

CONCISE EXPLANATORY STATEMENT

In accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-2.6, the following is a concise explanatory statement:

AGENCY:

Rhode Island Ethics Commission

RULE IDENTIFIER:

520-RICR-00-00-1 (Subsection 1.4.2)

RULE TITLE:

Code of Ethics (Gifts)

REASON FOR RULEMAKING:

This is an amendment to the Code of Ethics' provision relating to gifts. The reason for the amendment is to (1) close a perceived "loophole" in the definition of "interested person" that would conceivably have allowed unlimited gifts to public officials from certain non-profit organizations and their lobbyists; and (2) conform the allowable gift limits to both the rate of inflation since the limits were last updated in 2005, and to the limits set in many other jurisdictions.

ANY FINDING REQUIRED BY LAW AS A PREREQUISITE TO THE EFFECTIVENESS OF THE RULE:

N/A

TESTIMONY AND COMMENTS:

The Ethics Commission solicited and received comments from several individuals. These public comments overwhelmingly supported the amendments proposed by Common Cause Rhode Island to close the nonprofit lobbyist "loophole," and opposed amendments aimed at raising the allowable gift limits. Many comments stated that public officials should not be permitted to accept any gifts of any value. The Ethics Commission's decision to update the gift limits is based the Commission's experience enforcing the gift rule over the last twenty years, the rate of inflation over that period of time and going forward, and on the widely-held view among ethics enforcement agencies nationwide that an exception allowing *de minimis* gifts is effective in focusing ethics enforcement resources on investigating and penalizing the type of gift-giving that is most likely to improperly influence governmental decision-making or have a clear appearance of impropriety. The increase in the gift limits from \$25 per gift/\$75 in

aggregate to \$50 per gift/\$150 in aggregate is consistent with the rate of inflation and the gift limits established in other jurisdictions.

CHANGE TO TEXT OF THE RULE:

There are no changes between the text of the rule as proposed and the text of the final rule.

REGULATORY ANALYSIS:

The Ethics Commission is directed by the Rhode Island Constitution to adopt a code of ethics for public officials. A rule that restricts gifts and gratuities to public officials in some circumstances is consistent with the constitution's statement that public officials "must adhere to the highest standards of ethical conduct, . . . avoid the appearance of impropriety and not use their position for private gain or advantage."

- A. **As to Gift Limits:** The Code of Ethics' gift rule has, since 2005, prohibited gifts from interested persons to public officials that are valued in excess of \$25 per gift or \$75 in aggregate from the same source. This proposed amendment to subsection (B) of 520-RICR-00-00-1.4.2 raises those limits to \$50 per gift or \$150 in aggregate to acknowledge increases in inflation over the last twenty years and moving forward. There is no expected cost to implement this amendment, nor is there any alternative approach that would be as effective or feasible.
- B. **As to Definition of "Interested Person" to include Lobbyists:** The gift rule prohibits public officials from accepting expensive gifts from an "interested person," which is defined to mean a person or entity with a direct financial interest in decisions made by the public official. While this definition has historically been understood to include gifts from lobbyists to the public officials they lobby, lobbyists for non-profit entities may not fit neatly into this definition. This amendment to subsections (C) and (D) of 520-RICR-00-00-1.4.2 seeks to expressly prohibit expensive gifts from *all* lobbyists to the public officials they are lobbying. There is no expected cost to implement this amendment, nor is there any alternative approach that would be as effective or feasible.

Analysis of the benefits and costs of regulatory alternatives reflecting the scope of discretion provided by the statute authorizing the proposed rule:

These proposed amendments to the gift rule are consistent with the constitutional and statutory authority provided to the Ethics Commission to adopt a Code of Ethics. See R.I. Const. art. III, sec. 8; R.I. Gen. Laws § 36-14-9(a)(3), and in light of the standards of public office-holding set forth in the Rhode Island Constitution: "The people of the State of Rhode Island believe that public officials and employees must adhere to the highest standards of ethical conduct, respect the public trust and the rights of all persons, be

open, accountable and responsive, avoid the appearance of impropriety and not use their position for private gain or advantage.” R.I. Const. art. III, sec. 7.

- A. **As to Gift Limits:** The Ethics Commission has historically considered both higher and lower gift limits, including a “zero tolerance” rule prohibiting gifts of any value in effect from 1998-2001, and a gift limit of \$150 per gift/\$450 in aggregate in effect from 2001-2005. The current limits of \$25 per gift and \$75 in aggregate, adopted in 2005, have proven to be fair and effective, and the proposed increase of these limits to \$50 per gift/\$150 in aggregate is consistent with the rate of inflation and the gift limits established in other jurisdictions.
- B. **As to Definition of “Interested Person” to include Lobbyists:** Most lobbyists for for-profit entities are already considered to be “interested persons” under the current definition contained within the gift rule, so that the rule applies to gifts given by such lobbyists to the public officials they lobby. However, lobbyists for non-profit entities may not fit within the current definition because their clients may have more of a *policy-based* interest rather than a *financial-based* interest in the issue being lobbied. This proposed amendment closes this “loophole” by applying the gift rule to gifts given by *any* lobbyist to the public official being lobbied, regardless of whether the lobbyist’s or lobbyists’ clients’ interests are financial-based or policy-based. Closing this loophole is consistent with the authority granted to the Ethics Commission by the Rhode Island Constitution.

Demonstration that there is no alternative approach among the alternatives considered during the rulemaking proceeding which would be as effective and less burdensome to affected private persons as another regulation. As part of this demonstration, identify any other state regulation which is overlapped or duplicated by the proposed regulation and justify any overlap or duplication:

- A. **As to Gift Limits:** A gift limit is designed to only restrict and penalize the acceptance of significant gratuities that may influence a public official’s decision-making or independence of judgment or would result in an appearance of impropriety. The gift rule does not overlap or duplicate other state regulations.
- B. **As to Definition of “Interested Person” to include Lobbyists:** The alternative to enacting this amendment is to treat lobbyists differently depending upon whether they represent for-profit clients or not-for-profit clients. Such disparate treatment of gifts from lobbyists does not appear to be consistent with the Rhode Island Constitution’s statement that public officials should avoid the appearance of impropriety and not use their position for private gain or advantage. The gift rule does not overlap or duplicate other state regulations.

Additional considerations:

The Ethics Commission does not expect any changes to its enforcement of the gift rule. The proposed amendment as to gift limits merely updates the gift limit to be consistent with the rate of inflation since the rule's last amendment in 2005, while the proposed amendment to the definition of "interested person" merely makes express what has historically been understood, which is that gifts from lobbyists to those being lobbied are ethically suspect and subject to the gift rule.