

Overview of
State Pay-to-Play Statutes

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OVERVIEW OF STATE PAY-TO-PLAY STATUTES

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INTRODUCTION

Recent scandals involving government contractors have focused public attention on the practice of contractors contributing money to government officials, candidates, and political parties who, in many cases, are either responsible for evaluating and awarding government contracts or in a position to influence such decisions. Citing numerous recent examples, most prominently allegations against a California Public Employees Retirement System board member and former Illinois governor Rod Blagojevich, reform groups maintain that an unregulated environment for political contributions—commonly referred to as “pay-to-play”—presents a very real danger of corruption or, at a minimum, the appearance of corruption in the contracting process. In response to public pressure, many jurisdictions have enacted laws, promulgated regulations, or issued executive orders with the goal of not only maintaining the integrity of the contracting process, but also preventing a *de facto* regime whereby bidders come to believe that it is necessary to make political contributions in order to obtain government contracts.

Opponents of these laws contend that bans on contributions from government contractors significantly infringe on core political speech. The Supreme Court’s decisions in *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010), which struck down prohibitions on corporate independent political expenditures, and *Randall v. Sorrell*, 548 U.S. 230 (2006), which struck down the State of Vermont’s extraordinarily low campaign contribution limitations, may have provided some added momentum to pay-to-play opponents. In February 2010, the Supreme Court of Colorado invalidated that state’s entire pay-to-play constitutional amendment on several grounds, including that the amendment violated free speech rights and the language was unconstitutionally vague and overbroad. *Dallman v. Ritter*, 225 P.3d 610 (Colo. 2010). Time will tell what the fate of these laws will be in court. For the time being, it can be expected that more states and municipalities will adopt such measures.

The purpose of this summary is to provide quick overviews of some of the statutes that the various states have enacted that impose restrictions or special reporting requirements on political contributions by government contractors. Each summary discusses the scope of the pay-to-play laws, including which contracts and contractors are covered, and the potential sanctions for violations.

DISCUSSION

A. California

The California Public Employees Retirement System board is prohibited from considering any matter involving a government contractor in closed session unless the contractor has previously disclosed all “campaign contributions aggregating two hundred fifty dollars (\$250) or more and any gifts aggregating fifty dollars (\$50) or more in value” made to any board member or employee in the previous calendar year. CAL. GOV’T CODE § 20152.5. Similarly, the California Education Code provides that the State Teachers Retirement System Board may not consider any matter that involves a government contractor during an executive session absent a similar disclosure. CAL. EDUC. CODE § 22363. Failure to make these disclosures could result in disqualification. *Id.*; CAL. GOV’T CODE § 20152.5.

California State Lottery contractors must disclose all reportable campaign contributions “to any local, state, or federal political candidate or political committee in [California] for the past five years.” CAL. GOV’T CODE § 8880.57(b)(7).

Board members of the Los Angeles County Transportation Authority, who have received campaign contributions in excess of \$10 from contractors or prospective contractors within the previous four years, are prohibited from participating in contract decisions that involve those donors. CAL. PUB. UTIL. CODE § 130051.20.

B. Colorado

In 2008, Colorado voters narrowly approved a multi-faceted amendment to the state constitution prohibiting sole source government contractors and members of their immediate family from making any political campaign contributions to political parties or to state and local candidates at any time during the duration of the contract or two years thereafter. COLO. CONST. art. XXVIII, § 15; *see also id.* §§ 16-17. The amendment also prohibited any person who made contributions to a ballot measure committee from entering into a sole source contract related to that issue. *Id.* § 17(c). In *Dallman*, the Colorado Supreme Court struck down the entire amendment as unconstitutional under the First Amendment to the United States Constitution. 225 P.3d at 640.

C. Connecticut

Section 9-612(g) through (i) of the Connecticut General Statutes prohibits state government contractors from making political contributions to candidates running for statewide and state legislative offices and also political party committees. CONN. GEN. STAT. § 9-612(g)(2)(A)-(B). The prohibitions apply where a single contract is valued at \$50,000 or more or a combination or series of contracts are valued at \$100,000 or more and, in the case of awarded contracts, run until

December 31 of the year in which the contract terminates. *Id.* § 9-612(g)(1)(C)-(E). In 2008, the Connecticut District Court rejected a constitutional challenge to these restrictions, *Green Party of Connecticut v. Garfield*, 590 F. Supp. 2d 288 (D. Conn. 2008), which is now on appeal.

These provisions apply to both no-bid and competitive-bid contracts and restrict current state contractors, prospective state contractors, and principles of state contractors and prospective state contractors from making prohibited contributions. CONN. GEN. STAT. § 9-612(g)(2)(A)-(B). The statute defines prospective state contractors as any person, business entity, or nonprofit organization that submits a response to a request for proposals or holds a prequalification certificate issued by the Commissioner of Administrative Services. *Id.* § 9-612(g)(1)(E). The statute defines a principal of a state contractor or prospective state contractor to include any of the following: an individual member of the board of directors, an individual who holds a 5% or greater ownership interest in the state contractor or prospective state contractor, an individual employed by the state contractor or prospective state contractor as president, treasurer, executive vice president, chief executive officer, or an officer or employee who has managerial or discretionary responsibilities with respect to the state contract, and a spouse, dependent child, or a political committee of any of the foregoing. *Id.* § 9-612(g)(1)(F).

The State Elections Enforcement Commission has enforcement authority over these prohibitions. Violations can result in cancellation of an awarded contract or disqualification from state contracting for up to one year after the election, but the State Elections Enforcement Commission may reduce or decline to impose any violation if warranted by mitigating circumstances. *Id.* § 9-612(g)(2)(C)-(D).

D. Florida

In the past, Florida restricted two specific regulated entities from contributing to candidates for the offices that regulate those entities. Florida law previously prohibited insurers from making contributions to candidates for the Office of Insurance Commissioner. FLA. STAT. § 627.0623 (repealed 2003). The law was repealed by Senate Bill 1712, which reorganized the functions of the executive branch, including the Office of Insurance Commissioner. S.B. 1712, 2003 Leg., Reg. Sess. (Fla. 2003). Florida also previously prohibited food outlets and convenience stores from contributing to candidates for Commissioner of Agriculture. FLA. STAT. § 106.082 (repealed 2008). The law was repealed, however, by an omnibus elections reform bill. S.B. 866, 2008 Leg., Reg. Sess. (Fla. 2008).

E. Hawaii

Section 11-205.5 of the Hawaii Revised Statutes prohibits any person entering into a contract with the state or its subdivisions or any department or

agency of the state from directly or indirectly making or promising to make any contribution to any political party, committee, or candidate for public office or to any person for political purposes or use or to knowingly solicit any contributions from others for any purpose. HAW. REV. STAT. § 11-205.5(a). This prohibition applies from the execution of the contract until its completion. However, this prohibition does not cover the establishment, administration, or solicitation of contributions to any separate segregated fund by any state or national bank, corporation, or labor organization for the purpose of influencing the nomination or election of any person to office. *Id.* § 11-205.5(b).

This provision applies to both no-bid and competitive-bid contracts and restricts only the contracting entity from making any prohibited donations. *Id.* § 11-205.5(a).

The Hawaii Campaign Spending Commission has enforcement authority over these prohibitions. Violations can result in fines of up to \$1,000 for each occurrence or an amount equivalent to three times the amount of an unlawful contribution or expenditure, whichever is greater. *Id.* § 11-228(a). If the violation is committed knowingly, intentionally, or recklessly, it could result in misdemeanor prosecution. *Id.* § 11-229(a).

F. Illinois

Illinois law prohibits business entities with aggregate annual state contracts totaling over \$50,000, and certain of their affiliates, from making contributions to political committees established to promote the candidacy of any incumbent or declared candidate for the offices of Governor, Lieutenant Governor, Attorney General, Secretary of State, Comptroller, or Treasurer responsible for awarding the contracts. 30 ILL. COMP. STAT. § 500/50-37(a)-(b). This prohibition is effective for the duration of the officeholder's term in office, or for two years following expiration or termination of the contracts, whichever is longer. *Id.* § 500/50-37(b). In addition, a business entity with pending bids and proposals for state contracts (or any combination of pending bids/proposals and present contracts) totaling over \$50,000 is prohibited from making contributions to a political committee established to promote the candidacy of the incumbent officeholder responsible for awarding the contract. *Id.* § 500/50-37(c). This prohibition is effective from the date the invitation for bids or request for proposals is issued until the day after the date the contract is awarded. *Id.*

With certain limited exceptions (most significantly for highway projects eligible for federal highway funds), these provisions apply to both no-bid and competitive-bid contracts, and restrict current state contractors, prospective contractors with pending bids, and certain affiliated entities and persons from making prohibited contributions to covered officeholders and candidates. *Id.* § 500/50-37(a)-(c). "Affiliated entities" include the corporate parent of the covered

business entity, any operating subsidiary of the corporate parent or business entity, any 501(c) tax exempt organization organized by the business entity, and any political committee sponsored by the business entity. *Id.* § 500/50-37(a). “Affiliated person” means any person with an ownership interest in the business entity of over 7.5%, executive employees of the business entity, and the spouse of any executive employee. *Id.* § 500/50-37(a). Executive employees include the President, Chairman, and C.E.O. of the business entity, as well as individuals who either fulfill equivalent duties of such persons, or whose compensation is determined in whole or part by the award or payment of contracts to the business entity. *Id.*

The State Board of Elections and State Comptrollers Office have enforcement authority over these prohibitions. Contracts violating the provisions discussed above are voidable, and a notice of all violations and the penalties imposed will be published in both the Procurement Bulletin and the Illinois Register. *Id.* If a contractor covered by section 500/50-37(b) (*i.e.*, with over \$50,000 in annual state contracts) violates that provision three or more times within a 36-month period, *all* of its state contracts “shall be void,” and the contractor will be barred from submitting any bid or response to a request for proposal, or otherwise entering into any state contract, for three years from the date of the last violation. *Id.*

A political committee that receives contributions in violation of the prohibitions above is required to repay the state the value of the contribution within 30 days of the violation being identified. *Id.* § 500/50-37(e).

G. Indiana

Indiana law provides that a person who has made a campaign contribution to a candidate for state, legislative, or local office, or political parties, may not enter into a contract with the State Lottery Commission within three years preceding the date of the contract award. IND. CODE §§ 4-30-3-19.5(i), 4-30-3-19.7(i). Moreover, the statute prohibits contractors and officers and political action committees of contractors from making a state candidate campaign contribution “while the contract is in effect and during the three (3) years following the final expiration or termination of the contract.” *Id.* §§ 4-30-3-19.5(j), 4-30-3-19.7(j). Affected contracts include those for the printing of lottery tickets, consulting services for lottery operations, and contracts for certain goods and services. *Id.* §§ 4-30-3-19.5(e)(1)-(3), 4-30-3-19.7(e)(1)-(3).

Violations are subject to punishment as Class D felonies, which can result in a prison sentence between six months and three years and up to a \$10,000 fine. *Id.* § 35-50-2-7(a).

H. Kentucky

Section 121.330(1) through (4) of the Kentucky Revised Statutes prohibits an elected official from awarding a no-bid contract to any entity whose officers or

employees, or the spouses of officers or employees, contributed more than \$5,000 to the elected official's campaign. KY. REV. STAT. 121.330(1)-(4). The law also prohibits awarding no-bid contracts to any person who directly solicited more than \$30,000 as a fundraiser for the campaign, as well as prohibiting a no-bid contract award to that person's immediate family, employer, or employee. *Id.* Additionally, section 121.056 prohibits no-bid contracts to individuals who contribute more than \$1,000 dollars to a slate of candidates for Governor and Lieutenant Governor or to any entity in which such a person has a substantial interest. In this statute, substantial interest means the person making the contribution or their immediate family, or a combination of the two, who owns or controls 10% or more of the entity. *Id.* § 121.056(2).

These provisions apply to all no-bid contracts and restrict officers, employees, spouses of officers and employees, or individuals who separately or together with immediate family members hold an ownership interest in state contractors and prospective state contractors from making prohibited contributions. *Id.* §§ 121.330(1)-(2), 121.056(2). The statute also applies to any person who acted as a fundraiser by directly soliciting contributions in excess of \$30,000 in one election campaign and any immediate family member, employer, or employee of such a person. *Id.* § 121.330(3)-(4). The statute defines immediate family member as the spouse, parent of the person or the spouse, or the child of the person or the spouse. *Id.* § 121.056(2).

The Kentucky Registration of Election Finance and the state procurement office have enforcement authority over these prohibitions. Any person or entity who knowingly receives a contract in violation of these statutes is guilty of a Class D felony. Upon conviction, the contract will be canceled, and that person or entity is ineligible to receive a contract with the state for five years from the date of a final judicial determination of guilt. *Id.* § 121.990(11)-(17).

I. Louisiana

Louisiana Revised Statutes § 18:1469(A) defines the crime of bribery of a candidate as making or promising to make a campaign contribution in exchange for a promise to award or influence the awarding of a government contract to the contributor. LA. REV. STAT. § 18:1469(A).

Section 18:1505.2(S)(1) prohibits campaign contributions to candidates for insurance commissioner by contractors for the Louisiana Citizens Property Insurance Corporation ("LCPIC") who also subcontract with insurance adjusters to adjust claims for the LCPIC. *Id.* § 18:1505.2(S)(1). In the case of corporate contractors, the law includes individual officers and board members and, for LLCs, it includes all of the company's owners, members, and officers. Louisiana law also prohibits elected officials from accepting contributions from no-bid "hurricane rebuilding efforts" (Hurricane Katrina) contractors. *Id.* § 18:505.2(T)(2)(a)-(b), (d).

Similarly, section 27:261(D) provides that “[n]o entity that holds a casino operating contract under the provisions of this Chapter shall be eligible to make campaign contributions to any person seeking election or reelection to a public office.” *Id.* § 27:261(D).

Persons convicted of candidate bribery are subject to a fine of up to \$1,000 or a maximum prison sentence of up to five years, or both. *Id.* § 18:1469(C). Violators of the pay-to-play laws are subject to civil penalties of up to \$500 and criminal penalties of up to six months in jail or imposition of a criminal fine of up to \$500, or both. *Id.* §§ 18:1505.5(B)(1), 18:1505.6(C). Violators of the hurricane rebuilding efforts contribution prohibition are subject to a fine up to two times the value of the contribution and the statute requires that all such contributions must escheat to the state. *Id.* § 18:1505.2(T)(2)(a)-(c).

J. Maryland

Maryland law requires public contractors to file campaign contribution disclosure reports with the State Board of Elections. MD. CODE, ELEC. LAW § 14-101, *et seq.* The law requires that a contractor file an initial statement at the time when a public contract is executed that identifies campaign contributions over the preceding 24 months. *Id.* § 14-104(b)(1)(i). Contractors must also file semi-annual supplemental reports indicating any subsequent contributions. *Id.* § 14-104(b)(2)(i). This reporting requirement covers contractors “making, during any 12-month period, one or more contracts with one or more governmental entities involving cumulative consideration of at least \$100,000” and only applies to “contribution[s] to a candidate, or a series of such contributions, in a cumulative amount in excess of \$500.” *Id.* § 14-101(b), (g)(1). Contributions on behalf of officers, directors, and partners of government contractors are attributable to the contracting entity and must be reported, along with any contributions made by an officer, director, partner, employee, agent, or other person made at the contractor’s request or direction. *Id.* § 14-105(a)-(d).

Knowing and willful violators are subject to prosecution for a misdemeanor and a fine of up to \$1,000 or up to one year in prison, or both. *Id.* § 14-107.

K. Nebraska

Nebraska law prohibits the director of the state lottery from awarding a “major procurement”^{*} contract to a bidder who has made a campaign contribution to

* The code defines “major procurement” as including “any procurement or contract unique to the operation of the state lottery in excess of twenty-five thousand dollars for the printing of tickets used in any lottery game, security services, consulting services, advertising services, any goods or services involving the receiving or recording of number selections in any lottery game, or any goods or

a statewide office candidate within three years preceding the contract award. NEB. REV. STAT. § 9-835(2). Moreover, a major procurement lottery contractor is prohibited from making a contribution to or an independent expenditure for a candidate for state office “during the term of the contract or for three years following the most recent award or renewal of the contract.” *Id.* § 49-1476.01(1). These restrictions cover contributions made by the contractor, an officer, a separate segregated fund, or anyone acting on their behalf. *Id.* §§ 9-835(2), 49-1476.01(2).

The law provides that any contract awarded in violation of section 9-835 is void and that knowing or intentional violations of section 49-1476.01 are punishable as a Class IV felony, which means that violators are subject to a maximum prison sentence of five years or a fine of up to \$10,000, or both. *Id.* §§ 9-835, 49-1476.01.

L. New Jersey

Section 19:44A-20.14 through 15 of the New Jersey Statutes prohibits the state or its purchasing entities from entering into contracts where the value of the goods or services exceeds \$17,500, with any business entity that has solicited, made, or pledged to make any political contributions to a candidate committee or election fund of any gubernatorial candidate or to any state or county party committee. N.J. STAT. § 19:44A-20.14-15.

These provisions apply to both no-bid and competitive-bid contracts except for highway contracts and those involving eminent domain. *Id.* § 19:44A-20.25. The statute restricts donations from any business entity entering into contracts for over \$17,500 with the state. *Id.* §§ 19:44A-20.14, 19:44A-20.15. The statute defines business entities as (1) all principals who own more than 10% of the profits, assets, or stock, (2) any subsidiaries, (3) any 527 political organizations controlled by the business entity, or (4) if the business entity is a natural person, it also includes that person’s spouse or child who resides in the same household. *Id.* § 19:44A-20.17.

The Election Law Enforcement Commission has enforcement authority over these prohibitions. Violations can result in a penalty up to the value of awarded contract or disqualification from state contracting for up to five years. *Id.* § 19:44A-20.10.

services involving the determination of winners in any lottery game. Major procurement shall include production of instant-win tickets, procurement of on-line gaming systems and drawing equipment, or retaining the services of a consultant who will have access to any goods or services involving the receiving or recording of number selections or determination of winners in any lottery game.” NEB. REV. STAT. § 9-803(7).

M. New Mexico

New Mexico law requires that all prospective government contractors disclose all campaign contributions that it has made, or that were made by a family member or representative, to state and local public officials during the two years prior to (a) the date on which it submits its proposal for a competitive contract or (b) the date on which a sole source contract is signed. N.M. STAT. § 13-1-191.1(B); *see also id.* § 13-1-112(A)(3). Disclosure is required only when the total contributions exceeds \$250 over the applicable two-year period. *Id.* § 13-1-191.1(B). The law also prohibits a prospective contractor, family member, or representative from giving a campaign contribution or any other thing of value to a public official during the negotiation period for a sole source or small purchase contract. *Id.* § 13-1-191.1(E). The term “representative” includes corporate officers and directors, members of a limited liability corporation, or a partner or trustee of prospective contractors. *Id.* § 13-1-191.1(G)(5).

New Mexico’s statutory tribal gaming compact also requires that tribes with gaming facilities promulgate regulations that prohibit the tribe, its tribal gaming agency, or a management contractor from contributing money or anything of value to a candidate, political committee, or anyone holding elected office. *Id.* § 11-13-1 (*see* tribal compact section 4(B)(21)).

Violations of § 13-1-191.1 can result in cancellation or termination of a contract or ratification of the contract. *See id.* §§ 13-1-181, 13-1-182.

N. Ohio

Section 3517.13(I) through (Z) of the Ohio Revised Code prohibits state government contractors from making political contributions to state and local officials ultimately responsible for awarding the contract or appointing administrators who award the contract. OHIO REV. CODE § 3517.13(I)-(Z). Contractors are prohibited from making a contribution to that official for two years prior to the start of the contract and one year following its conclusion. *Id.* §§ 3517.13(I)(1)(a), 3517.093(B). The prohibitions apply where an agency or department of the state awards a single contract valued at \$500 or more or where a political subdivision awards a combination or series of contracts valued at \$10,000 or more in a calendar year. *Id.* § 3517.13(I)(1)(a).

These provisions apply to no-bid and competitive-bid contracts and restrict current state contractors, prospective state contractors, and principles of state contractors and prospective state contractors from making prohibited contributions. *Id.* § 3517.13(I)-(Z). In 2007, Ohio passed a stringent law restricting contributions from a company’s business partners, shareholders, administrators, executors, trustees, and individuals with at least a 20% ownership interest, as well as their spouses and children age 7-17. *Id.* § 3517.093(A). The law also restricted donations

from a company's political action committee. *Id.* § 3517.13(I)(1)(a). The law was recently invalidated on procedural grounds. *United Auto Workers, Local Union 1112 v. Brunner*, 911 N.E. 2d 327 (Ohio Ct. App. 2009). As a result, the 2006 pay-to-play law remains in force. The current law covers only those with at least a 20% ownership interest in the business.

The Ohio Elections Commission has enforcement authority over these prohibitions. Violations can result in fines, as well as cancellation of an awarded contract. OHIO REV. CODE § 3517.992(R)(1)-(2).

O. Pennsylvania

Pennsylvania law requires businesses that have been awarded non-bid contracts to report to the Secretary of the Commonwealth all political contributions made by its officers, directors, associates, partners, limited partners, owners, or employees or members of their immediate family that individually or in the aggregate exceed \$1,000 during the preceding year. 25 PA. CONS. STAT. § 3260a.

In December 2009, a new law went into effect regulating campaign contributions by municipal pension system contractors. Prospective or successful contractors “may not solicit a contribution to any municipal official or candidate for municipal office in the municipality where the municipal pension system is organized or to the political party or political action committee of that official or candidate.” 53 PA. CONS. STAT. § 895.703-A(b). This prohibition applies not only to the contractor or the prospective contractor, but also to agents, officers, directors, and employees. In addition, a person who has made a political contribution to a municipal official or candidate within the past two years is disqualified from entering into a contract with that municipal pension system. *Id.* § 895.704-A(a) (the statute excludes contributions made prior to December 17, 2009). Contractors and prospective contractors must also disclose all campaign contributions made within the last five years by officers, directors, executive employees, and owners in excess of \$500 (individually or in the aggregate) made to candidates and officers as well as political committees. *Id.* § 895.705-A(a)(1).

The Commonwealth Attorney General, along with the local district attorneys, has prosecutorial enforcement authority over violators of section 3260a's disclosure requirement. 25 PA. CONS. STAT. § 3260b. Violators of the municipal pension system contractor disclosure requirement are subject to contract cancellation and a prohibition from future contracting for up to three years. 53 PA. CONS. STAT. § 895.705-A(e)(1)-(2).

P. Rhode Island

Chapter 27 of the General Laws of Rhode Island imposes reporting requirements on state vendors with contracts worth \$5,000 or more where the vendor has, within the twenty-four months preceding the contract date, contributed

\$250 or more within a calendar year to any general officer or candidate for general office, any member of, or candidate for, the general assembly, or any political party. R.I. GEN. LAWS § 17-27-2. If the vendor has done so, it must file an affidavit with the board of elections listing the name of the person or entity to whom the vendor contributed, the amount of the contribution made during the preceding twenty-four months, and the gross amount of the contracts entered into between the vendor and all state agencies during that timeframe. *Id.* The vendor must also file a copy of the government contract or a summary of the principal terms of the contract. *Id.* § 17-27-3(a). If the contract is written, the vendor must file the affidavit within sixty days of its execution. *Id.* If the contract is not written, the vendor must file the affidavit within sixty days of the date when the vendor is notified that it has reached the \$5,000 threshold. *Id.* For purposes of this reporting law, a state vendor is a person or business that sells goods or provides services to a state agency, a person or business with at least a ten percent ownership interest in such an entity, an executive officer of such a business entity, the spouse or minor child of a person qualifying as a state vendor (unless the spouse works for a competitor), or a parent or subsidiary of a qualifying business entity. *Id.* § 17-27-1(7)(i). Parent, affiliate, or subsidiary entities of the vendor required to file an affidavit may consolidate their reports with the vendors. *Id.* § 17-27-3(c).

The board of elections has enforcement authority over these provisions. *Id.* § 17-27-4(c). Any vendor whom the board finds to have willfully and knowingly violated the reporting requirements shall be subject to a civil penalty of not more than \$1,000 per offense. *Id.* § 17-27-5(a). If the state vendor willfully and knowingly violated the reporting requirements in order to commit or attempt to commit fraud or bribery, to conceal unlawful political contributions, or to induce a public official to violate the code of ethics set forth in chapter 14 of title 36 of the General Laws, the vendor may be declared ineligible for the award of any additional state contracts for a period of time that the board of elections deems appropriate. *Id.* § 17-27-5(b).

Q. South Carolina

South Carolina's pay-to-play law regulates a "person who has been awarded a contract with the State, a county, a municipality, or a political subdivision" and prohibits "contribution[s] after the awarding of the contract or invest[ments] in a financial venture in which a public official has an interest if that official was in a position to act on the contract's award." S.C. CODE § 8-13-1342. It is unclear whether the prohibition extends beyond the contracting entity (*i.e.*, a corporation, partnership, other business entity, or sole proprietorship) to its owners, officers, or employees.

The statute applies only to contracts awarded through a non-competitive bidding process. *Id.* (excluding "contracts awarded through competitive bidding practices"). The statute also prohibits public officials and employees from soliciting

“campaign contributions or investments in exchange for the prior award of a contract or the promise of a contract with the State, a county, a municipality, or a political subdivision thereof.” *Id.*

Violators are subject to prosecution for a misdemeanor offense and could be fined up to five hundred percent of the amount of the contributions, but not less than five thousand dollars, and/or a prison sentence of up to one year. *Id.* § 8-13-1520(B). A person so convicted is subject to (1) a fine of up to five hundred percent of the amount of contributions, but not less than five thousand dollars, and/or (2) imprisonment for not more than one year. *Id.*

R. Vermont

A firm, or a political committee established by a firm, which currently has a contract with the state treasurer, may not make or solicit contributions on behalf of a candidate for the office of treasurer. 32 VT. STAT. ANN. § 109(b). For purposes of this law, a “firm” means any person or entity that provides investment services and includes the owners, managers, officers, directors, partners, and employees who have discretionary responsibility to invest or manage funds or provide investment services. *Id.* § 109(a)(1); *see also* § 109(a)(2) (defining “investment services”). The term “firm” does not cover shareholders owning less than one percent of a firm’s outstanding shares. *Id.* § 109(a)(1).

The treasurer may offer a contract to a firm if the firm, or a political committee established by the firm, has made or solicited contributions on behalf of a candidate for the office of treasurer after July 1, 1997 and within five years of the date of the contract. *Id.* § 109(c).

A violation of section 109(b) is considered a material breach and default by the firm, and the state will terminate the contract. *Id.* § 109(b). The state may still compensate the firm with respect to work performed, or expenses incurred, prior to the date the contract is terminated. *Id.*

S. West Virginia

Section 3-8-12(d) of the West Virginia Code prohibits any person entering into a contract with the state or its subdivisions or any department or agency of the state from directly or indirectly making any contribution to any political party, committee, or candidate for public office or to any person for political purposes or use. W. VA. CODE. § 3-8-12(d). This prohibition applies “during the period of negotiation for or performance under the contract or furnishing of materials, supplies, equipment, land or buildings.” *Id.* This provision applies to both no-bid and competitive-bid contracts and restricts only the contracting entity from making any political contributions.” *Id.*

The West Virginia Ethics Commission has enforcement authority over this prohibition. Any person violating this provision is “guilty of a misdemeanor and, upon conviction thereof, shall be fined no more than [\$1,000], or confined in a regional or county jail for not more than one year, or, in the discretion of the court, be subjected to both fine and confinement.” *Id.* § 3-8-12(n).

POSTSCRIPT

In addition to state-level laws and regulations, the Federal Election Campaign Act prohibits campaign contributions by federal government contractors. 2 U.S.C. § 441c(a)(1). Many local governments have also adopted some form of pay-to-play regulations for local office campaigns, including Albuquerque, Boston, Buffalo, Charleston (WV), Chicago, Cook County, Denver, Grand Rapids, Honolulu, Houston, Indianapolis, Little Rock, Los Angeles County, New Orleans, Oakland, Philadelphia, San Antonio, San Diego County, and San Francisco.

More jurisdictions are likely to adopt pay-to-play laws in response to the Supreme Court’s decision in the *Citizens United* case which gives corporations greater latitude in using corporate resources to influence elections. Pay-to-play laws pose real risk to companies that depend on government contracts as an important source of revenue. Penalties for violations are often very harsh and may include debarment. Allegations of violations alone can damage a company’s reputation and diminish the chances for a successful government contracting business. The prudent company will take steps to assure that its employees are aware of these laws and a compliance system is in place to guard against violations.

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