

Advisory

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WIGGIN AND DANA

Counsellors at Law

Connecticut's New Campaign Finance Law Signifies Major Changes for Lobbyists, State Contractors, and Businesses

If you are a lobbyist, do business or plan to do business with the State of Connecticut, or own or work for a business with a registered political action committee ("PAC"), you should be aware of sweeping new campaign finance reform provisions that take effect on December 31, 2006. These provisions are contained in Public Act 05-5 of the October 25, 2005 Special Session, An Act Concerning Comprehensive Campaign Finance Reform for State-Wide Constitutional and General Assembly Offices ("the Act").¹ The Act, which amends Connecticut laws governing political contributions and state election campaigns, places significant restrictions on campaign contributions by lobbyists, state contractors and prospective state contractors, as well as members of their immediate families. In addition, it imposes monetary limits on contributions through PACs. The Act only applies to state elections; it does not apply to campaigns for federal elections, which are governed by federal campaign finance laws.

This Advisory highlights how the Act will affect business entities, their PACs, and the lobbyists who advocate on their behalf. The Act also applies to non-profit organizations, but treats them differently from other businesses for purposes of state contractor restrictions. Tax-exempt organizations should take note that there are additional and very important federal restrictions on political campaign expenditures and activities of tax-exempt organizations; the Internal Revenue Service has posted information about

these restrictions at <http://www.irs.gov/newsroom/article/0,,id=154712,00.html>.²

Some provisions of the Act discussed below are subject to constitutional challenge, particularly the prohibitions on political contributions by lobbyists and state contractors (and their families). In fact, at least two lawsuits challenging the constitutionality of the new law have been filed.

State Contractors

Is Your Business a State Contractor?

Several provisions of the Act apply to businesses with state contracts, and the Act defines "state contract" broadly. Any agreement with the State, a state agency or a quasi-public agency valued at \$50,000 or more in a fiscal year for (a) furnishing materials, equipment or supplies; (b) construction or repair of a public building or public work; or (c) a grant or loan, is a "state contract" for purposes of the Act. State contracts also include certain agreements for the "rendition of personal services." The State Elections Enforcement Commission ("SEEC"), which is responsible for implementing the new law, has interpreted this to include any agreement for any service rendered to the State, a state agency or a quasi-public agency, where the provider of the service receives any fee or other compensation of any kind, unless a specific exemption applies. The SEEC has been working to identify all existing state contracts, and is expected to publish a list of all Connecticut state contractors prior to the Act's December 31, 2006 effective date.

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Prohibited Contributions

The Act bans “principals” of state contractors from making and soliciting a variety of political contributions.

“Principals” of a for-profit business include:

- Members of the board of directors;
- The president, treasurer, or executive or senior vice president;
- Employees with managerial or discretionary responsibilities with respect to a state contract — this refers to individuals who directly and substantially participate in the negotiation of the state contract, and does not include employees who are responsible for administering the contract;
- Other individuals who own 5% of the business; and
- The spouse and dependent children of any of the individuals above.

For non-profit organizations, the Act defines principals somewhat differently. For example, while board members of a for-profit business are principals by definition, members of the board of directors of a non-profit organization are not principals unless they play a direct and substantial role in negotiating the state contract. As another example, the Chief Executive Officer (“CEO”) of a for-profit business is a principal only if he or she directly and substantially participates in the negotiation of the state contract, while the CEO of a non-profit entity is a principal regardless of the nature or degree of his or her involvement.

Effective December 31, 2006, if a business entity contracts with an *executive*

agency or quasi-public agency of the state government, the **principals** of the business, and the **spouses and dependent children of such principals**, are prohibited from making or soliciting contributions on behalf of:

- A campaign committee established by a candidate for the office of governor, lieutenant governor, attorney general, secretary of the state, state comptroller, or state treasurer (“statewide office”);
- A political committee authorized to make contributions to a candidate for any statewide office (this includes the business’s own PAC if the PAC is registered to make contributions to statewide office candidates); and
- A party committee (a committee selected by a political party to campaign, raise funds, and promote the ideals of the party at the State and local levels).

If the business entity contracts with the *General Assembly*, **principals** of the business, and their **spouses and dependent children**, are prohibited from making or soliciting contributions on behalf of:

- A campaign committee established by a candidate for *legislative* office (i.e., state senator or state representative);
- A political committee authorized to make contributions on behalf of any such candidate (including the business’s own PAC if the PAC is registered to make contributions to candidates for *legislative* office); and
- A party committee.

Prospective State Contractors

Businesses that do not yet have a state contract, but have submitted a bid or proposal in response to a bid solicitation or request for proposal (“RFP”) by the State, a state agency or a quasi-public

agency, are considered “prospective state contractors” under the Act. **Effective December 31, 2006**, principals of *prospective* state contractors, and their spouses and dependent children, are subject to the same prohibitions noted above for principals of state contractors.

In addition, for bids and proposals submitted on or after December 31, 2006, the CEO of a prospective state contractor must notify all of the principals of the business about the contribution prohibitions, and must certify in writing that the organization’s principals will comply.

Ad Books

Current law permits business entities and individuals to purchase advertising space in program books for political fundraisers (“ad book purchases”). As long as the purchase is within the monetary amount set by statute, the law does not treat the purchase as a political contribution, and therefore exempts the purchase from reporting and other requirements that would otherwise apply. **Effective December 31, 2006**, the Act treats almost all ad book purchases and ad book solicitations by **state contractors, prospective state contractors, and their principals** as political contributions; thus, with very limited exceptions, ad book purchases by state contractors, prospective state contractors, and their principals are banned under the broad prohibitions noted above. As a result, effective December 31, 2006, a business that contracts with the Department of Economic and Community Development, for example, cannot lawfully make an ad book purchase for a candidate for statewide office; however, the business can purchase an ad in the ad book for a General Assembly candidate, assuming the business has not submitted a bid for and

does not hold a contract with the General Assembly.

Penalties

Any state contractor or prospective state contractor that violates the campaign finance reform laws will be disqualified from being awarded a new state contract, or extending or amending an existing state contract, for a period of one year. Additionally, state agencies have discretion to void an existing state contract, provided it was executed on or after December 31, 2006. Criminal penalties apply to knowing and willful violations, and political candidates who accept prohibited contributions from state contractors and prospective state contractors may also be penalized.

Political Action Committees

Limits on Contributions

Current law allows PACs established by business entities to make unlimited contributions to other PACs and party committees. Effective December 31, 2006, these contributions are subject to monetary limits. For example, business PACs will be permitted to contribute a maximum of \$2,000 per calendar year to other PACs. The Act also increases existing limits on PAC contributions to legislative and municipal office candidates.

PACs of State Contractors and Prospective State Contractors

In addition to monetary limits, businesses that contract with the State (or that submit bids or proposals for state contracts) and have registered PACs are subject to additional restrictions, effective December 31, 2006.

Principals of a state contractor or prospective state contractor that contracts with an *executive agency of the State* and

has a PAC that contributes to statewide office candidates **cannot contribute to the PAC**, and cannot solicit others to contribute to the PAC. (Alternatively, the principals could contribute to the PAC, but the PAC could not contribute to candidates for statewide office.)

Principals of a state contractor or prospective state contractor that contracts with the *General Assembly* and has a PAC that contributes to candidates for *legislative* office **cannot contribute to the PAC**, and cannot solicit others to contribute to the PAC. (Alternatively, the principals could contribute to the PAC, but the PAC could not contribute to legislative office candidates.)

Businesses will not be able to establish multiple PACs to enable principals to contribute. Effective December 31, 2006, business entities are prohibited from having more than one PAC. If a business becomes a state contractor or prospective state contractor with an executive agency, for example, it will be able to maintain a PAC, provided the PAC does not contribute to candidates for statewide office or principals do not make or solicit any contributions to the PAC.

Lobbyists

Prohibited Contributions

The lobbyist provisions of the Act apply only to “communicator lobbyists,” which are individuals or entities employed or retained by a business to advocate to the legislature and state agencies on the business’s behalf (e.g., the in-house government relations director or an outside lobbying firm). The Act does not apply to “client lobbyists” — i.e., the business itself. The Act will not affect the way communicator lobbyists perform their job duties or represent their clients,

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but it will greatly affect communicator lobbyists' participation in the political process. The Act extends the lobbyist provisions to the spouses and dependent children of communicator lobbyists.

Effective December 31, 2006, communicator lobbyists, and the spouses and dependent children of communicator lobbyists, are subject to broad prohibitions on political contributions and solicitations, similar to those that apply to principals of state contractors and prospective state contractors.

A communicator lobbyist who violates the Act is subject to suspension from lobbying for a period of up to three years. Violations of the lobbyist prohibitions may also result in civil or criminal penalties.

Conclusion

Connecticut's new campaign finance law will significantly affect the manner in which businesses, their employees and officers make and solicit political contributions, both individually and through PACs.

If you have any questions about the new law, or would like to discuss the implications of the Act for your organization, please contact:

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¹ The Act was subsequently amended by Public Act 06-137, An Act Concerning the Severability of the Provisions of the Campaign Finance Reform Legislation. References in this Advisory to "the Act" refer to the Act as amended.

² For example, organizations that are exempt from taxation under Section 501(c)(3) of the Internal Revenue Code are absolutely prohibited from participating or intervening in political campaigns on behalf of any candidate for public office, and cannot contribute funds to any political campaign, political party or candidate. Non-profit organizations that are tax-exempt must therefore be extremely cautious when considering political activities or expenditures and be aware of both state and federal law.

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