

July 2009

## State & Local Government Contractors Beware: Political Contributions Can Put Your Business At Risk

“Pay-to-play” laws present a serious and growing risk for companies that do business with state and local agencies. These complex laws bar or severely restrict campaign contributions by bidders and contractors, as well as by company owners, officers, executives – even their spouses and dependent children.

The stakes for noncompliance are high. Just one personal campaign contribution to a covered officeholder, candidate, or party committee can lead to the severing of contracts, disqualification of bids, fines, and criminal penalties. In fact, the New Jersey Supreme Court recently upheld the disqualification of the low bidder on a multi-million dollar project because a few months earlier the company’s owner paid \$1500 for tickets to a party fundraising event.

Some pay-to-play laws also require contractors to register and identify all affiliates, employees, and family members who are subject to contribution restrictions. Similarly, some laws require bidders and contractors to file reports listing campaign contributions by company employees. A false statement in a disclosure document can result in perjury charges. Late filings or reporting errors may lead to fines or disqualification from future work.

Pay-to-play laws have proliferated over the last few years. About 20 states now have pay-to-play laws at the state or local levels. At the state level, these include Colorado, Connecticut, Hawaii, Illinois, Maryland, New Jersey, Kentucky, Pennsylvania and Ohio. Major municipalities with their own pay-to-play laws include Houston, Los Angeles, New York City, Philadelphia, San Antonio, and numerous cities and counties in California and New Jersey.

As a related matter, many states apply special restrictions to campaign contributions by regulated businesses, such as insurance companies and state licensees.

Bidders and contractors also face special lobbying and gift restrictions. A growing number of states and municipalities treat a contractor’s sales agents as “procurement lobbyists,” requiring them to register and file periodic reports. Under some laws, contract bidders can be disqualified if their sales representatives communicate with a government official or employee outside of approved channels. Some jurisdictions also impose special gift restrictions on public contractors and bidders.

We help companies stay on top of these fast-changing laws and avoid potential problems. Our team of experienced political law attorneys can assist you in developing and implementing an effective compliance program to address these risks to your business.

[Lawrence H. Norton](#) and [James A. Kahl](#) – Larry and Jim served as General Counsel and Deputy General Counsel, respectively, of the Federal Election Commission from 2001 to 2007. They

assist companies and trade associations with federal, state, and local campaign finance, gift, and lobbying laws. Larry and Jim are frequent speakers on corporate political activities and related compliance issues. They also publish a newsletter and blog on political law issues called [Political GPS](#).

---

Womble Carlyle client alerts are intended to provide general information about significant legal developments and should not be construed as legal advice regarding any specific facts and circumstances, nor should they be construed as advertisements for legal services.

***IRS CIRCULAR 230 NOTICE:*** *To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or in any attachment).*