

New procurement lobbying, ethics and pay-to-play provisions

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The political headlines from last year's battle over lobbying and ethics reform legislation in the Commonwealth of Virginia may have long faded from public memory, but the legal realities of the enacted law—Senate Bill No. 1424—are just starting to set in. The bill, which Governor Terry McAuliffe signed into law on April 30, 2015, went into effect on January 1 of this year and will have a significant impact on the nature of individual and organizational interaction with Virginia government in 2016 and beyond.

In a broad sense, the recently-enacted legislation has expanded the definition of lobbying under Virginia law so as to qualify a wide range of sales and procurement activities directed at state government as lobbying conduct. The new law has also significantly modified state gift rules for covered public officials and candidates, and placed new "pay-to-play" contribution restrictions on entities seeking loans from certain state funds. The specific changes of note for those persons and businesses engaging with government officials in the Commonwealth are as follows:

Expansion of the definition of "lobbying" under Virginia law to include procurement or sales-related communications directed at executive branch officials

Under Virginia law, the term "lobbying" includes all attempts to influence executive or legislative action through communications with executive or legislative officials. In an effort to broaden the range of government interaction subject to state lobbying registration and disclosure laws, Senate Bill No. 1424 has expanded the definition of "executive action" to include procurement, sales and contracting efforts by existing or prospective state contractors.

Under this newly-enacted framework, any person who contacts Virginia executive branch officials in an attempt to influence a "procurement transaction" with the Commonwealth will be undertaking a lobbying activity. For the purposes of this rubric, the term "procurement transaction" is defined to include virtually all actions related to a state agency's purchase of goods, services or construction from a vendor, including communicating with regard to contract requirements, selecting and soliciting sources, preparing and awarding a contract, and all phases of contract administration.

Although Senate Bill No. 1424 does not disturb the present compensation/expenditure threshold for lobbyist registration or eliminate any of the standing registration exceptions contained within Virginia lobbying law, the sheer breadth of the new provision makes it extremely likely that all companies doing business with the Commonwealth will need to evaluate the compliance risks associated with the activities of their sales personnel. Many of those procurement professionals may now, in 2016, need to register and report as state lobbyists for traditional government

sales activities.

Imposition of a lower gift cap and development of new exceptions to the cap

In addition to strengthening the regulation of lobbying under state law, Virginia's new ethics legislation also imposes a \$100 gift limit for items of value provided by certain donors to Members of the General Assembly, state legislative employees, executive branch officials, certain executive branch employees, some local officials and employees, candidates for elected office, and the immediate family members of such persons. For the purposes of the new gift cap, covered officials and employees are prohibited from accepting any gift or combination of gifts with an aggregate, annual value of more than \$100 from restricted sources, including the following: lobbyists, lobbyist principals; existing or prospective state agency contractors; existing or prospective local agency contractors; or any officers, directors, owners, or persons with a controlling interest in such existing or prospective government contractors.

Despite the new \$100 annual, aggregate gift limit imposed by the newly-enacted legislation, Virginia law does offer an array of exceptions to what counts as a gift for the purposes of the new monetary cap. Items that are either not considered gifts under the new rule or which do not count toward the \$100 aggregate limit include, but are not limited to, the following:

- Items worth under \$20 and other items of nominal value;
- Registration costs and the costs of attendance, food, beverage and entertainment at certain widely-attended gatherings, events where the covered official or employee is performing official duties, or events where the official or employee is a featured speaker or presenter;
- Items given on the basis of personal friendship; and
- Certain travel expenses, provided they have been approved by the Ethics Advisory Council and disclosed.

Enactment of a new pay-to-play provision

A final legislative change of note put in place under the new ethics law is the addition of a targeted pay-to-play provision affecting organizations engaging with the Commonwealth's Development Opportunity Fund (CDOF). Under this newly-implemented rule, all entities submitting an application to the CDOF for a grant or a loan are prohibited from making political contributions of more than \$100 to the Governor, his campaign committee or any political action committee established on his behalf. This contribution restriction applies not only to the applying entity itself, but also to its officers, directors or any other individuals with a controlling interest in the organization. The ban on donations is effective from the date of application with CDOF until such time as the grant or loan is denied or until one year after the provision of the grant or loan.

For legal advice and counsel concerning the impact of these new provisions and for guidance on how best to design a compliance framework that can ensure full adherence with Virginia law, please contact the Dentons Political Law team. Our lawyers are well versed in assisting the regulated community with navigating the legal, political and ethical challenges associated with government interaction in the Commonwealth.

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