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Campaign Finance and Pay-to-Play Developments in Arizona, Florida, Maryland, Michigan, and Wyoming

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Below please find a summary of recent campaign finance and pay-to-play legislative developments in Arizona, Florida, Maryland, Michigan, and Wyoming.

Arizona

Among other items, Arizona House Bill 2593 makes the following campaign finance changes:

- Raises contribution limits for federal and state PACs qualifying as "super PACs" so that they may contribute $5,000 per non-statewide legislative and local candidate per election. The limit for statewide candidates remains unchanged at $4,560 per election. (A "super PAC" is a PAC to which 500 or more individuals contributed at least $10 in the previous year).
- Removes the $6,390 per calendar year aggregate limit on contributions from individual Arizona residents to state and local candidates and PACs. As a result, federal PACs that choose to register in the state (rather than maintaining an Arizona sub-account) will no longer be subject to this limit.
- Raises contribution limits for individuals and PACs not qualifying as super PACs to $2,500 per statewide, legislative, or local candidate per election.
- Changes the definition of "election" in order to apply the limits to the primary and general elections separately, rather than aggregated together.

The bill has been signed by the Governor. It will become effective 90 days after the adjournment of the current legislative session, which date has not yet been set.

Arizona House Bill 2593 may be viewed at:
http://www.azleg.gov/legtext/51leg/1r/laws/0098.pdf

Florida

Florida House Bill 569 has been passed by the legislature and signed by the Governor.

Contribution Limits: Previously, a corporation, individual, or PAC was limited to $500 per state or local candidate or PAC per election. Effective November 1, 2013, this limit will be raised to $3,000 per statewide or Supreme Court candidate, and $1,000 per legislative or local candidate per election. Contributions to PACs will be unlimited. This eliminates one of the major hurdles currently preventing a federal PAC from contributing in Florida. Other barriers remain, such as the requirement to have an in-state depository and to treat the payment of PAC administrative expenses as an in-kind contribution, but the $500 limit was the most insurmountable obstacle.

Committees of Continuing Existence: Previously, Florida law permitted the formation of committees of continuing existence ("CCEs") which were not PACs and thus were not subject to the $500 limit on contributions that could be made to PACs. House Bill 569 eliminates CCEs, requiring that they cease to accept contributions by August 1, 2013, and revoking their certifications as of September 30, 2013, as of which date, their accounts will be required to have a zero balance. As noted, there will be no limit on the contributions PACs are permitted to accept as of November 1, 2013. Accordingly, CCE account balances may be transferred to a PAC. PACs will be subject to the candidate contribution limits summarized above, as well as dramatically expanded reporting requirements. Removing CCE status could pose issues to federal PACs using the status to avoid burdensome requirements such as having an in-state depository and treating the payment of PAC administrative expenses as in-kind contributions.

Florida House Bill 569 may be viewed at:
http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=_h0569er.docx&DocumentType=Bill&BillNumber=0569&Session=2013

Maryland:

Maryland House Bill 1499 ("H.B. 1499") was signed by the Governor on May 2, 2013. Among other items, the bill amends campaign contribution, pay-to-play, and reporting provisions effective January 1, 2015.

Contribution Limits: Previously, contributions from corporations, individuals, and federal PACs were limited to $4,000 per candidate, PAC, or political party per four-year election cycle, and $10,000 aggregate total per election cycle. H.B. 1499 raises these limits to $6,000 and $24,000, respectively. The limit on contributions by state PACs remains $6,000 per recipient per election cycle with no aggregate limit.

Pay-to-play reporting: H.B. 1499 also amends Maryland's pay-to-play reporting provisions. Previously, initial reports included contributions aggregating $500 or more to state and local candidates and officials made in the 24 months prior to entering into a contract or contracts with one or more state or local governmental entities aggregating $100,000 or more over a twelve-month period. H.B. 1499 eliminates the aggregation of contracts, raises the threshold contract value required to be considered to be "doing public business" to $200,000, and modifies the definition of reportable contributions to include only those made for an office of a governmental entity with which the contributor is "doing public business." Thus, when H.B. 1499 becomes effective, initial reports will include contributions aggregating $500 or more to state or local candidates for offices in governmental entities with which the contributor is "doing public business," made in the 24 months before entering into a single contract with the state or local governmental entity worth $200,000 or more. Among other changes, the bill will also require the filing of semiannual reports whether or not reportable contributions were made, impose new record-keeping requirements, and require filing reports electronically to facilitate public posting of the documents online by the Board of Elections.

Reporting: Once H.B. 1499 becomes effective, 501(c)(4), 501(c)(6) (trade associations), and 527 organizations will be required to register and file a report within 48 hours of making more than $6,000 in contributions to candidates or PACs with the express purpose of those entities making disbursements in Maryland, or making a donation to a person with the express purpose of that person making an independent expenditure or electioneering communication in Maryland. Among other information, the report will disclose the organization's five top donors who gave over the previous year in order to influence elections in Maryland.

Similarly, entities (excluding PACs) making certain independent expenditures or electioneering communications will be required to file reports disclosing the identity of any contributor that made cumulative donations of $6,000 or more to the person making the independent expenditure or electioneering communication during the reporting period, regardless of whether the donations were given for the purpose of furthering such expenditures or communications. Previously, reports included donations of $51 or more, but only those donations given with the purpose of furthering independent expenditures or electioneering communications were reportable.

H.B. 1499 may be viewed at: http://mgaleg.maryland.gov/2013RS/bills/hb/hb1499e.pdf

Michigan:

Michigan Public Act 347 of 2012 enacted a pay-to-play law impacting service providers to state and local public employee retirement systems. The law went into effect on March 28, 2013 and appears to have been modeled after SEC Rule 206(4)-5 (the "SEC Rule"). Under the Michigan law, "service providers," their covered associates, and PACs controlled by either are prohibited from making contributions (including campaign contributions and payments made for campaign debt retirement, transition and inaugural expenses, and legal defense funds) to an official of a government entity. Any prohibited contribution triggers a 24-month prohibition on an investment fiduciary (which includes any person exercising discretionary authority or control in the investment of a system's assets, or rendering investment advice for direct or indirect compensation) making payments from the assets of the retirement system to the service provider.

Covered Business – A service provider is defined as a person retained to provide services to a system and includes investment advisers, brokers, consultants, custodians, accountants, auditors, attorneys, actuaries,

administrators, and physicians. However, investment advisers regulated by the Securities and Exchange Commission under the Investment Advisers Act of 1940 are expressly excluded from the definition of "service provider" and, therefore, they and their covered associates are not impacted by this law, as Michigan appears content to rely on the restrictions of the SEC Rule.

Covered Officials – An official of a government entity is an incumbent, candidate, or successful candidate for elective office that (i) is directly or indirectly responsible for or can influence the hiring of a service provider by a system sponsored by the governmental entity or (ii) has the authority to appoint an individual with such responsibility or influence. Please note that this could cover certain state or local officials running for federal office.

Covered Associates – a covered associate includes:

- an employee who solicits a governmental entity on behalf of the service provider;
- any employee directly or indirectly supervising such solicitor;
- a general partner, managing member, agent, or officer or any other individual with a similar status or function.

Look-Back for New Covered Associates – For an employee who becomes a covered associate, any contribution he or she made during the prior 6 months to an official of a government entity would trigger a ban for the service provider. Thus, when an employee becomes a covered associate for the first time, one must "scrub" that employee to make sure he or she has not made a covered contribution during the relevant look-back period.

Exemptions:

- There is an exemption for a service provider or a covered associate of a service provider who contributes no more than $350 per election to a candidate for whom the service provider or covered associate is entitled to vote, or $150 per election to a candidate for whom the service provider or covered associate is not entitled to vote.
- As noted above, there is an exemption for contributions made by an individual more than 6 months before he or she became a covered associate.

A copy of Public Act 347 is attached to this mailing.

Wyoming

The Wyoming legislature recently passed, and the Governor signed, House Bill 0187, amending certain campaign finance provisions. Currently, there is no limit placed on contributions from PACs. Effective January 1, 2015, PAC contributions (including from federal PACs) will be limited to $7,500 to statewide candidates per election, and $3,000 to non-statewide and local candidates per election. The bill also raises individual limits from $1,000 to all state and local candidates per election to $2,500 per statewide candidate and $1,500 per non-statewide and local candidate per election. The aggregate limit that an individual may contribute to all candidates, PACs, and party committees during the general election year and the preceding calendar year will also rise from $25,000 to $50,000. Corporate contributions remain prohibited.

Wyoming House Bill 0187 may be viewed at: http://legisweb.state.wy.us/2013/Enroll/HB0187.pdf

Please contact us with any questions.