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If you have any questions regarding the matters discussed in this memorandum, please call one of the following representatives in the Political Law Group (Washington, D.C. office) or your regular Skadden contact.

Kenneth A. Gross
Partner | 202.371.7007
kenneth.gross@skadden.com

Ki P. Hong
Partner | 202.371.7017
ki.hong@skadden.com

Matthew Bobys
Counsel | 202.371.7739
matthew.bobys@skadden.com

Melissa Miles
Counsel | 202.371.7836
melissa.miles@skadden.com

Patricia Zweibel
Counsel | 202.371.7089
patricia.zweibel@skadden.com

Shayla Parker
Associate | 202.371.7534
shayla.parker@skadden.com

Charles Ricciardelli
Associate | 202.371.7573
charles.ricciardelli@skadden.com

Tyler Rosen
Associate | 202.371.7035
tyler.rosen@skadden.com

Kelvin Reese
Head Political Reports Analyst
202.371.7498
kelvin.reese@skadden.com

Virginia Enacts Stricter Gift Provisions, Expands Lobbying and Pay-to-Play Laws

On May 1, 2015, Virginia Gov. Terry McAuliffe signed Senate Bill No. 1424 (the Bill). The Bill tightens restrictions on gifts, expands Virginia’s lobby law to cover attempts to obtain public contracts and adds a new pay-to-play provision. The changes summarized below will become effective on January 1, 2016.

Gifts

The current law restricts gifts from lobbyists, lobbyist principals, and current or potential contractors to certain state and local officials or employees to \$250 per calendar year with an exemption for intangible gifts such as meals, entertainment, admission, tickets, passes, travel and hospitality. The Bill lowers the gift limit to \$100 per calendar year, except for items worth less than \$20, which do not count toward the limit. The Bill removes the tangible/intangible distinction and instead covers all things of value subject to certain exemptions. These exemptions include, but are not limited to, the following:

- An unsolicited award of appreciation or recognition in the form of a plaque, trophy, wall memento or similar item given in recognition of public, civic, charitable or professional service;
- Food and beverages consumed while attending an event at which the recipient performs official duties related to his or her public service;
- Food and beverages, registration or waiver of admission received at an event where the recipient is a featured speaker, presenter or lecturer;
- Attendance at and food and beverages and entertainment associated with and while at widely attended events to which at least 25 persons were invited or are reasonably expected to attend. A widely attended event is an event open to individuals who share a common interest; who are members of a public, civic, charitable or professional organization; who are from a particular industry or profession; or who represent persons interested in a particular issue;
- Travel and lodging, and food and beverages and hospitality in connection with the travel that bears a reasonable relationship to the recipient’s duties as preapproved by the Ethics Advisory Council at the request of the recipient. This travel may be to any meeting, conference or event composed primarily of public officials; at which public policy related to the official duties of the recipient will be discussed in a substantial manner; where the event is reasonably expected to educate the recipient on matters relevant to his or her official duties or to enhance the recipient’s knowledge and skills relative to his or her official duties; or at which the recipient has been invited to speak on matters related to his or her official duties; and
- Travel to facilitate the attendance of a legislator at a national conference where attendance is approved by the applicable legislative Committee on Rules.

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The Bill does not impact the governor's executive order, which restricts gifts to officers and employees of the executive branch to \$25 per occasion from lobbyists and lobbyist principals, and to \$100 per calendar year from other sources.

Lobbying

Currently, we classify Virginia as a Category I state, meaning its lobby law covers only attempts to influence legislation and executive orders. Effective January 1, 2016, Virginia will become a Category III state, meaning that attempts to obtain business also will be covered. Specifically, the Bill modifies the definition of "executive action" to include procurement transactions. Thus, lobbying will include oral and written communication with certain legislative and executive officials, or solicitation of others to influence covered officials, in an attempt to influence any function that pertains to obtaining all goods, services, or construction on behalf of an executive agency. Functions include description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

The Bill does not amend the registration threshold; a person must register if he or she receives or expends more than \$500 in a calendar year for lobbying and his or her job duties regularly include lobbying. In addition, please note that Virginia prohibits the payment of contingent fees for lobbying, and the Bill does not amend that provision. Thus, beginning in 2016, contingent compensation for registrable procurement activity will be prohibited.

Pay-to-Play

The Bill enacts a new pay-to-play provision prohibiting contributions and gifts with a value greater than \$100 from applicants for a grant or loan from the Development Opportunity Fund, their officers, directors, owners, and persons with a controlling interest, to the governor or a PAC established on his behalf during the pendency of the application and for one year after award. The Bill does not impact the existing pay-to-play rule covering certain contributions to the governor and his PAC and secretaries from a prospective contractor and its officers and directors, from the time a bid is submitted until a covered contract is awarded by an executive branch agency under the Virginia Public Procurement Act, Public-Private Transportation Act, or Public-Private Educational Facilities and Infrastructure Act.