

Md. Pay-To-Play Law: Increased Scrutiny For Gov't Contracts

Law360, New York (December 23, 2014, 10:31 AM ET) -- Amendments to Maryland's pay-to-play law taking effect Jan. 1, 2015, will impose burdensome contract reporting requirements for many companies. Although Maryland has had a pay-to-play law on the books for years, these amendments will require many companies to change how they have been approaching compliance with the law. The same legislation also amends the state's contribution limits and campaign finance reporting requirements. These changes also will take effect on Jan. 1.



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- Government contracts must be itemized even if no reportable contributions: Whereas previously the law allowed companies that did not have reportable political contributions to avoid filing reports altogether, the amended law will require all companies to itemize their Maryland state and local government contracts — even if the company has no reportable contributions.
- Increased enforcement: These contract reports will be uploaded to a searchable online database. The State Board of Elections anticipates uploading old reports to the same database. Enforcement of the law also is shifting from the attorney general to the State Board of Elections, which is expected to result in greater scrutiny of the reports and the failure to file required reports.

Summary of the New Pay-to-Play Reporting Requirement

The requirement will apply to companies that enter into or maintain a contract with a state or local governmental entity with a total value of at least \$200,000 ("covered business") or have subsidiaries that enter into or maintain covered business. This includes leasing real or personal property as lessee or buying or otherwise obtaining supplies, services, construction, construction related services, architectural services, engineering services, or services provided under an energy performance contract. Certain medical care reimbursement contracts are exempt.

An initial report must be filed online no later than the day after the award of the covered business and then semi-annually for the duration of the contract. Such reports must contain a list of contributions by covered donors to covered recipients totaling \$500 or more during the reporting period (24 months for the initial report), along with identification of the recipient, donor, and amount of contribution. The filer also must disclose the nature and amount of the covered business awarded, the agency that awarded

the contract, and the company that was awarded the contract (including a contracting company in which the filer owns a 30 percent interest).

For companies that have not filed an initial report on any current contract, the filing obligation will commence with the first \$200,000 contract on or after Jan. 1, 2015. For companies that have filed an initial report on a \$200,000 contract that is still active, semi-annual filing will be required in February regardless of whether there are reportable contributions.

Covered donors include the company, subsidiaries, company political action committees, officers (i.e., CEO, president, vice president, secretary, treasurer, chief financial officer, managing partner, managing member, principal, or any other role in which an individual exercises substantial independent responsibility for managing the company's affairs), directors, and partners, as well as employees, agents, or other persons who make a contribution at the direction of the company or a subsidiary. Covered recipients include any candidate for, or holder of, state or local office in a jurisdiction with which the company is doing covered business.

Importance of Seeking Timely Exemptions

Companies may obtain a waiver from disclosing the value of their contracts and the agencies with which they contract by petitioning the State Board of Elections and showing the requirement is unduly burdensome and the public interest is not harmed by the lack of disclosure. Waiver requests may be submitted before the amendments take effect at the end of the year.

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