

January 15, 2015
2015 Edition, Issue I

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

Rachel Jacobs
Associate | 202.371.7511
rachel.jacobs@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

Tanya Sehgal
Associate | 202.371.7636
tanya.sehgal@skadden.com

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

Disclosure of Political Contributions in Maryland, New Jersey, Pennsylvania and Rhode Island

The following describes the reporting requirements under Maryland, New Jersey, Pennsylvania and Rhode Island laws, which require certain corporate entities to file reports regarding their business relationships with state entities, as well as their political contributions and those of their employees. There are also pay-to-play disclosure and certification requirements in California, Connecticut, Florida, Illinois, Kentucky, New Hampshire, New Mexico, Texas, and New Jersey and Pennsylvania (in addition to the New Jersey and Pennsylvania disclosure requirements below). However, in these states the disclosure requirements are coupled with a pay-to-play ban, *i.e.*, a restriction on contributions from certain corporate employees.¹ There are also pay-to-play disclosure requirements in various localities. Please contact us if you would like additional information on any of these jurisdictions as well.

Maryland

Entities that enter into certain contracts with the state or a local government entity are required to file information with the Maryland State Board of Elections. Specifically, an entity must file a public disclosure form if the entity, or its subsidiary (*i.e.*, 30 percent or more of the equity of the subsidiary is owned or controlled by the business entity), makes a single contract with the state, a county, a municipal corporation or other political subdivision of the state that equals or exceeds \$200,000.² Such disclosure includes the name of each candidate, if any, to whom one or more applicable contributions in a cumulative amount of \$500 or more were made during the reporting period by covered donors. For this \$500 contribution reporting threshold, covered donors include not only the entity and its subsidiary, but also company PACs, officers, directors and partners of the business entity and its subsidiary. Furthermore, political contributions made by employees, agents or other persons at the suggestion or direction of a business entity or subsidiary also must be reported.

Pursuant to amendments that went into effect January 1, 2015, an entity also must itemize its Maryland state and local government contracts of \$200,000 or more, even if the company has no reportable contributions. Previously, the law allowed companies having no reportable political contributions to avoid filing reports altogether. Specific details regarding these contracts must be reported, including the amount and nature of the business done with the state and its political subdivisions; the agency that awarded each contract; the company awarded the contract (including a contracting company in which the filer owns a 30 percent interest); and the award, start and end dates of the contract. Certain contract details may be omitted under certain circumstances, if approved by the state Board of Elections.

The Maryland State Board of Elections opines that a business entity must make a good faith effort to gather the contribution information required by the report, including contacting all officers, directors and partners from the parent and subsidiaries. For some very large entities, the board states it is necessary to begin collecting contribution information well in advance of the end of the reporting period.

¹There are also disclosure requirements for certain contributions of individuals associated with companies seeking business with Denver, the Missouri Development Finance Board and some of the jurisdictions listed above (under separate laws), which are not necessarily coupled with a pay-to-play ban.

²Lobbyist employers have a filing obligation as well.

(continued on next page)

If this is an initial report, the filing period covers the two years prior to the date the business relationship with the state was established. If an initial report already has been filed and the business relationship is ongoing, then a semiannual report is due February 5, covering the filing period August 1 through January 31. For semiannual filers, in addition to the February 5 report, an August 5 report will be due, which will cover the period February 1 through July 31.

For additional discussion on the changes to the law, please see our November 21, 2014 mailing.

New Jersey

Once entering into a contract with an agency, annual disclosure statements are required from a business entity that has received in any calendar year \$50,000 or more in the aggregate through agreements or contracts with public entities. The annual disclosure statement must state all reportable contributions made by covered donors (defined below) during the year prior to the reporting deadline, as well as details regarding the contracts, and must be filed with the New Jersey Election Law Enforcement Commission (ELEC) by March 30. A statement must be filed regardless of whether there are any contributions to report. However, if there are no contributions to report, details regarding the contracts need not be reported. Reportable contributions include any currency contribution, or contributions by other means exceeding \$300 (per election or per year depending on the recipient), from the business entity; the business entity's principals, partners, officers, directors and their spouses; the business entity's state PACs and subsidiaries; or any owner of more than 10 percent of the business entity (collectively covered donors), to an incumbent of or candidate for any public office having ultimate responsibility for the awarding of public contracts, or to a political party committee, legislative leadership committee, political committee or continuing political committee. The following are considered officers: president, vice president with senior management responsibility, secretary, treasurer, chief executive officer or chief financial officer of a corporation, including a nonprofit corporation, or any person routinely performing such functions for a corporation.

Pennsylvania

Under Pennsylvania law, a business entity is required to file a report disclosing individuals' contributions made to Pennsylvania state and local candidates, political parties and PACs if the business entity has been awarded a non-bid contract (*e.g.*, a contract let by virtue of some selection process or exercise of governmental discretion) from the Commonwealth of Pennsylvania or its political subdivisions during the preceding calendar year. The report requires such an entity to ascertain whether contributions have been made in excess of \$1,000 during the preceding year in Pennsylvania by corporate officers, directors, associates, partners, limited partners, employees (and members of their immediate families) whose contributions are known by any of the above and the immediate families of the above. The specific information required on this report includes the name of the contributor, the contributor's relationship to the corporation, to whom the funds were contributed, when the contribution occurred and the amount. A business entity is not required to report the activity of the officers, directors or employees of its subsidiaries. A statement must be filed regardless of whether there are any contributions to report. This report is due by February 15.

Rhode Island

Any business entity contracting with a Rhode Island state agency to sell goods or services at a cost of \$5,000 or more annually must file an affidavit with the Rhode Island Board of Elections if it has, within the 24 months preceding the date of the contract, made contributions in excess of \$250 in the aggregate within a calendar year to any state candidate or political party.

That affidavit requires the business entity to supply contractual information (including a copy of the contract, if one exists) and information about political contributions made to Rhode Island candidates or committees by the contracting entity and any related parties.

(continued on next page)

Related parties include:

1. any person having a 10 percent or greater ownership interest in or being a subsidiary of the contracting party;
2. any person who is an “executive officer,” meaning any employee of the contracting party who (1) is appointed or elected as an officer of the business entity by either the incorporators, stockholders or directors of the business entity; (2) is in charge of a principal business unit, division or function of the business entity; (3) participates or has authority to participate other than in the capacity of a director in major policymaking functions of the business entity; or (4) is actively engaged in soliciting business from the state or conducting, other than in a ministerial capacity, business with the state. An officer who is located outside of the state, is not a resident of the state and does not participate in the business of the business entity within the state is exempt from these reporting requirements; and
3. the spouses or minor children of the persons named in (1) and (2) above.
4. In determining who falls within (2) above, employees who are involved in soliciting or conducting Rhode Island business are covered regardless of employment level. Senior employees who fall within categories (1), (2) or (3) are only covered if they are located in Rhode Island, are a resident of Rhode Island or participate in the business of the business entity within Rhode Island.

The specific information required includes the name of the contributor, a description of the contributor’s relationship to the corporation, the identity of the recipient of the contributor, and the date and amount of the contribution.

This report is due within 60 days of entering into a contract to sell goods or services at a cost of \$5,000 or more with any Rhode Island state agency, or, where no written contract exists, within sixty days of crossing the \$5,000 threshold. If a company has more than one such contract, it may make the filing on a semi-annual basis (January 31 and July 31) rather than on a rolling 60-day basis.³ The political contribution information required covers the 24 months prior to entering into such a contract. All contributions made by the related parties must be reported every time a contract is entered into, regardless of whether those contributions have been reported previously.

Please contact us if you have any questions or need assistance in completing the forms.

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

³If it so chooses, it must file a notice indicating it wishes to report on the alternate filing schedule.