



Political Law Alert

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Montana Enacts New Pay-to-Play Disclosure Requirements

On June 8, 2018, Montana Gov. Steve Bullock signed Executive Order No. 15-2018 (the order), enacting new pay-to-play disclosure requirements. The order is notable in that it not only requires disclosure of certain contractor political contributions, but also requires disclosure of contractor payments to organizations that make electioneering communications. The requirements summarized below will apply to contracts resulting from solicitations and applications the state receives on or after October 1, 2018.

Pursuant to the order, entities submitting offers for covered contracts will be required to disclose “covered expenditures” that the contracting entity has made in the prior two years if the aggregate amount of the “covered expenditures” made within the prior 24 months by the bidding or applying entity, any parent entities, or any affiliates or subsidiaries within the entity’s control exceeds \$2,500. Covered contracts are defined as state procurement contracts whose value exceeds \$25,000 for services or \$50,000 for goods. The order prohibits an agency from awarding a covered contract to an entity that has not completed the required certification verifying that disclosures were made.

Reportable covered expenditures include any contribution, expenditure or transfer made by the contracting entity, any of its parent entities, or any affiliates or subsidiaries within the entity’s control that is:

1. to or on behalf of a Montana candidate, political party or party committee; or
2. to another entity, regardless of the entity’s tax status, that either pays for an electioneering communication or makes contributions, expenditures or transfers to another entity that pays for electioneering communications.

However, covered expenditures do not include an expenditure or contribution where the donor and the recipient agree that it will not be used to contribute to candidates, parties or electioneering communications. Also, investments and expenditures made by the contracting entity or its affiliates in the ordinary course of business are not covered expenditures. The order does not expressly refer to a company’s PAC, so it is unclear whether a PAC’s contributions would be covered.

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For purposes of the order, the term electioneering communications includes, with certain exemptions, any paid communication that is publicly distributed by radio, television, internet website, mobile device, newspaper, billboard, or other printed or electronic materials; that is distributed within 60 days of the initiation of voting in an election in Montana; that can be received by more than 100 recipients in the relevant district in Montana, and that:

1. refers to one or more clearly identified candidates in that election;
2. depicts the name, image, likeness or voice of one or more clearly identified candidates in that election; or
3. refers to a political party, ballot issue or other question submitted to the voters in that election.

By September 1, 2018, Montana's Department of Administration will issue policies and orders necessary to carry out the order, in addition to finalizing the disclosure form. The order specifies that the disclosures for each expenditure must include, at minimum: the recipient's name and address; the date; the amount; the purpose; a description; and, if made for a direct campaign expenditure for express advocacy or for an electioneering communication, identifying information about the relevant candidate or ballot measure. The Department of Administration will make disclosed information publicly available in a searchable database. For contracts lasting 24 months or longer, the contracting entity will be required to file updated disclosures every 12 months.

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