

California Legislative Update: Governor Signs New Legislation Amending Placement Agent Lobbyist Registration and Reporting

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Last year, California enacted legislation requiring certain placement agents doing business with California state and local public retirement systems to register and report as lobbyists. These prior changes took effect on January 1, 2011. On October 9, 2011, California Governor Jerry Brown signed new legislation modifying the existing law. The bill, former Senate Bill 398, took effect immediately, and its highlights are summarized below.

One of the new law's most significant changes involves the interaction between placement agents and local public retirement systems. As a general matter, California law can require placement agents to file lobbying reports with a local government agency. An exception, however, has existed to this requirement for an external manager's employees if the employees spend a certain amount of time managing securities or assets. This exception remains. The new law, however, adds a second exception to the registration and reporting requirements for those involved with local pension funds if: (1) the external manager is registered as an investment adviser or a broker-dealer with the Securities and Exchange Commission or a state securities regulator; (2) the external manager is participating in certain competitive bidding processes or has been awarded such a contract; and (3) the external manager has agreed to a certain fiduciary standard of care.

Second, with respect to the similar three-prong exception involving state public retirement systems, the bill amended the second prong so that it conforms with the new test for localities. Previously, the plain text of the second prong suggested that the exception only

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applied to a contractor that had been selected in a competitive bidding process and was providing services pursuant to that selection. Now, as noted above, the exception applies to the process of obtaining a contract with a retirement system sought through a competitive bidding process and not only after the award of such a contract. The California Fair Political Practices Commission (FPPC) had previously issued an advisory opinion to this effect.

Among other changes, the bill also amends certain defined terms to conform with an FPPC opinion that performing securities trades for a pension fund does not trigger these lobbyist registration and reporting requirements.