

New Pay-to-Play Reporting Requirements for Maryland State and Local Contractors; Report Due February 5

January 2015

Businesses holding contracts with Maryland state agencies and municipalities are subject to new reporting requirements, effective as of the beginning of this year, relating to certain political contributions that they make or that are attributed to them. While the basic requirement to file semiannual reports for “persons doing business” with state and local governments is not new, the details of what triggers the reports, as well as what the reports must include, have changed significantly.

New Thresholds. Under the prior law, Maryland state and local contractors triggered the reporting requirements based on the aggregate value of contracts they had with all state and local governmental entities. The new law not only doubles the monetary threshold for the reporting requirement, but it also applies the threshold on a per-agency basis. In other words, a business may now have multiple contracts that cumulatively add up to a large amount, but if no contract exceeds the threshold with respect to any single state or local agency, the reporting requirement does not apply.

Fewer Contributions Reportable. Additionally, whereas under the prior law, contributions made to any state or local candidates or officeholders during the reporting period had to be included, under the new law, the only contributions that have to be reported are those that are made to candidates or officeholders in the jurisdiction where the business holds a contract.

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Reports Required Even Without Contributions. While the reporting requirements have been narrowed in some respects, they also have been expanded in others. Contributions that are made to certain political committees affiliated with candidates or officeholders now also must be reported. Additionally, once the reporting requirement is triggered, reports now must be filed even in periods when no reportable contributions are made, and information about the contracts a business holds also must be included on the publicly-accessible reports. Moreover, reports now must be filed electronically using a Maryland State Board of Elections website.

As before, contributions that trigger the reporting requirements and that must be disclosed include not only contributions made by the contractors themselves, but also those made by their officers and directors, PACs, certain subsidiaries, and officers and directors of such subsidiaries. Contributions made by others at a contractor's suggestion or direction also must be reported.

Bifurcated Filing on February 5. Maryland state and local contractors subject to the reporting requirements under the prior law, and whose reports are due on February 5, are subject to a mix of the old and new requirements. For the portion of the reporting period from August 1 through December 31 of last year, the prior reporting thresholds and requirements apply, whereas the new thresholds and requirements will apply with respect to the January 2015 portion of the reporting period.

As before, waivers to the reporting requirements may be requested from the State Board of Elections if it can be demonstrated that the reporting would be "unduly burdensome" and that the "public interest would not be impaired substantially" by the waiver.

Wiley Rein has extensive experience with Maryland's pay-to-play regime as well as the federal, state, and local pay-to-play rules. We are available to assist your company in navigating the new and existing rules in Maryland and across the country.