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Governor Spitzer Signs Ethics Reform Bill

By: Jisha S. Vachachira

Making good on campaign promises, Governor Eliot Spitzer signed an omnibus ethics reform bill on March 26, 2007 known as the Public Employee Ethics Reform Act of 2007. The Act contains reforms to the ethical standards that public officials must observe, and notably, the legislation creates a Public Integrity Commission, which will replace the State Ethics Commission and the New York Temporary State Commission on Lobbying. The legislation, with some exceptions, will take effect on April 25, 2007. This article provides an overview of the new legislation.

Public Integrity Commission

The State Ethics Commission and the New York Temporary State Commission on Lobbying will be combined to create the Public Integrity Commission (hereinafter "PIC"). The PIC will consist of 13 members, with 7 members appointed by the Governor and 6 members to be appointed by the Governor upon nomination from each of the following individuals: 1) State Comptroller; 2) Attorney General; and 3) the four legislative leaders. The Chair of the 13-member PIC will be appointed by the Governor.

The PIC will have jurisdiction over state-wide elected officials and candidates for state-wide elected office, state officers and employees, political party chairs, lobbyists and lobbyist clients. In other words, the PIC will have jurisdiction over all those who were subject to the jurisdiction of the State Ethics Commission and the Lobbying Commission. The PIC will come into existence 180 days after enactment.

Legislative Ethics Commission

The legislation replaces the Legislative Ethics Committee (comprised of eight members of the Legislature) with a Legislative Ethics Commission (hereinafter "LEC"). The LEC will consist of nine members, five of whom may not be current or former members of the legislature, legislative employees, candidates for legislature, political party chairs, and lobbyists. The LEC will have broad power to investigate wrongdoing by members of the legislature and legislative employees and is obligated to accept referrals from the PIC regarding potential violations by public officials subject to the LEC's jurisdiction. The legislation also mandates that the LEC issue an annual report on its activities, including enforcement actions, to the Governor and Legislature.

Gifts

The legislation eliminates a provision of the State ethics laws that allows gifts of up to \$75 to State officials, employees and legislators under circumstances

that could imply intent to influence official conduct. Now, the law prohibits all such gifts having more than a nominal value.

The legislation also prohibits lobbyists and their clients from giving – and public officials from accepting – gifts of more than nominal value to public officials and their immediate families, including most travel, lodging and other expenses. The law also prohibits a public official from permitting a third party to receive, accept or solicit a gift from a lobbyist under circumstances where it is reasonable to infer the gift was intended to influence the official (e.g. official agrees to allow lobbyist to make a gift to a charity in the official's name).

Honoraria

The law bans all honoraria paid to state-wide elected officials, agency heads and legislators, except that legislators may accept honoraria for speeches on topics unrelated to their public office.

Nepotism

The legislation prohibits any state-wide elected official, state officers or employees, and members of the legislature and legislative employees from participating in any decision affecting relatives relating to: 1) employment; 2) state contracting involving the payment of more than \$1,000; and 3) investment of public funds. A "relative" is defined as any person living in the same household or who is a direct descendant of the individual's grandparents or a spouse of a such descendant.

Revolving Door

The legislation prohibits former legislative employee from directly lobbying the legislature for two years, effective December 31, 2008. The legislation also prohibits any former officer or employee appointed by the Executive Chamber from appearing or practicing before any state agency for two years after their departure.

Taxpayer-Financed Advertisements

The legislation codifies Governor Spitzer's Executive Order prohibiting state or local officials and employees from appearing in taxpayer-funded advertisements. Specifically, the provision prohibits elected government officials and candidates for elected local, state or federal office from appearing in taxpayer-funded advertisements or promotions (including public or community service announcements) in any print or electronic media, and prohibits the use of taxpayer money to pay for such appearances. Additionally, any person who violates this provision shall be subject to a civil penalty between \$1,000 and \$5,000, pursuant to civil action brought by the Attorney General.

Lobbyist Definitions & Disclosure

The legislation expands the definition of public official so as to require lobbyists and their clients to report lobbying of unpaid per diem members of state boards, commissions and councils, as well as per diem members and directors of public authorities, public benefit corporations and commissions. This provision becomes effective on December 31, 2007.

Rather than requiring bi-monthly reports from lobbyists and semi-annual reports from clients who actually expend, receive, or incur in excess of \$5,000 in reportable compensation and expenses during the year, the legislation now changes this requirement to lobbyists and clients who “reasonably anticipate” their compensation or expenditures to exceed \$5,000 during the year.

The new law will require lobbyist organizations to list the names, addresses and telephone numbers of any officers or employees who engage in lobbying or who are employed in the organization’s divisions that engages in lobbying. This provision became effective on April 1, 2007.

The new law will require filing a grant lobbying report with the PIC disclosing the lobbyist’s efforts to obtain grants, loans, and agreements involving the disbursement of public money over \$15,000. This provision becomes effective on January 1, 2008.

Penalties

The legislation increases the current \$10,000 maximum civil penalty for violations of the ethics laws to \$40,000, plus restitution of any associated gain. The law also authorizes the imposition of civil penalties (up to \$10,000 plus such restitution) for certain ethics violations. The legislation also increases penalties for violating the Lobbying Law and authorizes the suspension of lobbyists who repeatedly violate the law.

Local Pay-to-Play Moves to the City of Newark

By: Rebecca Moll Freed

Effective March 31, 2007, persons and entities doing business with or hoping to do business with the City of Newark are subject to new pay-to-play restrictions pursuant to Executive Order No. MEO-07-001, which Mayor Cory A. Booker signed into law on February 7, 2007 (the “Newark Executive Order” or the “Order”).¹

The Newark Executive Order applies to all post-March 30, 2007 “no-bid contracts” with the City of Newark. For purposes of the Order, the “City of Newark” includes the contracting or purchasing agents for the administration of the City of Newark, including all municipal agencies, offices, boards, commissions or independent authorities responsible for arranging and entering into such contracts.

A “no-bid contract” under the Order includes agreements, contracts (or any amendments thereto) awarded without public bidding on or after March 31, 2007. Also included in the Order’s definition of a “no-bid contract” are “fair and open” process contracts valued at \$17,500 or less. Thus, unlike P.L. 2004, c. 19 (the statewide law, which governs county and municipal government contracts), the Newark Executive Order does not provide an exception for contracts of \$17,500 or less or for contracts awarded through a “fair and open” process. Rather, only no-bid contracts are exempt from the law’s requirements.

¹ Newark is just one of many localities throughout the Garden State with its own pay-to-play restrictions in effect. To this end, it is worth noting that although similarities exist among these restrictions, local pay-to-play laws often differ from locality to locality.

For purposes of the Newark Executive Order, the following persons and entities are covered by the Order's prohibitions, restrictions and limitations:

- The Business Entity seeking the contract;
- Principals (persons and entities) who own or control more than 10% of the profits, assets or stock of the Business Entity;
- Partners and Officers of the Business Entity (without regard to interest);
- Subsidiaries directly or indirectly controlled by the Business Entity;
- Any PAC/CPC directly or indirectly controlled by the Business Entity; and
- If the Business Entity is a natural person (i.e., sole proprietor), his or her resident spouse and children are also included.

For purposes of the Newark Executive Order, the above-listed persons and entities may not, within 1-year immediately preceding the award of covered no-bid contract, make political contributions in excess of the following limits:

- **\$300/year** to the candidate committee of any holder of or candidate for municipal public office in the City of Newark.
- **\$300/year** to a Newark municipal political party committee.
- **\$300/year** to an Essex County political party committee.
- **\$300/year** to any PAC/CPC which regularly engages in or is formed for the purpose of engaging in the support of candidates or political parties in municipal elections in the City of Newark.

The Newark Executive Order also prohibits all persons and entities falling within the definition of a "business entity" from annually contributing more than **\$3,000/year** in the aggregate to all of the recipients set forth above.

After a business entity is awarded a post-March 30, 2007 no-bid contract in the City of Newark, the Newark Executive Order prohibits the business entity itself and all covered persons and entities associated with the business entity from making a contribution in ANY amount to the above-listed recipients during the term of any such contract.

The Newark Executive Order also contains anti-circumvention provisions, which in short prohibit the business entity and all covered persons and entities associated with the business entity from directly or indirectly violating the Order by engaging in an exchange of contributions, making or soliciting contributions in violation of the Order, concealing or misrepresenting a contribution given or received, funding contributions by third parties and/or doing any act which would violate the terms of the Order.

The penalties for violating the Newark Executive Order are severe and include:

- Being deemed in material breach of a post-March 30, 2007 no-bid contract;
- Being disqualified from any future no-bid contracts in the City of Newark for a period of one (1) year from the date of the violation for the first offense and for a period of two (2) years from the date of any and all subsequent offenses; and
- Where a violation is knowing or intentional, being disqualified from eligibility for any future no-bid contracts with the City of Newark for a period of four (4) years from the date of the violation.

As set forth above, because the Newark Executive Order covers a broad class of persons and entities, does not contain a "fair and open" exception and contains an aggregate contribution limit, an absolute prohibition on certain contributions during the term of a covered contract, strong anti-circumvention provisions and severe penalties for violating the law, business entities wishing to protect their eligibility for government contracts in the City should develop a compliance plan.

The Corporate Political Activity Law Group at Genova, Burns & Vernoia

The Corporate Political Activity Law Group is a unique group of attorneys and former regulators that practice exclusively in this field. This very specialized practice group is dedicated to the representation of corporations, trade associations and PACs in legal matters such as campaign finance, public procurement, government affairs compliance and corporate ethics.

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