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NEWSLETTER

New York State Passes Changes to Lobbying and Campaign Finance Laws

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By D. Mark Renaud and Eric Wang

Members of the New York state legislature pulled an all-nighter in the middle of last month to pass a hodgepodge of changes to the state's lobbying and campaign finance laws. The amendments include, among other important provisions:

- Lowering the thresholds for disclosure of donors to lobbying efforts while exempting some forms of payment;
- Imposing new reporting and donor disclosure requirements for non-profit groups in certain circumstances;
- Requiring registration for certain political consultants; and
- Creating new standards for when spending by independent groups is considered coordinated with candidates.

Critics on both the left and the right have panned the new law for not targeting conduct related to the recent ethics scandals that have plagued the state and dethroned the State Senate leader and Assembly Speaker.

New Lobbying Donor Disclosure Thresholds and Exemptions and 501(c)(4) Reporting Requirements. New York's lobbying law has required any lobbying entity or lobbying client that spends certain amounts on New York state lobbying to disclose certain large donors to the lobbying effort since 2012. Under the new law, those disclosure thresholds have been reduced significantly. At the same time, the new law exempts from disclosure payments for "membership dues, fees, or assessments" charged by a lobbying entity to its members. This exemption is a nod to many advocacy groups and trade associations,

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which had faced a difficult choice of either not lobbying in New York or having to comply with burdensome disclosure requirements.

What one hand giveth in easing disclosure burdens, however, the other taketh away. While 501(c)(3) charities generally had been exempt from disclosure under the lobbying law, the new law now requires 501(c)(3) entities that make "in-kind" donations to lobbying efforts to be disclosed if they exceed the disclosure threshold. In addition, the 501(c)(3) donors must file additional reports of their own, and also disclose certain of their own donors.

501(c)(4) entities also face additional reporting requirements if they sponsor certain public communications that "refer[] to and advocate[] for or against" elected officials or any "position" of an elected official or administrative or legislative body with respect to votes, legislation, regulations, or other official matters. These reports involve disclosure of donors as well.

PR Consultant Registration Dropped, Political Consultant Registration Added. In another example of trading one regulatory burden for another, the law eliminates a registration requirement for PR consultants while imposing a new registration requirement for political consultants. Earlier this year, the Joint Commission on Public Ethics – New York's ethics and lobbying agency – had issued an advisory opinion requiring PR consultants who contact news media to advance their clients' message or interests on certain policy matters to register and report as lobbyists. (*Election Law News*, March 2016) Several PR firms sued in federal court to overturn this holding. The new law supersedes JCOPE's interpretation by excluding this activity from the legal definition of "lobbying."

However, providers of "political consulting services" will now be required to register with the state if they represent elected officials or candidates and also have represented certain clients in matters before state or local government agencies or the legislature. While the law generally characterizes this provision as a "registration" requirement, the law also discusses the requirement with respect to a six-month "reporting period." As what is essentially a registration *and* reporting requirement, it would not be surprising to see this new law challenged in court by political consultants, just as JCOPE's registration and reporting requirement for PR consultants was challenged.

New Coordination Standards and Requirements for Independent Expenditures. On the campaign finance side, the new law provides expansive standards for when "independent expenditures" are considered to be coordinated, and therefore treated as campaign contributions that are subject to contribution limits. In New York, independent expenditures include not only certain public communications that expressly advocate the election or defeat of candidates, but also communications that refer to candidates within certain pre-election time windows.

Under the new law, these communications may be considered coordinated based on a number of factors, including whether the sponsoring entity employs or retains someone who has worked for a candidate within two years of the candidate's upcoming election, has "strategic discussions" with the candidate or his or her campaign or agents within two years of the candidate's upcoming election, or uses "strategic" non-public

information obtained from someone who has worked for a candidate within two years of the candidate's upcoming election. Having immediate family members of a candidate involved in an independent expenditure effort and having a candidate raise money for the independent expenditure effort also will be considered coordination.

Sponsors of independent expenditures—even individuals—will be required to register and report as independent expenditure committees under the new law, and direct contributions to candidates and independent expenditures must now be made through different types of PACs. These requirements arguably are in tension with the Supreme Court's *Citizens United* decision, as well as a federal district court ruling that allowed for "hybrid PACs" to make both direct candidate contributions and independent expenditures.

Effective Dates. As of the time this issue was going to print, Gov. Andrew Cuomo still had not signed the bill into law, although he is widely expected to do so. The law's provisions have various effective dates, ranging from immediately upon the law's enactment to 90 days thereafter.