

Client Alert

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CRITICAL ACTION ITEM – MARCH 15 REPORT

Major Changes for any Business that Deals with the Rhode Island General Assembly

by
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Each month during the legislative session, and at the end of the session, lobbyists and their clients must disclose “any expenditure, gift, or honorarium of twenty-five dollars (\$25.00) or more for each occurrence concerning any legislative or executive official paid or incurred”. The first report of this session is due March 15, 2005.

Under regulations that became final on January 3, 2005, the term “expenditure” includes all payments made by a lobbyist (or its client) to “a business entity which is owned, in whole or in part” by “a legislative or executive official” or “member of the executive branch or public corporation”, and which is listed in that official’s ethics commission filing. If you employ a lobbyist, the regulation applies to your business.

There is no “ordinary course of business” exception, and no knowledge exception. For example, if you spend \$26 on pizza from a pizza parlor owned by a legislator, you have to report it even though buying pizza has nothing to do with lobbying. Moreover, it is a violation of the statute and regulations if you don’t report the pizza purchase, even if you have no idea that the business is owned by a legislator.

Partridge Snow & Hahn LLP attempted to create a list of these businesses, but could not because of the sheer volume of Ethics

Commission filings (6,500 to 7,000), the manner in which they are filed (on paper, rather than electronically, and by name, rather than by public office), and the logistical impossibility of completing such a project before March 15 (e.g. that the Ethics Commission has less than 10 employees and only one copy machine).

When the Rhode Island Secretary of State released the final regulations, Partridge Snow & Hahn LLP informed his office that compliance with the regulations was virtually impossible and requested relief for ourselves and our clients. Initially, we were told that the Secretary of State would provide relief before the deadline. It is now our understanding that the Secretary of State is still reviewing the matter but does not anticipate granting relief before March 15. It is possible that the legislature will take action to address this issue before the March 15 deadline, but there are no guarantees.

If relief is not granted, lobbyists and their clients must make a good faith attempt at compliance, which would include some review of accounts payable, an inventory of the vendors that you “know” are owned by legislative and executive officials, and possibly a review of Ethics Commission filings. If the violation is willful, there is a \$1,000 fine and potential criminal penalties.



OTHER KEY ISSUES

The General Assembly and Secretary of State made other changes to lobbying laws, not the least of which was extending the definition of "lobbying" beyond the General Assembly to interactions with the Executive Branch. These changes affect many businesses that deal with the General Assembly, the Office of the Governor, the Economic Development Corporation, and other state agencies and public corporations. The key issues of concern are:

1. Lobbyists and their clients must report "money or anything of value" aggregating \$250 or more that was "paid or promised" to any "major state decision makers". The list of major state decision makers is extensive, including all legislators, all judges, and all directors, assistant directors, and executive counsel for all executive departments, state agencies, and public corporations. Again, there is no exception for payments in the ordinary course of business, and no exception for lack of knowledge that a vendor is a "major state decision maker". The first report was due January 15.

2. Based upon guidance provided by the Secretary of State, unless an exemption applies, a business must register and file financial reports under the "executive branch" lobbying law if the business:

- Employs someone principally for governmental affairs,
- Pays someone to promote, oppose, or influence a policy making action or decision, or
- Pays someone to promote, oppose, or influence the sale/lease/alienation/encumbrance of real estate owned by the state or a public corporation.

This would include certain contacts with decision makers in the Office of the Governor, Department of the Attorney General, Department of Administration,

Department of Business Regulation, Department of Environmental Management, Department of Health, the Public Utilities Commission, the Economic Development Corporation, and other state agencies and public corporations.

The key exemptions include:

- Solicitation of information about the rules, procedures, forms, programs or requirements of a department, agency, board, commission or public corporation,
- Participation in a governmental advisory committee or task force,
- Representation of one's wholly owned business entity,
- Participation in a bid conference or responding to request for proposals issued by a state agency or department or by a public corporation.

If you have a legislative lobbyist, immediate action is required to evaluate vendors and payments made in 2005 in order to comply with the March 15 report. Beyond this time-sensitive issue, you also need to review your business' interaction with executive branch and legislative officials, determine the effect of these new laws on those contacts, and perhaps consider a restructuring of your governmental relations, marketing, and vendor contracts as a result.

Ms. McCarthy is a Partner of the Firm. She advises clients concerning the regulatory implications of business decisions. This is general information designed to alert clients of PS&H to a potential legal issue, but does not constitute legal advice. If you have particular questions, you can call Kim McCarthy at 401-861-8256.