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POLICY ALERT

PENNSYLVANIA ISSUES PAY-TO-PLAY RULES APPLICABLE TO MUNICIPAL PENSIONS

On September 18, 2009, Pennsylvania Gov. Edward Rendell signed House Bill 1828 into law as Act 44. The new law mandates ethics standards for municipal pension systems, including the Pennsylvania Municipal Retirement System, as a way of stabilizing municipal pension funds and increasing the transparency and accuracy of the funds.

The law contains a number of noteworthy provisions regarding pay-to-play, gifts and third-party involvement as they pertain to bids and contracts for municipal pension funds.

PAY-TO-PLAY PROVISIONS

The new law prohibits municipal pension systems from entering into contracts with persons or affiliated entities that have made contributions to an official or candidate for office in the municipality that controls the pension in the two years preceding. An "affiliated entity" includes a subsidiary or holding company of a lobbying firm or other business entity owned in whole or in part by a lobbying firm or any tax-exempt organization under IRS sections 501(c). "Person" is not defined under the law.

Any person that enters into a bid for professional services with a municipal pension system or responds to a request for solicitation may not make or solicit a contribution to any municipal official, candidate for municipal office, political party or political action committee of that official or candidate.

GIFT PROVISIONS

Individuals who enter into professional services contracts may not offer or give a gift—including money, services, loans, travel, lodging or entertainment—to any official or employee of a municipal pension system.

REPORTING

In addition, new reporting requirements for an individual or affiliated entity that has entered into a contract require that individuals and affiliated entities must disclose all contributions made within the previous five years if the contribution was at least $500 (separately or in the aggregate) and made by a covered donor to a candidate of any public office in Pennsylvania, to a current office holder or to a political committee of a candidate or officeholder. "Covered donors" include an officer, director, executive-level employee or owner of at least 5 percent of the affiliated entity. "Executive-level employee" includes an employee of a person or the person's affiliated entity who can affect or influence the outcome of actions, policies or decisions and/or someone who is directly involved in implementation of policies, investments, contracts or procurement relating to pensions and business with a municipality or municipal pension system

If the contribution was at least $500, the aggregate of all contributions to any candidate for public office in Pennsylvania or their political action committee (PAC) by a covered donor must be reported.

PENALTIES

A professional services contract will be voided for persons who knowingly make a material misstatement or omissions in a disclosure form. Violators will be prohibited from entering into new contracts for up to a three-year period. More than two violations in a three-year period will result in the voiding of all contracts between the individual and pension plan and the barring of that person for three years from the date of the last violation.

Municipal pension funds have two years to update information on the value and liability of their fund. Distressed pension funds—those that have less than half of the liability funded—must adhere to new standards and payment arrangements under state control.

Additional reforms to pension legislation in the state may be introduced in the coming years to preserve existing pension plans and focus on municipal pension issues in Philadelphia, Pittsburgh and across the state.

CONTACT INFORMATION

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