

Alert | New York Government Law & Policy



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New York Governor Approves Legislation Restricting LLC Political Contributions; Proposes Additional Changes to Campaign Finance System

Not even a month into 2019, and New York has adopted significant changes to the state’s campaign finance laws. With Democrats controlling both the Assembly and the Senate, the Legislature passed and promptly delivered to the governor legislation that would change the way limited liability companies (LLCs) are treated for campaign contribution purposes. Less than a week later, on Jan. 24, the governor held a bill-signing ceremony to approve the LLC contribution rule change, as well as a package of other election law reforms. Governor Andrew Cuomo described the new laws – including the LLC amendment – as “a pivotal step forward,” but insisted further reforms to the system are necessary and, as such, included several notable changes in the Executive Budget Proposal (the Governor’s Ethics Bill). This GT Alert summarizes the new law on LLC campaign contributions, as well as the other key campaign finance proposals.

LLC Contributions; Limitations & Disclosures: Chapter 4 of the Laws of 2019

Currently, New York state Election Law limits corporations from making more than \$5,000 in political contributions to all New York state and local candidates and their related committees, political action committees, and party committees, in the aggregate, each calendar year. Contributions to independent expenditure committees or bona fide “housekeeping committees” are excluded from this aggregate

limitation. Historically, however, LLCs were treated more like natural people, and were not subject to the corporate limit.

Effective Jan. 31, 2019, new provisions of the Election Law will subject LLCs to the same annual aggregated contribution limit of \$5,000. In addition, the new law mandates that:

- on or before Dec. 31 each year, LLCs that make New York political contributions disclose to the State Board of Elections (BOE) “all direct and indirect owners of membership interests in the” LLC, and the applicable apportionable share;
- similar to how partnership contributions are allocated among partners, contributions by LLCs, in addition to counting against the LLC, be attributable to each LLC member’s per candidate limit, based on the member’s proportional share in the LLC; and
- the Board of Elections promulgate regulations implementing these requirements.

Arguably, the new limitation, the imputation requirement, and the disclosure obligation should only apply to contributions made on or after the effective date. This is one of several open questions that the BOE will have to address when it promulgates new regulations. Regardless, because of these changes, an individual holding substantial interests in LLCs will likely be significantly more limited in his or her ability to make political contributions. For example, if the contribution limit for Assembly campaigns is \$4,400, and an LLC with a single member makes a maximum contribution to Assembly Candidate X, that member would not be permitted to make any more contributions to X for that race. Moreover, because LLCs would be limited to \$5,000 per year, the LLC would then only have \$600 in contributions it could make for the remainder of the calendar year. Because of the attribution rule, if the LLC opts to contribute that \$600 to Assembly Candidate Q, the single member then would be limited to personally contributing \$3,800 to Assembly Candidate Q for the remainder of the applicable election cycle.

Barring Corporate and LLC Political Contributions: Governor’s Ethics Bill Part F

Even though Governor Cuomo approved the LLC limitations described above, and the changes have not yet even taken effect, Part F of the Governor’s Ethics Bill includes a proposal that would eliminate nearly all corporate and LLC contributions by prohibiting any political contributions by corporations or LLCs. To the extent that those entities would otherwise have been permitted to make up to \$5,000 in annual contributions to candidates and committees – including PACs and political parties – the entities will not be permitted to make any such contributions. The governor’s proposal would not, however, change the ability of corporations or LLCs to contribute to housekeeping committees or independent expenditure committees. This amendment would take effect immediately, meaning that upon the adoption of the budget (presumably on or before April 1), corporations and LLCs could no longer make political contributions (other than to housekeeping committees and independent expenditure committees).

Contribution Limits; Public Financing of Campaigns: Governor’s Ethics Bill Part B

Part B of the Governor’s Ethics Bill is devoted mostly to the establishment of a voluntary public financing system, pursuant to which candidates who meet certain thresholds would be entitled to \$6 of public funds for each \$1 of matchable funds raised, up to the first \$175 of contributions from any given contributor. In turn, there would be additional disclosure obligations, and participating candidates would be subject to lower limits. Notably, however, the proposal would dramatically change contribution limits, even outside of the public matching system:

- *Housekeeping Committees:* Currently, housekeeping committees of party or constituted committees may accept unlimited contributions. The governor has proposed limiting contributions to housekeeping committees to no more than \$25,000 annually.
- *Party or Constituted Committees:* Currently, contributors may annually give up to \$109,600 to committees established by state or local political parties. This contribution limit is statutorily set at \$62,500, but is adjusted every four years to account for increases in the consumer price index (CPI). The governor has proposed to lower this limit to \$25,000 annually and eliminate the CPI adjustment. Party and constituted committees would also be severely limited in how they may support preferred candidates. Currently, parties can freely “transfer” funds between the party committee and candidates, or spend funds on enrolled candidates, without limitation. The governor proposes limiting parties from generally transferring and/or spending more than \$5,000 on any given race per election cycle, provided, however, that such entities would also be permitted to transfer and/or spend up to \$500 received from each voter during a general or special election.
- *Candidates for Statewide office (not participating in public financing system¹):* New limits would be established for all candidates running for public office, even those candidates not participating in the public financing system. For the primary, the limit for non-participants would be based on a formula related to the number of enrolled members of the relevant political party in the state (\$.005/enrolled voter). In no instance would the limit be lower than \$4,000, and it would never exceed \$10,000 for a primary election. For the general election, the limit would be set at \$15,000.
- *Candidates for Senate and Assembly (not participating in public financing system):* Non-participating candidates running for Senate would be permitted to accept up to \$5,000 for each of the primary and general election. Non-participants running for Assembly could accept up to \$3,000 during a primary, and up to \$3,000 for a general election.
- *Candidates for all other offices (not participating in public financing system):* Contribution limits for candidates running for all other offices would generally also be based on a formula – five cents multiplied by either: (i) the number of enrolled members of the relevant political party residing in the applicable district, for the primary; or (ii) the number of enrolled voters in the applicable district, regardless of political affiliation, for the general.

Pay-to-Play Restrictions: Governor’s Ethics Bill Part K

The governor proposed significant restrictions on contributions made by entities or persons seeking state contracts. It is unclear whether these provisions would need to be further revised if the corporate and LLC contribution ban was adopted. In general, however, this proposal would:

- prohibit any individual who or entity (as well as its subsidiaries and any PAC “directly or indirectly controlled by the business entity) that submits a bid, quote, or offer to a state entity with an outstanding procurement solicitation from also contributing to “any officeholder of the state governmental entity or entities,” or candidate for such office, that either issued the relevant solicitation or is involved in evaluating/awarding/approving the final contract;
- require that, for a vendor awarded the applicable contract, the prohibition begin at the announcement of the solicitation and continue until one year after the final contract award is made and approved, and

¹ If the state enacts a public financing system, candidates participating in that program would be subject to even lower contribution limits.

for vendors not awarded a contract, until the final contract award is approved by the contracting agency and the state comptroller; and

- mandate that state entities include notice of this prohibition in the announcement of the solicitation.

As drafted, it appears that the contribution restriction would not apply to any natural people affiliated with an entity bidding on a state contract. It is also not immediately clear which elected officials would be subject to the prohibition, but presumably it would apply to the governor, attorney general, and comptroller (except for contracts that are not subject to the comptroller's approval) with regards to any executive-branch agency procurement. It is less clear who would be impacted by legislative procurements, which are also covered by this proposal.

Disclosures by Lobbyists Who Fundraise for Candidates: Governor's Ethics Bill Part O

If enacted, Part O would require that individual lobbyists who either solicit or collect contributions in support of a candidate for public office file additional disclosure statements with the Joint Commission on Public Ethics (JCOPE). Lobbyists who engage in fundraising activity would need to disclose to JCOPE, along with the relevant lobbyist bi-monthly report, the candidates for whom the lobbyist fundraised, the total amount raised for the applicable candidate (including any contributions made by the lobbyist), as well as information regarding whether the lobbyist was compensated for the fundraising services, expenses that were incurred by the lobbyist in furtherance of such services, and "a list of all persons or entities with whom the lobbyist contracted" for fundraising services. JCOPE would be required to keep this information available for the public to access electronically.

Conclusion

The first month of New York state's 2019 legislative session has already seen significant campaign finance and election law amendments. Just the change to the LLC standard will likely prove to be a major shift for New York's campaign finance landscape. If the governor's budget proposals are also adopted, New York politics will experience a real paradigm shift. Many of these proposals likely will be rejected or changed during the budget negotiations, but it is important for all potential campaign contributors and candidates to be sensitive to these policies. The Governor's Ethics Bill includes various other proposals regarding lobbyists, political consultants, and activities by public officers, which will be addressed in a separate GT Alert. [GT's Political Law & Compliance Practice](#) is available to assist with questions as to how these changes will affect political fundraising in New York.

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