



STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION
20 Trinity Street Hartford, Connecticut 06106—1628

To: Connecticut State Contractors and Prospective State Contractors with the Legislative Branch of State Government

From: Jeffrey B. Garfield, Executive Director and General Counsel

Re: Prohibition on Campaign Contributions to Candidates, Political Action Committees (PACs) and Political Parties---REVISED PROCEDURES

Date: March 20, 2007

General Background

On February 7, 2007, the General Assembly enacted various changes to the laws prohibiting the solicitation of and making of campaign contributions by principals of state contractors and prospective state contractors seeking to do business with the State of Connecticut. These revisions took effect February 8, 2007. The underlying prohibitions on the soliciting and making of campaign contribution by principals of state contractors and prospective state contractors are generally unchanged. In certain respects, the prohibition has been expanded. The major changes made by the legislation affect the implementation of the prohibition, and the corresponding duties of the state contractors, prospective state contractors, contracting state agencies and the State Elections Enforcement Commission (SEEC), which is charged with the enforcement of the prohibitions. This memorandum highlights the changes to the law, which is contained in Section 9-612, General Statutes, as amended by Public Act 07-1.

The Campaign Contribution and Solicitation Prohibition, as amended

Conn. Gen. Stat. §§9-612(g) (2) (A) and (B) now provide:

(2) On and after December 31, 2006:

(A) No state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall make a contribution to, or solicit contributions on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee;

(B) No state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or state contract solicitation with or from the General Assembly or a holder, or principal of a holder, of a valid prequalification certificate, shall make a contribution to, or solicit contributions on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of state senator or state representative, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee;

Highlights of Changes made by Pubic Act 07-1

The following is a summary of the changes made in the new law affecting the ban on the solicitation and making of campaign contributions by principals of state contractors and prospective state contractors:

1. ***State Contract*** is defined as any agreement or contract with a state agency in the executive or legislative branch of state government, or any quasi-public agency. Contracts with the judicial branch are not included for purposes of the underlying prohibition on contributions. The other limited exceptions to the definition of state contract are those contracts or agreements that are exclusively federally funded, educational loans, or loans to an individual for other than commercial purposes (e.g. a loan for the purchase of residential property). The law further clarifies that a contract with a municipality or other political subdivision of the state, as well as any entity or association created by a municipality or political subdivision to further any purpose authorized by law is not covered.
2. ***Types of State Contracts*** that are covered by the prohibition are broad, and include contracts for the rendition of any service, and the furnishing of any goods or items of any kind. The rendition of services is broadly defined to mean the provision of any service to a state agency or quasi-public agency in exchange for a fee, remuneration or compensation of any kind from the state or through an arrangement with the state. Accordingly, if a business or nonprofit organization receives a fee or remuneration from a third party as a result of the business entity's or nonprofit's agreement with the state, even if the state does not directly pay the fee or remuneration, the agreement would constitute a state contract provided the financial threshold is satisfied.
3. ***Value of the State Contract or Contract Solicitation*** is determined on a calendar year rather than a fiscal year basis. The value of the contract or series of contracts for inclusion in the campaign contribution prohibitions remains unchanged. For the principals of a state contractor to be subject to the campaign contribution prohibitions, the state contractor must have a single contract with a state agency or quasi-public agency valued at

\$50,000, or a series of contracts with multiple state agencies or quasi-public agencies valued at \$100,000, per calendar year. Similarly, for a prospective state contractor, the value of its bid, proposal, quote or other type of submittal with a single state agency must be \$50,000, or an aggregate of \$100,000 to all state agencies, in a calendar year, for its principals to be covered by the campaign contribution and solicitation prohibitions.

4. ***Types of State Contract Solicitations*** that are included in the law are not limited to bids or responses to RFPs, but include any solicitation by a state agency or quasi-public agency in any form, including competitive procurement, sole source or other processes for procurement.

5. ***Principals of State Contractors and Prospective State Contractors*** that are covered by the campaign contribution prohibitions has been modified. Changes to the definition of principal include exclusion of the office of senior vice president, and increasing from 16 to 18 the age of dependent children covered by prohibition (children under 18 are restricted to contributing no more than \$30. Principals subject to the prohibitions under the new law are as follows:
 - a. For Business Entities – all types of businesses, regardless of its form of organization
 - i. Directors
 - ii. Owners of at least 5% of business
 - iii. President, Treasurer, Executive Vice President
 - iv. Managerial or Discretionary Employees
 - v. Spouse and Dependent Children of any of above
 - vi. PAC established or controlled by the business entity or by any of the above individuals

 - b. For Non Profit Organizations—all types of nonprofits, regardless of tax exempt status
 - i. Chief Executive Officer or officer with comparable duties
 - ii. Managerial or Discretionary Employees
 - iii. Spouse and Dependent Children of any of above
 - iv. PAC established or controlled by the nonprofit organization or by any of the above individuals

Managerial or discretionary employees are those having direct, extensive and substantive responsibilities with respect to the ***negotiation*** of the state contract.

Dependent Child is one who is 18 years of age or older residing in the parent’s household and who can be legally claimed as a dependent on the federal income tax return of

the parent. A child who is under 18 years of age is not subject to the prohibitions; however he/she may contribute no more than \$30 to any candidate or committee. Moreover, a principal is prohibited from requesting that any of his/ her children make such contributions.

6. ***Affidavit by Requirement is repealed and replaced with Written Acknowledgement.*** Under prior law, the Chief Executive Officer of the State Contractor or Prospective State Contractor was required to submit an affidavit certifying that all principals have been informed of the applicable prohibitions on solicitation and making of campaign contributions, that the principals would not violate these prohibitions, and acknowledging the consequences should any violation occur. This affidavit (SEEC Form SC 3) is no longer required of a State Contractor as a condition of the contract. Nor is a Prospective State Contractor required to submit this affidavit at the time of submission of a bid, response or other form of contract solicitation by a state agency or quasi-public agency. Instead, state agencies are required to provide a notice to their State Contractors and Prospective State Contractors, advising them of the campaign contribution restrictions, directing them to provide notice of the law to their principals and informing them of the possible consequences of violations of the law. The Chief Executive Officer of the State Contractor or Prospective State Contractor, or an authorized signatory to the contract, must submit a written acknowledgement to the contracting agency that this notice has been received. You will receive this acknowledgement notice if you are an existing State Contractor which meets the financial threshold for inclusion in the campaign contribution and solicitation prohibitions, or if you are a Prospective State Contractor which submits a bid, quote or response to an RFP issued by a state agency.
7. ***Duty to Report Names of Contractor's Principals is repealed.*** State Contractors and Prospective State Contractors will not be required to disclose the names of their principals, as defined above, to the SEEC or the contracting agency, and the names of principals will no longer be posted on the See's web site. All names of principals that have previously been reported to the SEEC have been removed from the agency's website.
8. ***SEEC will publish the Names of State Contractors and Prospective State Contractors on its Website, as reported by the contracting state agencies.*** State agencies and quasi-public agencies in the executive and legislative branches of state government will report the names of its state contractors and prospective state contractors which meet the financial threshold in the legislation, that is, having, or seeking to obtain a state contract valued at \$50,000 or more from a single state agency since January 1, 2007. Using financial data from the state's accounting system, the SEEC will identify existing state contractors that have received payments of \$100,000 or

more from more than one state agency or quasi-public agency, (or which have combined contracts and payments that exceed \$100,000) and will enter the names of those state contractors on the prohibited list, and will notify the applicable state contractors of the campaign contribution restrictions. The SEEC will publish the names of the State Contractors and Prospective State Contractors whose principals are subject to the prohibitions on the solicitation and making of campaign contributions arranged alphabetically by name of contractor in three separate lists. List One shall contain the names of State Contractors and Prospective State Contractors Prohibited from Contributing to both Statewide and General Assembly Candidates. List Two shall contain the names of State Contractors and Prospective State Contractors Prohibited from Contributing to Statewide Office Candidates. List Three shall contain the names of State Contractors and Prospective State Contractors Prohibited from Contributing to General Assembly Candidates. Any business entity or nonprofit organization which believes that the listing of its name on the SEEC website is erroneous, may contact the SEEC in care of Dara Howard, Associate Accounts Examiner, at 18-20 Trinity Street, 3rd Floor, Hartford, CT 06106, or by e-mail dara.howard@ct.gov. State agencies are required to update their lists of contractors and prospective state contractors each month, and report changes to the SEEC by the 15th of each month, and the SEEC will update its lists by the 1st of the month.

9. ***Right to Cure Improper Contribution avoids Legal Consequences.*** If a principal of a State Contractor or Prospective State Contractor inadvertently violates the campaign contribution prohibition, no legal consequences arise if, and only if, the improper contribution is returned by the recipient committee treasurer to the principal within 30 days of receipt of the contribution or the campaign report filing date corresponding with the period in which the contribution was made, whichever is later. For example, if a spouse of a state contractor with a legislative branch agency makes a contribution to a candidate for State Senator in February, and the treasurer of the recipient candidate returns the contribution by April 10, which is the applicable filing date for the period requiring reporting of such contributions, no violation occurs, and no penalties can be assessed. We suggest that if such an improper contribution is made, that the principal making such contribution request the refund in writing, and as soon as the problem is discovered.

10. ***Legal Consequences Arising from Violation of Campaign Contribution Restrictions Can Be Avoided Upon SEEC Determination of Mitigating Circumstances. Penalties.*** If a violation of the solicitation or contribution prohibition is determined by the SEEC to have been committed, the SEEC can impose civil penalties against the principal of up to \$2000 per offense, or twice the amount of the contribution, whichever is greater. The SEEC could also seek criminal prosecution against the violator if there is

evidence that the violation was committed knowingly and willfully. The crime is considered a Class D felony, which is punishable by up to 5 years imprisonment or a \$5000 fine, or both. The SEEC could also impose civil penalties on the State Contractor or Prospective State Contractor if it is determined that it did not make reasonable efforts to comply, such as by informing its principals of the applicable prohibitions and consequences.

Contractual Consequences. In addition to the civil or criminal penalties, there are potential contractual consequences for any violation. In the case of an existing State Contractor, the state contract could be voided; and the contractor cannot be awarded an extension or amendment to the contract or any other state contract for the period beginning with the determination of the violation by the SEEC and one year after the date of the election to which the contribution related. In the case of a Prospective State Contractor, the contract shall not be awarded, and the contractor cannot be awarded any other state contract for a similar period as described above. These contractual consequences can be avoided however if the SEEC determines there are mitigating circumstances surrounding the violation. The SEEC can make such determination on its own initiative or upon request of the state contractor or prospective state contractor. In adjudging mitigating circumstances, the SEEC will take into consideration: a) the amount of the prohibited contribution or instance of solicitation; b) the type of principal committing the violation; c) past history of non compliance with election laws; d) whether the contractor or prospective state contractor exercised due diligence in notifying the principals of the statutory prohibitions; e) the economic harm to the State; f) the disruption of an essential State service; and g) any other circumstance that the contractor, prospective state contractor or contracting state agency may raise that, in the SEEC's determination, is relevant to whether such contractual consequences should be imposed.

11. ***Required Notice to State Contractors and Prospective State Contractors.***
The SEEC has made available a Notice for use by state agencies, to enable such agencies to meet their obligation to advise State Contractors and Prospective State Contractors of the contribution and solicitation prohibition, of their duty to inform their principals of the prohibition, and of the possible consequences of violation of the law. State agencies are responsible for distributing such notice to their contractors and prospective contractors, and obtaining the written acknowledgement of receipt. A copy of that notice is found at www.ct.gov/seec, as well as a copy of Public Act 07-1 by linking to "State Contractor Contribution ban." See SEEC FORM 12.

Further information regarding the State Contractor Contribution and Solicitation Ban can be found on the SEEC website, including FAQs.

Should you still have any questions concerning the application of the prohibitions, you may contact Attorney William Smith at the SEEC william.smith@ct.gov.