Michigan Ballot Measure Would Create Sweeping Pay-to-Play Restrictions for Utilities and Government Contractors

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Michigan voters are expected to decide this November whether to adopt a far-reaching new pay-to-play law that would restrict political contributions by regulated electric and gas utilities, certain state and local government contractors and companies seeking government contracts, and many affiliated individuals and organizations.

Although the ballot measure has not yet been approved, organizations and individuals that could fall within its scope should use the period before the November election to evaluate whether the measure could affect the timing of planned political contributions and whether existing compliance procedures would need to be modified if the measure is adopted.

Key Provisions

The measure would establish separate contribution restrictions for regulated electric and gas utilities and for companies that hold or seek Michigan state or local government contracts exceeding $250,000 during a calendar year. In both cases, the restrictions would extend well beyond the company itself.

For regulated utilities, the measure would prohibit certain contributions by the utility, its principals, and affiliated entities to specified state officials, candidates, political party committees, and certain candidate-affiliated organizations. The definition of a utility "principal" is notably broad, encompassing directors, owners of at least 5%, specified senior officers, agents (including lobbyists and lobbyist agents), and certain immediate family members.

Government contractors would face similarly expansive restrictions. Covered contractors—including certain subcontractors—would generally be prohibited from contributing to candidates for state elective office or, in the case of local contractors, to candidates and officials in the contracting jurisdiction. The restricted period would begin when contract negotiations commence or a solicitation is released and would continue until 18 months after the contract ends. Unlike the utility provisions, however, the contractor contribution restrictions would not become enforceable until 18 months after the law takes effect.

Why It Matters

The measure's most significant feature is its breadth.

Rather than applying only to utilities and government contractors, the measure would also reach a wide range of related individuals and organizations, including directors, significant owners, senior officers, affiliated entities, lobbyists, lobbyist agents, subcontractors, and certain family members. For many organizations, determining who is covered may prove as important as understanding which contributions are prohibited.

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The measure's affiliate provisions also could have important implications for corporate groups, trade associations, PACs, and other organizations connected to covered companies. The measure defines an affiliate to include an entity directly or indirectly "financed" by a utility or government contractor, or one of its principals, but does not specify how much financial support is required. As a result, questions could arise regarding membership dues, sponsorships, and other support received from covered companies.

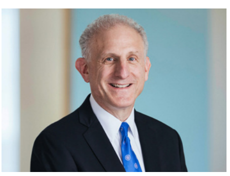
Bottom Line

The Michigan House has voted to enact the measure, but Senate leadership has indicated it does not intend to do so, leaving the measure likely to go before voters on November 3. If approved, the law generally would take effect 10 days after the official declaration of the election results, although the government contractor contribution restrictions would not become enforceable until 18 months later.

Organizations and individuals that could fall within the measure's scope should use the period before the November election to review planned political contributions and evaluate whether existing compliance procedures would need to be modified if the measure is approved.

Venable's Political Law Practice is closely monitoring the measure and will provide updates as additional developments occur. Please contact us with questions about how the proposed measure could affect your organization's political activities.

Contact Us



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