

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

ATTORNEY GENERAL
KARL A. RACINE



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OFFICE OF THE
SECRETARY

February 17, 2016

The Honorable Phil Mendelson
Chairman, Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Suite 504
Washington, DC 20004

Dear Chairman Mendelson:

I am writing to transmit the “Campaign Finance Transparency and Accountability Amendment Act of 2016.” The bill ensures that independent expenditures are truly independent by requiring candidates, elected officials, affiliated committees, and their agents to wall themselves off from entities that make independent expenditures, including Political Action Committees (PACs) and independent expenditure committees. It does so by borrowing both from Bill 21-511 and from federal regulations. Candidates, officials, committees, and agents would not be allowed to encourage anyone to donate to an independent expenditure committee or a PAC. PACs and independent expenditure committees in turn would have to certify that, to the best of their knowledge, after due diligence, they have not received any donations that were coordinated with any candidate, official, political committee, or political party. Moreover, any expenditure coordinated with a candidate, campaign, or agent would be treated as a contribution to that candidate or campaign.

The bill also ensures that the public knows who is behind independent expenditures by requiring extensive disclosure. The bill requires individuals and entities making such expenditures to disclose not only how much they spend, but also to identify any affiliates or donors associated with that spending. These requirements will prevent individuals and organizations from hiding behind “dark money” groups to circumvent sunlight provisions.

The bill closes a significant PAC loophole. Under current regulations, restrictions on giving to a PAC do not apply during any calendar year in which the committee is not supporting candidates in either a primary or general election. Consequently, a PAC could collect unlimited donations in non-election years, even for political contributions, although of course it could not give above the maximum to any one candidate. The bill repeals this exemption.

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The bill builds on prior campaign finance proposals, including Bill 21-22, to sever the connection between contributions and significant business dealings with the District. It focuses on what it calls “doing business with the District”: large contracts, large grants, large tax abatements, and agreements to acquire, sell, or lease land or a building – the type of arrangements where the concern of pay-to-play corruption appears highest. Anyone who contributed to a candidate or elected official who could influence or award any of these types of business, to any political committee affiliated with that candidate or official, and to certain individuals or organizations closely tied to such a candidate or official, would be ineligible to do high-value business with the District. This ineligibility would last for two years following the election for which the contribution was made. Anyone seeking to “do business with the District” would need to certify that he or she was in compliance with District pay-to-play law, and the District would be forbidden from “doing business with” anyone who was ineligible to “do business with the District.”

Moreover, current law allows the Mayor and Councilmembers to designate one employee each who may solicit and receive political contributions while on leave. The bill would narrow this provision by limiting the type of leave that a designated employee can use for this purpose (annual or unpaid leave only) and specifying that an employee may only solicit and receive political contributions for a principal campaign committee or an exploratory committee.

Finally, the bill would require board and commission members to receive ethics training from the Board of Ethics and Government Accountability.

If you have any questions, your staff may contact my Legislative Director, James A. Pittman, on (202) 724-6517.

Sincerely,



Karl A. Racine
Attorney General for the District of Columbia


Chairman Phil Mendelson
at the request of the Attorney General

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Phil Mendelson, at the request of the Attorney General, introduced the following bill, which was referred to the Committee on _____

To require political action committees to direct their contributions through regulated accounts that are designated for that purpose; clarify that expenditures coordinated with a candidate or campaign are considered contributions to that candidate or campaign; require political action committees and independent expenditure committees to certify that the donations they have received have not been coordinated with any candidate or campaign; enhance disclosure of independent expenditures; prohibit candidates, public officials, and their affiliated political committees from soliciting donations to any independent expenditure committee or political action committee; close the loophole allowing unlimited contributions to a political action committee in a year when the committee is not supporting candidates; disqualify individuals and corporations from large contracts or other significant business with the District if they have recently contributed to certain covered recipients; regulate Hatch Act employee designations by requiring them to be for a principal campaign or exploratory committee, requiring employees to use either annual or unpaid leave, requiring designated employees to disclose their designation to the Board of Ethics and Government Accountability, and requiring the Board to post designated-employee information on its website; require members of boards and commissions to obtain ethics training from the Board at the beginning of their service.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this Act may be cited as the “Campaign Finance Transparency and Accountability Amendment Act of 2016”.

TITLE I – CAMPAIGN FINANCE

1 Sec. 101. The Board of Ethics and Government Accountability Establishment and
2 Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-
3 124; D.C. Official Code § 1-1161.01 *et seq.*) is amended as follows:

4 (a) Section 101 (D.C. Official Code § 1-1161.01) is amended as follows:

5 (1) Paragraph (4A) is amended to read as follows:

6 “(4A) “Business contributor” means a business entity that makes a contribution,
7 or makes a donation to a political action committee or an independent expenditure committee,
8 along with all of that entity’s affiliated entities.”.

9 (2) A new paragraph (9A) is added to read as follows:

10 “(9A) “Contribution Account” means an account of a political action committee
11 that is segregated from other accounts of the political action committee and is used for the sole
12 purpose of making contributions to candidates, political parties, political committees, and
13 Contribution Accounts of other political action committees.”.

14 (3) Paragraph (10) is amended by inserting a new subparagraph (C) to read as
15 follows:

16 “(C) The term “contribution” includes any expenditure that is coordinated with:

17 “(I) A candidate or public official;

18 “(II) A political committee affiliated with a candidate or public official; or

19 “(III) An agent of any person described in sub-subparagraph (I) or (II).”.

20 (4) Paragraph (10B) is amended to read as follows:

21 “(10B)(A) “Coordinate” or “coordination” means to take an action, including making an
22 expenditure:

23 “(I) At the request, suggestion, or direction of a covered campaign; or

1 “(II) In cooperation, consultation, or concert with, or with other material
2 involvement of, a covered campaign.

3 “(B) There is a rebuttable presumption that an expenditure by a person is
4 coordinated with a covered campaign if:

5 “(I) The expenditure is based on information that the covered campaign
6 provided to the person about the covered campaign’s needs or plans, including information about
7 campaign messaging or planned expenditures;

8 “(II) The person making the expenditure retains the services of a person
9 who provides the covered campaign with professional services related to campaign or
10 fundraising strategy; or

11 “(III) The person making the expenditure is a committee that was
12 established, run, or staffed in a leadership role by an individual who previously worked in a
13 senior position or advisory capacity on the candidate’s or public official’s staff within the current
14 campaign, who is an immediate family member of the candidate or the public official, or who
15 has been a candidate within the prior two elections.”.

16 (5) A new paragraph (10C) is added to read as follows:

17 “(10C) “Covered campaign” means:

18 “(A) A candidate or public official;

19 “(B) A political committee affiliated with a candidate or public official; or

20 “(C) An agent of any person described in subparagraph (A) or (B).”.

21 (b) Section 313 (D.C. Official Code § 1-1163.13) is amended as follows:

22 (1) Subsection (a)(1) is amended to read as follows:

1 “(1) Every political action committee and every independent expenditure
2 committee shall certify, in each report filed with the Director of Campaign Finance, that:

3 “(A) To the best of its knowledge, after due diligence, the expenditures it
4 has made have not been controlled by or coordinated with any covered campaign; and

5 “(B) To the best of its knowledge, after due diligence, none of the
6 contributions or donations it has received were solicited, as defined in section 333(j-1)(2), by any
7 covered campaign.”.

8 (2) Subsection (b) is amended to read as follows:

9 “(b) A business contributor to a political committee, political action committee, or
10 independent expenditure committee shall:

11 “(1) Provide the committee with the identities of the contributor’s affiliated
12 entities that have also contributed to the committee; and

13 “(2) Comply with all requests from the Office of Campaign Finance to provide
14 material information about its individual owners, the identity of affiliated entities, the individual
15 owners of affiliated entities, the contributions or expenditures made by such entities, and any
16 other information that the Office of Campaign Finance reasonably requests in order to enforce
17 this section.

18 (3) New subsections (b-1), (b-2), and (b-3) are added to read as follows:

19 “(b-1) Independent expenditure disclosures by individuals. Any individual who makes
20 one or more independent expenditures in an aggregate amount of \$50 or more within a calendar
21 year shall file reports with the Director of Campaign Finance, that include:

22 “(1) The individual’s name and address;

23 “(2) The amount and object of the expenditures;

1 “(3) The names of any candidates, initiatives, referenda, or recalls in support of or
2 opposition to which the expenditures are directed; and

3 “(4) A certification that the independent expenditures were not coordinated with
4 any covered campaign.

5 “(b-2) Independent expenditure disclosures by covered organizations.

6 “(1) For the purpose of this subsection, the term “covered organization” means
7 any person other than an individual, a political committee, a political action committee, or an
8 independent expenditure committee.

9 “(2) A covered organization that makes one or more independent expenditures in
10 an aggregate amount of \$500 or more shall file reports with the Director of Campaign Finance
11 that include:

12 “(A) The organization’s name and principal place of business;

13 “(B) The amount and object of the expenditures;

14 “(C) The name of any candidate, initiative, referendum, or recall in
15 support of which or opposition to which the expenditures are directed;

16 “(D) A certification that, to the best of the organization’s knowledge after
17 due diligence, the independent expenditures were not coordinated with any covered campaign;

18 “(E) A certification that, to the best of the organization’s knowledge after
19 due diligence, none of the donations that organization has received were solicited, as defined in
20 section 313(j-1)(2), by any covered campaign; and

21 “(F) The name and principal place of business of any affiliated entity.

22 “(3) If the covered organization makes independent expenditures solely from a
23 segregated bank account, and if funds donated to the organization are not allocated to that

1 account unless the donor requests in writing that they be allocated to the account, each of the
2 organization's reports to the Office of Campaign Finance under paragraph (2) shall include:

3 “(A) The name and address of each person whose total donations to the
4 account during the period covered by the report exceeded \$200; and

5 “(B) The date and amount of each donation by that person to the account
6 during the period covered by the report.

7 “(4) If the covered organization makes independent expenditures from sources
8 other than the type of segregated bank account described in paragraph (3), each of the
9 organization's reports to the Office of Campaign Finance under paragraph (2) shall include:

10 “(A) The name and address of each person whose total donations to the
11 organization during the period covered by the report exceeded \$200; and

12 “(B) The date and amount of each donation by that person to the
13 organization during the period covered by the report.

14 “(5) Any disclosures required under paragraph (4) shall not include amounts
15 received by the covered organization:

16 “(A) In commercial transactions in the ordinary course of business
17 conducted by the covered organization; or

18 “(B) In the form of investments (other than investments by the principal
19 shareholder in a limited liability corporation) in the covered organization.

20 “(6) Any disclosures required under paragraph (4) shall not include information
21 about a donor's donation if:

22 “(A) That donor prohibited, in writing, the use of his or her payment to
23 support or oppose any candidate, initiative, referendum, or recall; and

1 “(B) The covered organization agreed to follow the prohibition and
2 deposited the donation in an account which is segregated from any account used to make
3 independent expenditures.

4 “(b-3) Contribution Accounts for Political Action Committees.

5 “(1) A political action committee may not make contributions to a public official,
6 a candidate, a political party, or a political committee unless and until it establishes a
7 Contribution Account for the purposes of financing any contributions the political action
8 committee will make to any public official, candidate, political party, political committee, or
9 political action committee.

10 “(2) Within ten days of establishing the Contribution Account, a political action
11 committee must notify the Board that it has established a Contribution Account.

12 “(3) A political action committee that establishes a Contribution Account must:

13 “(A) Ensure that the Contribution Account remains segregated from any
14 accounts of the political action committee that are used to make independent expenditures;

15 “(B) Ensure that no donation or contribution to the political action
16 committee is placed in the Contribution Account unless the contributor or donor has specifically
17 designated the donation for that purpose;

18 “(C) Ensure that contributions are made only from the Contribution
19 Account;

20 “(D) Inform prospective contributors and donors to the political action
21 committee that a contribution or donation to the political action committee will not be placed in
22 the Contribution Account unless the contributor or donor specifically designates the contribution
23 or donation for that purpose; and

1 “(E) Ensure that the Contribution Account pays a proportional share of the
2 political action committee’s administrative expenses.

3 “(4) If a political action committee has established a Contribution Account, it
4 must, in any reports it files pursuant to section 309 of this act, identify any receipts that have
5 been allocated to that Contribution Account.”.

6 (c) Section 333 (D.C. Official Code § 1-1163.33) is amended as follows:

7 (1) A new subsection (h-1) is added to read as follows:

8 “(h-1) A contribution to a political action committee shall not be considered a
9 contribution for the purposes of the limitations specified in this section if that contribution is not
10 designated for the political action committee’s Contribution Account.”.

11 (2) A new subsection (j-1) is added to read as follows:

12 “(j-1)(1) A covered campaign shall not solicit a contribution or donation to any covered
13 organization as defined in section 313(b-2)(1), any independent expenditure committee, or any
14 political action committee.

15 “(2) For the purposes of this subsection, a person solicits a contribution or
16 donation to an independent expenditure committee or political action committee if that person
17 asks, requests, or recommends, explicitly or implicitly, that the other person make a contribution
18 or donation to that independent expenditure committee or political action committee. This
19 includes any oral or written communication that, construed as reasonably understood in the
20 context in which it is made, contains a clear message asking, requesting, or recommending that
21 another person make such a contribution or donation.”.

22 Sec. 102. Title 3, subsection 3011.33 of the District of Columbia Municipal Regulations
23 is repealed.

1 TITLE II – PREVENTING PAY-TO-PLAY IN BUSINESS DEALINGS WITH THE
2 DISTRICT

3 Sec. 201. Definitions.

4 For purposes of this title, the term:

5 (1) “Business contributor” means the same as that term is defined in section 101(4A) of
6 the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics
7 Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official
8 Code § 1-1161.01(4A)).

9 (2) “Candidate” means the same as that term is defined in section 101(6) of the Board of
10 Ethics and Government Accountability Establishment and Comprehensive Ethics Reform
11 Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-
12 1161.01(6)).

13 (3) “Contracting authority” means:

14 (A) The Chief Procurement Officer as defined in section 104(11) of this act;

15 (B) Any subordinate agency, instrumentality, employee of the District
16 government, independent agency, board, or commission, other than the District of Columbia
17 courts and the District of Columbia Public Defender Service, that is exempted from Chapter 3A
18 of this act pursuant to section 105(c) of the Procurement Practices Reform Act of 2010, effective
19 April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.05).

20 (C) Any subordinate agency, instrumentality, employee of the District
21 government, independent agency, board, or commission authorized to conduct procurements
22 under section 201 of the Procurement Practices Reform Act of 2010, effective April 8, 2011
23 (D.C. Law 18-371; D.C. Official Code § 2-352.01).

1 (3) "Contribution" means the same as that term is defined in section 101(10) of the Board
2 of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform
3 Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-
4 1161.01(10)).

5 (4) "Contribution Account" means the same as that term is defined in section 101(9A) of
6 the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics
7 Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official
8 Code § 1-1161.01(9A)).

9 (5) "Covered recipient" means:

10 (A) Any elected District official who is or could be involved in influencing or
11 approving the award of a tax abatement, a contract valued at \$100,000 or more, or an agreement
12 for the acquisition, sale, or lease of any land or building;

13 (B) Any candidate for elective District office who is or could be involved in
14 influencing or approving the award of a tax abatement, a contract valued at \$100,000 or more, or
15 an agreement for the acquisition, sale, or lease of any land or building;

16 (C) Any political committee affiliated with a District candidate or official
17 described in subparagraphs (A) and (B).

18 (D) Any political party;

19 (E) Any political action committee Contribution Account, as defined in section
20 101(9A) of the Board of Ethics and Government Accountability Establishment and
21 Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-
22 124; D.C. Official Code § 1-1161.01(9A)).

1 (F) Any constituent-service program or fund, or substantially similar entity,
2 controlled, operated, or managed by:

3 “(i) Any elected District official who is or could be involved in
4 influencing the award of a contract or grant; or

5 “(ii) Any person under the supervision, direction, or control of an elected
6 District official who is or could be involved in influencing the award of a contract or grant.

7 (G) Any entity or organization:

8 (i) Which a candidate or public official described in subparagraphs (A)
9 and (B), or a member of his or her immediate family, controls; or

10 (ii) In which a candidate or public official described in subparagraphs (A)
11 and (B) has an ownership interest of 10 percent or more.

12 (6) “Election” means the same as that term is defined in section 101(15) of the Board of
13 Ethics and Government Accountability Establishment and Comprehensive Ethics Reform
14 Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-
15 1161.01(15)).

16 (7) “Engage in business dealings with the District” means to:

17 (A) Receive a grant from the District that is valued at \$100,000 or more;

18 (B) Receive a tax abatement from the District that is valued at \$100,000 or more;

19 (C) Enter into an agreement with the District for the acquisition, sale, or lease of
20 any land or building; or

21 (D) Enter into a contract with the District valued at \$100,000 or more.

22 (8) “Immediate family” means the same as that term is defined in section 101(26) of the
23 Board of Ethics and Government Accountability Establishment and Comprehensive Ethics

1 Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official
2 Code § 1-1161.01(26)).

3 (9) "Person" means:

4 (A) An individual, partnership, committee, corporation, labor organization, and
5 any other organization; or

6 (B) A business contributor.

7 (10) "Political action committee" means the same as that term is defined in section
8 101(43A) of the Board of Ethics and Government Accountability Establishment and
9 Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-
10 124; D.C. Official Code § 1-1161.01(43A)).

11 (11) "Political committee" means the same as that term is defined in section 101(44) of
12 the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics
13 Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official
14 Code § 1-1161.01(44)).

15 (12) "Political party" means the same as that term is defined in section 101(45) of the
16 Board of Ethics and Government Accountability Establishment and Comprehensive Ethics
17 Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official
18 Code § 1-1161.01(45)).

19 Sec. 202. Eligibility to engage in business dealings with the District.

20 (a) A person that makes a contribution or solicitation for contribution to a covered
21 recipient, shall, for two years, be ineligible to engage in business dealings with the District.

22 (b) The two-year ineligibility described in subsection (a) shall begin on the date that the
23 contribution or solicitation for contribution was made.

1 (c) Neither the District nor any contracting authority of the District shall do any of the
2 following with a person that is ineligible to engage in business dealings with the District:

3 (1) Provide the person a grant valued at \$100,000 or more;

4 (2) Provide the person a tax abatement that is valued at \$100,000 or more;

5 (3) Enter into an agreement with the person for the acquisition, purchase, or sale
6 of land; or

7 (4) Enter into a contract, valued at \$100,000 or more, with the person.

8 (d) For the purposes of this section, a person solicits a contribution or donation to covered
9 recipient if that person asks, requests, or recommends, explicitly or implicitly, that another
10 person make a contribution or donation to that covered recipient. This includes any oral or
11 written communication that, construed as reasonably understood in the context in which it is
12 made, contains a clear message asking, requesting, or recommending that another person make
13 such a contribution or donation.

14 Sec. 203. Sworn statement on eligibility to engage in business dealings with the District.

15 Before a person may engage in business dealings with the District, the person shall
16 provide the District with a sworn statement, under penalty of perjury, that to the best of the
17 person's knowledge, after due diligence, the person is in compliance with this title and therefore
18 is eligible to engage in business dealings with the District.

19 TITLE III – POLITICAL ACTIVITY AND TRAINING

20 Sec. 301. Employee Political Activity

21 (a) Section 3(b) of the Prohibition on Government Employee Engagement in Political
22 Activity Act of 2010, effective March 31, 2011 (D.C. Law 18-355; D.C. Official Code § 1-
23 1171.02) is amended as follows:

1 (1) The lead-in language is amended by striking the phrase “while on leave” and
2 inserting the phrase “while on annual or unpaid leave” in its place.

3 (2) A new paragraph (1-a) is added to read as follows:

4 “(1-a) The employee may only perform these functions for a principal campaign
5 committee or an exploratory committee.”.

6 (3) Paragraph (3) is amended to read as follows:

7 “(3)(A) Any designated employee shall report that designation to the Board on a
8 paper or electronic form that the Board designates.

9 “(B) The form for each designated employee shall identify only the
10 employee’s name, the identity of the designor, and the identity of the principal campaign
11 committee or exploratory committee for which the employee is soliciting, accepting, or receiving
12 contributions.

13 “(C) The Board shall, on its website, identify each designated employee,
14 and for each designated employee shall identify the employee’s designor as well as the principal
15 campaign committee or exploratory committee for which the employee is soliciting, accepting,
16 or receiving contributions.

17 “(D) The report required by this paragraph shall be in addition to any
18 disclosure required under section 224 of the Board of Ethics and Government Accountability
19 Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27,
20 2012 (D.C. Law 19-124; D.C. Official Code § 1-1162.24).”.

21 (b) Section 1801(a-2) of the District of Columbia Comprehensive Merit Personnel Act of
22 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-618.01(a-2)) is amended
23 by inserting a new paragraph (4) to read as follows:

1 “(4) No later than 90 days after commencement of service, each member of a
2 board or commission shall certify that he or she has undergone ethics training developed by the
3 District of Columbia Board of Ethics and Government Accountability. The required training
4 may be provided electronically, in person, or both as considered appropriate by the Board of
5 Ethics and Government Accountability.”.

6 **TITLE IV – FISCAL IMPACT AND EFFECTIVE DATE**

7 **Sec. 401. Fiscal impact statement.**

8 The Council adopts the fiscal impact statement provided by the Chief Financial Officer as
9 the fiscal impact statement required by section 4a of the General Legislative Procedures Act of
10 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

11 **Sec. 402. Effective date.**

12 This act shall take effect following approval by the Mayor (or in the event of veto by the
13 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
14 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
15 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of
16 Columbia Register.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



Legal Counsel Division

MEMORANDUM

TO: James A. Pittman, Esq.
Director of Legislative Affairs
Office of Attorney General for the District of Columbia

FROM: Janet M. Robins
Deputy Attorney General
Legal Counsel Division

DATE: February 17, 2016

SUBJECT: Legal Sufficiency Review of Draft Bill, the "Campaign Finance
Transparency and Accountability Amendment Act of 2016"
(AE-15-798)

This is to Certify that this Office has reviewed the above
referenced legislation and found it to be legally sufficient. If you have any questions in this
regard, please do not hesitate to call me at 724-5524.



Janet M. Robins