Chairman Phil Mendelson at the request of the Attorney General

A BILL

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

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

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

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

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

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

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

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

“(I) A candidate or public official;

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

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

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

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

“(I) At the request, suggestion, or direction of a covered campaign; or
“(II) In cooperation, consultation, or concert with, or with other material involvement of, a covered campaign.

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

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

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

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

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

“(10C) “Covered campaign” means:

“(A) A candidate or public official;

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

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

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

(1) Subsection (a)(1) is amended to read as follows:
“(1) Every political action committee and every independent expenditure committee shall certify, in each report filed with the Director of Campaign Finance, that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(3) If the covered organization makes independent expenditures solely from a segregated bank account, and if funds donated to the organization are not allocated to that...
account unless the donor requests in writing that they be allocated to the account, each of the
organization’s reports to the Office of Campaign Finance under paragraph (2) shall include:

“(A) The name and address of each person whose total donations to the
account during the period covered by the report exceeded $200; and
“(B) The date and amount of each donation by that person to the account
during the period covered by the report.

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

“(A) The name and address of each person whose total donations to the
organization during the period covered by the report exceeded $200; and
“(B) The date and amount of each donation by that person to the
organization during the period covered by the report.

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

“(A) In commercial transactions in the ordinary course of business
conducted by the covered organization; or
“(B) In the form of investments (other than investments by the principal
shareholder in a limited liability corporation) in the covered organization.

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

“(A) That donor prohibited, in writing, the use of his or her payment to
support or oppose any candidate, initiative, referendum, or recall; and
“(B) The covered organization agreed to follow the prohibition and
deposited the donation in an account which is segregated from any account used to make
independent expenditures.

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

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

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

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

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

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

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

“(D) Inform prospective contributors and donors to the political action
committee that a contribution or donation to the political action committee will not be placed in
the Contribution Account unless the contributor or donor specifically designates the contribution
or donation for that purpose; and
“(E) Ensure that the Contribution Account pays a proportional share of the political action committee’s administrative expenses.

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

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

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

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

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

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

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

Sec. 102. Title 3, subsection 3011.33 of the District of Columbia Municipal Regulations is repealed.
TITLE II – PREVENTING PAY-TO-PLAY IN BUSINESS DEALINGS WITH THE
DISTRICT

Sec. 201. Definitions.

For purposes of this title, the term:

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

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

(3) “Contracting authority” means:

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

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

(C) Any subordinate agency, instrumentality, employee of the District
government, independent agency, board, or commission authorized to conduct procurements
under section 201 of the Procurement Practices Reform Act of 2010, effective April 8, 2011
(3) “Contribution” means the same as that term is defined in section 101(10) of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01(10)).

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

(5) “Covered recipient” means:

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

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

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

(D) Any political party;

(E) Any political action committee Contribution Account, as defined in section 101(9A) of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01(9A)).
(F) Any constituent-service program or fund, or substantially similar entity, controlled, operated, or managed by:

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

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

(G) Any entity or organization:

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

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

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

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

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

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

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

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

(8) “Immediate family” means the same as that term is defined in section 101(26) of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics
Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01(26)).

(9) “Person” means:

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

(B) A business contributor.

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

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

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

Sec. 2. Eligibility to engage in business dealings with the District.

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

(b) The two-year ineligibility described in subsection (a) shall begin on the date that the contribution or solicitation for contribution was made.
(c) Neither the District nor any contracting authority of the District shall do any of the following with a person that is ineligible to engage in business dealings with the District:

1. Provide the person a grant valued at $100,000 or more;
2. Provide the person a tax abatement that is valued at $100,000 or more;
3. Enter into an agreement with the person for the acquisition, purchase, or sale of land; or
4. Enter into a contract, valued at $100,000 or more, with the person.

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

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

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

TITLE III – POLITICAL ACTIVITY AND TRAINING

Sec. 301. Employee Political Activity

(a) Section 3(b) of the Prohibition on Government Employee Engagement in Political Activity Act of 2010, effective March 31, 2011 (D.C. Law 18-355; D.C. Official Code § 1-1171.02) is amended as follows:
(1) The lead-in language is amended by striking the phrase “while on leave” and inserting the phrase “while on annual or unpaid leave” in its place.

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

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

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

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

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

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

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

(b) Section 1801(a-2) of the District of Columbia Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-618.01(a-2)) is amended by inserting a new paragraph (4) to read as follows:
“(4) No later than 90 days after commencement of service, each member of a board or commission shall certify that he or she has undergone ethics training developed by the District of Columbia Board of Ethics and Government Accountability. The required training may be provided electronically, in person, or both as considered appropriate by the Board of Ethics and Government Accountability.”.

TITLE IV – FISCAL IMPACT AND EFFECTIVE DATE

Sec. 401. Fiscal impact statement.

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

Sec. 402. Effective date.

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