

Summary of Behested Payment Related Provisions in other States and Local Jurisdictions

Alabama

- Public officials cannot solicit contributions for non-profits or charitable organizations if in doing so they realize personal gain. Case-by-case analysis of “personal gain.” They also cannot use their public position to benefit a business with which they are associated, which the non-profit or charitable organization could be. ([Ala. Code, Sec. 36-25-5](#); [Ethics Commission, AO 2016-29](#).)
- Additionally, no person or entity can make a donation for the purpose of corruptly influencing an official. ([Ala. Code, Sec. 36-25-7](#); [Ethics Commission, AO 2017-08](#).)
- “No public official, public employee, or group of public officials or public employees shall solicit any lobbyist to give any thing whether or not the thing solicited is a thing of value to any person or entity for any purpose other than a campaign contribution.” ([Ala. Code, Sec. 36-25-23](#).)

Florida

- A candidate may not make contributions, in exchange for political support, to any religious, charitable, civic, or other cause or organization established primarily for the public good. ([Fla. Stat., Sec. 106.08](#).)
- Officials are prohibited from soliciting or accepting anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the official's action would be influenced. ([Fla. Stat., Sec. 112.313\(2\)](#).)
- Individuals, including candidates, required to file disclosures of financial interest are prohibited from directly or indirectly accepting a gift worth more than \$100 from a lobbyist, from a partner, firm, employer, or principal of the lobbyist, or from a political committee or vendor. However, a gift may be accepted by a person on behalf of a governmental entity or charitable organization, provided the gift is promptly transferred to the intended entity or organization. ([Fla. Stat., Sec. 112.3148](#).)

Hawaii

- The definition of “contribution” includes anything of value provided for the purpose of influencing the nomination or election of an individual to office. ([HRS, Sec. 11-302](#).)
- In speaking with staff from the Hawaii Campaign Spending Commission, the definition of contribution is interpreted quite broadly. The key question is whether a charitable solicitation can be thought of as providing value to a candidate. For example, a candidate asking for donations of food to feed public school children, which the candidate then

references on his or her campaign website/materials, would be considered of value to the candidate and must be reported as an in-kind contribution. Heavily fact-specific analysis.

- The Hawaii Campaign Spending Commission has provided guidance to candidates to help ensure that funds raised for charitable purposes are not attributable to the candidates as contributions. ([Advisory Opinion 06-04.](#))

Maryland

- State employees and officials may not solicit gifts, which would include charitable donations, in their official capacities. If they wish to make or solicit donations as private citizens, not connected to their State positions and not using State resources, they are free to do so. Even in their private capacities, however, they should refrain from fundraising activities that involve solicitation of lobbyists and individuals or entities subject to their contractual or regulatory authority or that of their agency.

Related to the restrictions on soliciting gifts is a prohibition against State employees and officials using the prestige of their offices or public positions for their private gain or that of another. This prohibition also applies to obtaining contributions for a charity. That is, State employees and officials should not use their positions, to include the authority associated with those positions, to benefit a particular charitable cause, however worthy. This restriction would be violated if reference to one's official title, position or agency affiliation could lead a person to reasonably assume that the agency or the State endorsed the fundraising effort. ([MD Code, Sec. 5-505](#); [State Ethics Commission, Gift Memo.](#))

New Mexico

- The Gift Act outright prohibits a state officer or employee from soliciting gifts “for a charity from a business or corporation regulated by the state agency for which [a] state officer or employee works,” and also prohibits any other solicitation of charitable donations “in such a manner that it appears that the purpose of the donor in making the gift is to influence the state officer or employee in the performance of an official duty.” ([NMSA 1978, 10-16B-3\(C\).](#))

New York

- A State official may not designate or recommend a third party to receive a gift, and no prohibited gift may be offered to, or received by, a third party under circumstances in which it would be reasonable to infer the gift was intended to influence a public official. In other words, an Interested Source ([19 NYCRR Part 933.2\(l\)](#)) is presumptively prohibited from giving a gift to a third party, even a charity, at the behest of a public official. ([POL § 73\(5\)\(a\) and \(c\)](#); [19 NYCRR Part 933.3\(d\)](#); [19 NYCRR Part 934.3\(e\).](#))

- A gift given by an Interested Source at the behest of a public official – either through personal solicitation, an intermediary with the official’s knowledge, or other conduct demonstrating the official’s awareness of the solicitation or acknowledgement of the gift – is presumptively prohibited. This presumption can be overcome upon an analysis of the totality of the circumstances surrounding the gift. Such circumstances can include, but are not limited to the nature of the solicitation; the substance of the solicitation; the nature and purpose of the gift; the nature and purpose of the gift recipient; the public official’s awareness of the gift; the nature of the gift offeror’s business before the official; the nexus between that pending business, the public official, and the gift; and the offeror’s history with respect to similar gifts. The weight given to any factor may vary between public officials, lobbyists, and clients, as their perspectives, understanding of the facts, and motives are distinct.
- Draft advisory opinion [here](#).

Local Jurisdictions

Chicago, IL

- City officials prohibited from soliciting gifts to third parties if the official “knows that the prospective donor is seeking administrative or legislative action from the City,” and the official can affect the outcome of that action. ([Chicago Code §2-156-142\(h\)](#).)

New York City, NY

- Public servants may only solicit donations using their public position under certain circumstances. The solicitation must be accompanied by a disclaimer that a contribution will not affect any business dealings with the City or provide special access to City officials. The head of each Agency must report to the Conflict of Interest Board annually any donors of \$5,000 or more, and the non-profit organizations for which employees solicited donations. ([NYC Rules, Sec. 1-14](#); [Staff memo regarding enactment of Rule 1-14](#); [NYC Charter, Secs. 2604\(b\)\(2\), \(b\)\(3\)](#).)
- Local Law No. 181 of 2016 amended the New York City Administrative Code to regulate donations to certain not-for-profit organizations affiliated with City elected officials. This law, codified as Administrative Code §§ 3-901 to 3-907, requires reporting and public disclosure of donations to not-for-profit organizations controlled by City elected officials or their agents; limits permissible donations to some of these entities; and provides that violations of its provisions may result in civil fines up to \$30,000 and may constitute a class A misdemeanor. The Conflicts of Interest Board (the “Board”) is charged with administering, enforcing, and promulgating “such rules as are necessary” to implement Local Law 181. ([NYC Rules, Secs. 3-01 – 3-05](#); [NYC Admin. Code, Secs. 3-901 – 3-907](#); [NYC Campaign Finance Board, AO 2016-1](#).)