

MAINE COULD SOON JOIN TREND TO DEFINE ROUTINE ACTIVITIES AS LOBBYING: KEY IMPACTS FOR BUSINESSES

Insights
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Lawmakers in Maine are considering legislation this session that would create a seismic shift in how private businesses must report their interactions with the state's executive branch. If the bill is approved, Maine would join a growing list of states – including Hawaii, New York, Illinois, Florida, Tennessee, and Oregon – that have taken steps to expand their definition of “lobbying.” This trend is gaining traction across the country and could create headaches for industry leaders engaged in routine activities they wouldn't typically think of as lobbying. While Maine's bill was recently tabled in the Veterans and Legal Affairs Committee for further refinement, we expect it to be picked up again soon. Here's what businesses need to know about the bill and how it could impact your operations.

Focus on State Agencies

Traditionally, “lobbying” has been understood as attempting to influence whether lawmakers pass legislation. However, [LD 1814](#) seeks to pull two critical executive branch functions into regulatory scrutiny:

- 1. Administrative Rulemaking:** The process where state agencies draft the “fine print” of how a law will be implemented.
- 2. Procurement and Competitive Bidding:** The process of responding to Requests for Proposals (RFPs) and attempting to secure state contracts.

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Pawel Z. Binczyk

Partner

207.477.7006

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The bill proposes that oral or written communications directed at state agency officials during these processes (including time spent preparing a bid) could trigger lobbyist registration and reporting requirements.

The goal is to provide more transparency in the rulemaking and competitive bidding processes, but these efforts may expand the definition of "lobbying" so far as to include activities previously considered purely administrative or technical.

Industry Example: High Stakes for Home Care Providers

These changes would have particularly high stakes for home care providers for disabled adults and children that contract with MaineCare. These organizations are in constant contact with the Department of Health and Human Services (DHHS).

Under the proposed expansion, routine advocacy for fair reimbursement rates or the technical back-and-forth required to secure a Medicaid-waiver contract could suddenly be classified as lobbying. The consequences of this change are likely to be threefold:

- **Administrative Burden:** Providers would need to track and report every hour spent "influencing" an agency official, even for standard contact and discussions about reimbursement rates.
- **Legal Exposure:** Failure to register or report qualifying hours can lead to significant ethics violations and fines, adding yet another layer of regulatory scrutiny to an industry already struggling to stay afloat in a sea of complex requirements.
- **Strategic Transparency:** Reporting requirements may expose competitive strategies in the procurement process.

These changes stand to mostly benefit large, systemic providers and could lead to further consolidation in the industry.

Key Concerns for All Maine Businesses

Opposition from the Department of Administrative and Financial Services (DAFS) and the Maine State Bar Association centers on the potential chilling effect. If every subject matter expert or attorney becomes a lobbyist simply

by explaining how a proposed rule impacts their industry, the vital flow of information between businesses and state agencies could dry up.

Although this concern has led to the bill being taken back for re-working, this is notably the second session in which this language has been proposed. Further, the committee stopped short of voting not to pass the bill, as urged by the bar association and agencies themselves.

What's Next?

While the sponsor is currently working with the Maine Commission on Governmental Ethics to replace the bill's language, the intent is clearly to increase regulation of industry interactions with state agencies.

Businesses must remain vigilant to ensure their advocacy for fair labor standards and sustainable contracts doesn't result in an unexpected regulatory entanglement. Make sure you are subscribed to [Fisher Phillips' Insights](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our [Portland, Maine, office](#).