



The Hispanic Bar Association of New Jersey
2009 Corporate Counsel Roundtable Series

***Pay-to-Play Legislation: What You Don't
Know Can Hurt You***

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New Jersey Election Law Enforcement Commission

Pay-to-Play

November 2008





History of Pay-to-Play in New Jersey

Chapter 19

Signed 6/16/04; Effective 1/1/06

“P2P Prohibition Law”

Prohibits entering contract >\$17,500 if certain contributions were made, unless the contract is FAIR & OPEN. Prohibits certain contributions during term of contract.

Chapter 51

Signed 3/22/05; Effective 1/1/06

(Codified Executive Order 134)

Prohibits entering contract >\$17,500 if certain contributions were made; no exclusion for FAIR & OPEN contract. Prohibits certain contributions during term of contract.

~~**STATE CONTRACTS**~~

~~(Replaced by EO 134)~~

LEGISLATIVE CONTRACTS

COUNTY CONTRACTS

MUNICIPAL CONTRACTS

STATE CONTRACTS

Effective 10/15/04



History of Pay-to-Play in New Jersey

Executive Order 117
Signed 9/24/08
Effective 11/15/08

Amends Chapter 51

Expands the definition of Business Entity to include: officers, partners, principals, members and any person that owns or controls 10% or more of stock; the spouse or civil union partner and any resident child

Expands prohibited contributions to a candidate for or holder of the office of Governor and Lieutenant Governor, State Political Party Committees, County Political Party Committees, Legislative Leadership Committees, or Municipal Political Party Committees



History of Pay-to-Play in New Jersey

Executive Order 118
Signed 9/24/08
Effective 11/15/08

Amends Chapter 51

Redevelopers will be disqualified from agreements if contributions are made by partners, members, officers, and their spouses/civil union partners or resident children. Also contributions made by subsidiary business entities and any business entity in connection with the agreement

Prohibited contributions include: contributions to candidate committee or election fund of candidate or holder of Governor or Lieutenant Governor; a State, County, or Municipal Political Party Committee or Legislative Leadership Committee; any State, legislative, county, or municipal candidate or officeholder in the legislative district, county, or municipality where the redevelopment agreement is situated



History of Pay-to-Play in New Jersey

Chapter 271
Signed 1/5/06
“P2P Disclosure Law”

Enables Other P2P Laws

Enables counties (21), municipalities (566), boards of education (616), & fire districts (186) to enact P2P ordinances & resolutions

Disclosure to Government Entity

If contract is > \$17,500, requires pre-contract disclosure by a business to contracting government entity, unless the contract is FAIR & OPEN. Covers contracts at all levels of government

Annual Disclosure to ELEC

Requires annual disclosure to ELEC by a business entity that receives \$50,000 or more in a year as a result of contracts with government entities



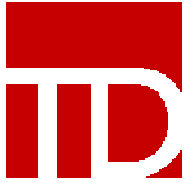
History of Pay-to-Play in New Jersey

*P.L. 2007, c.304
Effective 1/13/08*

Amends Chapter 271

Clarifies that only for-profit business entities that receive \$50,000 or more in public contracts are required to file the Business Entity Annual Statement with the Commission

Clarifies that only for-profit business entities must disclose certain contributions to a government contracting entity prior to the award of the contract



ELEC's Role

- Begins once a business entity has been awarded a contract with a New Jersey government entity
- Determines whether or not a prohibited contribution has been given or accepted during a contract
- Requires Annual Disclosure Statement to be filed outlining contribution and contract information for the previous calendar year
- Imposes penalties for certain violations of prohibition and disclosure requirements



What is considered a business entity?

- A natural or legal person
- Business corporation or professional services corporation
- Any principal who owns or controls more than 10% of the profits, assets, or stock of the business entity
- Officers of corporations and any person or business entity that owns or controls 10% of the stock of the corporation
- Limited liability company, partnership, limited partnership
- Business trust or association
- Subsidiary directly or indirectly controlled by the business entity
- Spouse or Civil Union Partner and any child that resides with the individual
- Any other legal commercial entity organized under the laws of New Jersey or of any other state or foreign jurisdiction



What contracts are subject to Pay-to-Play restrictions?

- Any *State* contract in excess of \$17,500
- Any redevelopment agreement with a State redevelopment entity after November 15, 2008
- Any *Legislative* contract requiring approval by a presiding officer of either or both Houses in excess of \$17,500 that is not awarded through a Fair and Open Process
- Any *County* or *Municipal* contract in excess of \$17,500 that is not awarded through a Fair and Open Process



Contracts and Contributions

- A contribution may disqualify a business entity from obtaining a contract
- The business entity should consult the contracting government entity for disqualification information
- ELEC has no authority regarding the awarding of contracts
- Federal and out-of-state contracts as well as contributions made to federal and out-of state candidates are not included



What is a contribution reportable by the recipient?

- Contribution(s) in excess of \$300 in the aggregate
- Per election made to or received by a candidate committee, joint candidates committee, or political committee
- Per calendar year made to or received by a political party committee, legislative leadership committee, or continuing political committee



Reportable Contributions Prohibited during the Term of a Contract

State Contracts

- To a candidate for or holder of the office of Governor
- To a candidate for or holder of the office of Lieutenant Governor
- To a County Political Party Committee
- To a State Political Party Committee
- To a Municipal Political Party Committee
- To a Legislative Leadership Committee

(N.J.S.A. 19:44A-20.15)

Legislative Contracts

(Non-Fair and Open)

- To a candidate or joint candidates committee of Presiding Officer
- To a Legislative Leadership Committee established by the presiding officer
- To a State Political Party Committee of the political party of which the presiding officer is a member

(N.J.S.A. 19:44A-20.3)



Reportable Contributions Prohibited during the Term of a Contract

County Contracts

(Non-Fair and Open)

- To a candidate or joint candidates committee of any person serving in an elective public office of the county when the contract is awarded
- To a County Political Party Committee in that county if a member is serving in an elective public office of that county when the contract is awarded

(N.J.S.A. 19:44A-20.4)

Municipal Contracts

(Non-Fair and Open)

- To a candidate or joint candidates committee of any person serving in an elective public office of the municipality when the contract is awarded
- To a Municipal Political Party Committee in that municipality if a member is serving in an elective public office of that municipality when the contract is awarded

(N.J.S.A. 19:44A-20.5)



Contributions Attributable to a Business Entity under Prohibition Laws

Legislative, County, Municipal Contracts (c.19)

- Any natural person or other business entity having an interest in the business entity
- If the business entity is a natural person, that person's resident spouse or child

State Contracts (c.51)

- Any natural person or other business entity having an interest in the business entity
- Any subsidiary directly or indirectly controlled by the business entity
- Any continuing political committee organized under §527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity
- Officers of corporations and any person or business entity that owns or controls 10% or more of the stock
- If the business entity is a natural person, that person's resident spouse or child – also any spouse, civil union partner, or child residing with officers, partners, etc.



How is “interest” defined?

“Interest” means the ownership or control of:

- More than 10% of the profits or assets of a business entity or
- More than 10% of the stock in the case of a business entity that is a corporation for profit



Refund of Prohibited Contributions Made during the Term of the Contract

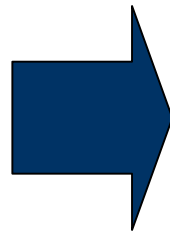
- For contracts with the *State* or its agencies, the business entity must report all contributions to the contracting entity; subject to review by the State Treasurer
- For non-fair and open *Legislative, County, or Municipal* contracts, the business entity must report any prohibited contribution to ELEC
- The business entity can request a refund of the prohibited contribution within the required timeframe
- ELEC has authority to impose penalties on business entities, candidates, and committees for making and accepting prohibited contributions



Refund Timeframe

STATE

(N.J.S.A. 19:44A-20.15)

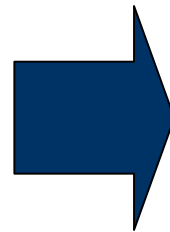
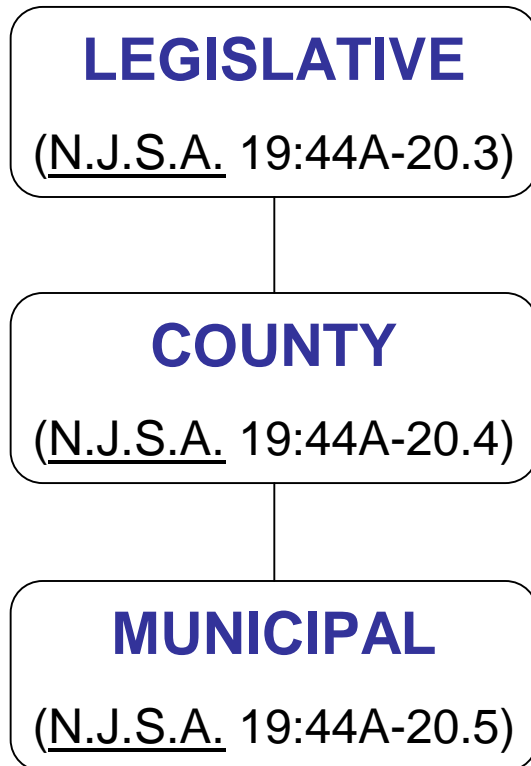


- Business entity must make a written request for return within **30** days of making contribution
- Business entity must receive refund within **30** days
- No cure for contributions made within **60** days of a gubernatorial primary or general election

(N.J.S.A. 19:44A-20.20)



Refund Timeframe



- Business entity must make a written request for return within **60** days of making contribution
- Business entity must receive refund within **60** days
(N.J.S.A. 19:44A-20.9)



Pay-to-Play Disclosure Law Requirements (c.271)

- Prior to entering a contract, disclosure to a contracting entity of political contributions within the preceding 12-month period (*Political Contribution Disclosure Form*)
- Annual disclosure to ELEC of political contributions and contract information if business entity has received \$50,000 or more through government contracts (*Business Entity Annual Statement*)

Note: A County, Municipality, Independent Authority, Board of Education, or Fire District may have its own additional pay-to-play requirements.



Filing the Political Contribution Disclosure Form with the Contracting Entity

- Not later than 10 days prior to the execution of any contract with a **State agency** in excess of \$17,500
- Not later than 10 days prior to the date of the resolution by a **local unit** awarding a contract in excess of \$17,500 that is not Fair and Open
- Contact the contracting entity to obtain the Political Contribution Disclosure Form



Information Required to be Reported on the Political Contribution Disclosure Form

State Contracts

All reportable political contributions made during the 12-month period preceding the date of the execution of the contract to any:

- § Political Party Committee
- § Legislative Leadership Committee
- § Continuing Political Committee
- § Candidate committee or joint candidates committee of a candidate for or holder of a State elective office (Governor, State Senate, and General Assembly)

(N.J.A.C. 19:25-26.2)

Local Contracts

All reportable political contributions made during the 12-month period preceding the date of the resolution awarding the contract to any:

- § Political Party Committee
- § Legislative Leadership Committee
- § Continuing Political Committee
- § Candidate committee or joint candidates committee of a candidate for or holder of an elective office of:
 - the local unit awarding the contract
 - the county in which that local unit is located
 - another local unit within that county
 - the legislative district in which that local unit is located or, when the local unit is a county, any legislative district which includes all or part of the county

(N.J.A.C. 19:25-26.3)



Contributions Attributable to a Business Entity under c.271

- Any natural person or other business entity having an interest in the business entity
- Principals, partners, officers, or directors of the business entity or their spouses
- Any subsidiary directly or indirectly controlled by the business entity
- Any continuing political committee organized under §527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity
- If the business entity is a natural person, that person's resident spouse or child



ELEC's Business Entity Annual Statement

- Required to be filed by any business entity that has received \$50,000 or more in the aggregate through government contracts in a calendar year
- The due date for the first statement was September 28, 2007 for calendar year 2006
- Subsequent annual statements will be due no later than March 30th
- The statement is required to be filed electronically on ELEC's website



BUSINESS ENTITY ANNUAL STATEMENT
NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION
 (809) 292-8700 or Toll Free Within NJ 1-888-313-ELEC (3532)

FORM BE

FOR STATE USE ONLY

This statement is required to be filed by a business entity which has received \$50,000 or more in the aggregate during a calendar year through agreements or contracts with a public entity or public entities.

Part 1: General Information

Date of Statement _____ Activity for Calendar Year _____ Check if Amendment

Part 2: Business Entity Information

Business Name _____ Business Type _____
 Address 1 _____
 Address 2 _____
 City _____ State New Jersey Zip _____
 *(Area Code) Telephone Number _____

ACKNOWLEDGEMENT

I have been authorized by the above named business entity to complete the annual statement.

First Name _____ Last Name _____
 Title/Position _____ Date _____
 *(Area Code) Telephone Number _____

A business entity which has received \$50,000 or more in the aggregate during a calendar year through agreements or contracts with a public entity or public entities, but has made no contributions to candidates or committees, shall file the business entity annual disclosure statement with the Commission to report that no contributions were made during the calendar year.

Check this box if the business entity has not made any reportable contributions during the calendar year.

Part 3: Summary of Amounts (Totals will be automatically calculated)

Total Amount Received through Agreements or Contracts in _____	Total of Reportable Contributions Made to Candidates or Committees in _____
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*Leave this field blank if your telephone number is unlisted. Pursuant to N.J.S.A. 47:1A-1.1, an unlisted telephone number is not a public record and must not be provided on this form.



Part 4: Contracts Received

Contract ID# _____	Contract Date _____
Name of Contracting Public Entity _____	
Public Entity Type _____	
Address 1 _____	
Address 2 _____	
City _____	State <u>New Jersey</u> Zip _____
Description of the goods, services, equipment provided or property sold: _____ _____	
Contract Amount Received _____	

Add a Contract

Part 5: Contributions Made (Please provide each contributor's information followed by all related contributions)

Contributor Information

Name _____	Type _____
Address 1 _____	
Address 2 _____	
City _____	State <u>New Jersey</u> Zip _____

Recipient Name _____	
Political Office or Committee Type _____	Contribution Type _____
Contribution Date _____	Contribution Amount _____

Add a New Contribution

Add a Contributor



Allegation of a Violation

- Citizens may file a complaint by completing an Investigation Request Form available on ELEC's website
- The complainant will be required to provide a copy of the contract or resolution awarding the contract to the business entity





If you have any questions please contact ELEC's Special Programs Section.

- **1-888-313-ELEC (toll free in NJ)**
- **(609) 292-8700**

Remember to visit our website at www.elec.state.nj.us for additional Pay-to-Play information.

