July 18, 2013

New Jersey’s Pay-to-Play Law

Presented to the Commerce and Industry Association of New Jersey

Brian S. Montag, Partner
John F. Spinello, Jr., Partner
TOPICS

- Limits on Political Contributions
- Pay-to-Play Law in New Jersey
  - Prohibitions
  - Contracts Covered by Pay-to-Play
  - “Business Entity”
  - Reportable Contributions
  - Refund of Prohibited Contributions
  - Formation and Operation of a CPC
  - Enforcement
LIMITS ON POLITICAL CONTRIBUTIONS

- The NJ Campaign Contributions Expenditure and Reporting Act enacted in 1973
  - Establishes ELEC, contribution limits and requirements that candidates publicly report contributions and expenditures
- Constitutionality of limits on political contributions upheld in 1976
### Contribution Limits Chart

<table>
<thead>
<tr>
<th>Entities Making Contributions</th>
<th>Candidate Committee*</th>
<th>Political Committee**</th>
<th>Continuing Political Committee</th>
<th>Legislative Leadership Committee</th>
<th>State Political Party Committee</th>
<th>County Political Party Committee</th>
<th>Municipal Political Party Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual to:</td>
<td>$2,600 per election</td>
<td>$7,200 per election</td>
<td>$7,200 per year</td>
<td>$25,000 per year</td>
<td>$25,000 per year</td>
<td>$37,000 per year</td>
<td>$7,200 per year</td>
</tr>
<tr>
<td>Corporation or Union to:</td>
<td>$2,600 per election</td>
<td>$7,200 per election</td>
<td>$7,200 per year</td>
<td>$25,000 per year</td>
<td>$25,000 per year</td>
<td>$37,000 per year</td>
<td>$7,200 per year</td>
</tr>
<tr>
<td>Association or Group to:</td>
<td>$2,600 per election</td>
<td>$7,200 per election</td>
<td>$7,200 per year</td>
<td>$25,000 per year</td>
<td>$25,000 per year</td>
<td>$37,000 per year</td>
<td>$7,200 per year</td>
</tr>
<tr>
<td>Candidate Committee to:</td>
<td>$8,200 per election</td>
<td>$7,200 per election</td>
<td>$7,200 per year</td>
<td>$25,000 per year</td>
<td>$25,000 per year</td>
<td>$37,000 per year</td>
<td>$7,200 per year</td>
</tr>
<tr>
<td>Political Committee to:</td>
<td>$8,200 per election</td>
<td>$7,200 per election</td>
<td>$7,200 per year</td>
<td>$25,000 per year</td>
<td>$25,000 per year</td>
<td>$37,000 per year</td>
<td>$7,200 per year</td>
</tr>
<tr>
<td>Continuing Political Committee to:</td>
<td>$8,200 per election</td>
<td>$7,200 per election</td>
<td>$7,200 per year</td>
<td>$25,000 per year</td>
<td>$25,000 per year</td>
<td>$37,000 per year</td>
<td>$7,200 per year</td>
</tr>
<tr>
<td>Legislative Leadership Committee to:</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>NO LIMITS</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>State Political Party Committee to:</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>NO LIMITS</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>County Political Party Committee to:</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>NO LIMITS</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>No limits, but from January 1st through June 30th of each year, a county political party committee is prohibited from making a contribution to another county political party committee and a county political party committee is prohibited from accepting a contribution from another county political party committee. A county political party committee is subject to other restrictions; see N.J.A.C. 19:25-11.7.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Municipal Political Party Committee to:</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>NO LIMITS</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>National Political party Committee to:</td>
<td>$8,200 per election</td>
<td>$7,200 per election</td>
<td>$7,200 per year</td>
<td>$25,000 per year</td>
<td>$72,000 per year</td>
<td>$37,000 per year</td>
<td>$7,200 per year</td>
</tr>
<tr>
<td>National Political party Committee to:</td>
<td>$8,200 per election</td>
<td>$7,200 per election</td>
<td>$7,200 per year</td>
<td>$25,000 per year</td>
<td>$72,000 per year</td>
<td>$37,000 per year</td>
<td>$7,200 per year</td>
</tr>
</tbody>
</table>
LIMITS ON CONTRIBUTIONS – KEY ISSUES

- Contributions from certain banks, utilities and casino interests are prohibited
- Contributions from Partnerships and Limited Liability Companies prohibited - must be attributed to individual partner/shareholder
- Aggregation of contributions
  - Contributions from related or affiliated entities are aggregated
  - Contributions to multiple committees for the same candidate are aggregated
LIMITS ON CONTRIBUTIONS – RELATED OR AFFILIATED ENTITIES

- Multiple contributions to the same candidate or committee from related or affiliated entities will be aggregated and treated as if made by a single entity for purpose of the contribution limit:
  - Whether an entity is related or affiliated “shall depend on the circumstances existing at the time of such contribution, including, but not by way of limitation, the degree of control or common ownership with related or affiliated corporations, associations or labor organizations, the source and control of funds used for such contribution and the degree to which the decisions whether to contribute, to what candidate and in what amount are independent decisions.
  - In considering the criteria set forth in (a) above, two or more corporations shall be conclusively deemed to be affiliated if:
    - Any individual, corporation, partnership, company, association, or other entity owns, directly or indirectly, more than a 30 percent interest in each of such corporations; or
    - One such corporation owns, directly or indirectly, more than a 30 percent interest in the other such corporation.”
Pay-to-Play Restrictions on Political Contributions by Government Contractors
PAY-TO-PLAY LAW IN NEW JERSEY

- Chapter 19
  - Covers Legislative, County and Municipal Contracts
- Chapter 51
  - Covers State Contracts
- Executive Order 117
  - Covers definition of “Business Entity” and expands prohibited contributions
- Executive Order 118
  - Covers “Redevelopers”
PAY-TO-PLAY LAW IN NEW JERSEY (CONT.)

- Chapter 271
  - Enables County, Municipal and other local government entities to enact Pay-to-Play laws
  - Covers disclosure to government entities and annual disclosure to ELEC

- Executive Order 7
  - Extends definition of “Business Entity” and Pay-to-Play prohibitions
PAY-TO-PLAY PROHIBITIONS

- General Rule:
  - Business entities making certain political contributions of greater than $300 are prohibited from entering into government contracts valued at more than $17,500. Prohibition extends to certain contributions during term of the contract.

- Important nuances, definitions and issues to consider in determining how and in what circumstances Pay-to-Play law applies.
CONTRACTS COVERED BY PAY-TO-PLAY

- For State Contracts:
  - Must have an anticipated value >$17,500
  - Determined in advance and certified in writing by the government agency

- For Legislative, County and Municipal Contracts:
  - Must be a contract not awarded through a “Fair & Open” process
  - “Fair & Open” means those contracts which are publicly advertised
CONTRACTS COVERED BY PAY-TO-PLAY (CONT.)

- For State Contracts:
  - No exclusion for Fair & Open contracts. That is, Pay-to-Play rules apply to all State contracts greater than $17,500
  - The “State” includes its purchasing agents, its agencies and its independent authorities. “State” does not include interstate agencies
“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
“BUSINESS ENTITY” (CONT.)

- Limited liability company, partnership, limited partnership, partners, principals and members
- Business trust or association
- Subsidiary directly or indirectly controlled by the business entity
- Spouse or Civil Union Partner
- Any child that resides with the individual
- Any other legal commercial entity organized under the laws of NJ or of any other state or foreign jurisdiction
PAY-TO-PLAY DISCLOSURE LAW
(CHapter 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)*

- A County, Municipality, Independent Authority, Board of Education, or Fire District may have its own additional pay-to-play requirements
CONTRIBUTIONS REQUIRED TO BE REPORTED

- State Contracts – All reportable contributions made during the 12-month period preceding the date of the execution of the contract to:
  - Political Party Committee
  - Legislative Leadership Committee
  - Continuing Political Committee
  - Committees of a candidate for State office (Governor, State Senate, General Assembly)

- Local Contracts – All reportable 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
  - Committee of a candidate for 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
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 ____________ 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 ______
### Part 4: Contracts Received

<table>
<thead>
<tr>
<th>Contract ID#</th>
<th>Contract Date</th>
</tr>
</thead>
</table>

Name of Contracting Public Entity

Public Entity Type

Address 1

Address 2

City  | State | Zip

Description of the goods, services, equipment provided or property sold:

Contract Amount Received

Add a Contract

### Part 5: Contributions Made

(Provide each contributor's information followed by all related contributions)

<table>
<thead>
<tr>
<th>Contributor Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
</tr>
<tr>
<td>Address 1</td>
</tr>
<tr>
<td>Address 2</td>
</tr>
</tbody>
</table>

City  | State | Zip

Recipient Name

Political Office or Committee Type

Contribution Type

Contribution Date

Contribution Amount

Add a New Contribution

Add a Contributor
REFUND OF PROHIBITED CONTRIBUTIONS

- State Contract – Must be received within 30 days
- Local Contract – Must be received within 60 days
  - Upheld constitutionality of restrictions on political contributions under Pay-to-Play law
  - Held that for a State contract, the 30 day period to receive a refund of a contribution is not subject to enlargement and is strictly applied
FORMATION AND OPERATION OF A CPC

- Known as “Continuing Political Committees” (a/k/a PACs)
- Limits on contributions to and from CPC
- Key Issues:
  - Contributions from CPC to covered candidates/committees are not subject to Pay-to-Play restrictions
  - CPC is not a “business entity” covered by Pay-to-Play
  - CPC may not be used to improperly pass through or launder contributions
  - Organization and decision making structure of CPC should ensure there is no appearance decisions are controlled by any single person or entity
ENFORCEMENT

- Civil Remedies:
  - Civil penalties
  - Debarment/disqualification

- “It shall be a breach of the terms of the government contract for a business entity to:
  - (i) make or solicit a contribution in violation of this act;
  - (ii) knowingly conceal or misrepresent a contribution given or received;
  - (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
  - (iv) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee of any candidate or holder of the public office of Governor or Lieutenant Governor, or to any State or county party committee;
  - (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of this act…” N.J.S.A. 19:44A-20.21
ENFORCEMENT (CONT.)

- Criminal Prosecution:
  - Conspiracy
  - Fraud
  - Misrepresentation
  - Money Laundering

- Lessons from the Birdsall Engineering Group case