

# Time to untangle New Jersey Pay-to-Play Law's web of confusion



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**BY JEFF BRINDLE**

## **COMMENTARY**

It appears that the goals of the Pay-to-Play Law – the elimination of the appearance of impropriety and the reduction in contractor cash – are largely being met.

In 2010, public contractors reported donating \$9.4 million to candidates and committees, a

13 percent decrease from the previous year.

Since 2006, when the law went into effect, political contributions by vendors dropped by a whopping 38 percent.

But while proponents of Pay-to-Play can be rightfully pleased, there should be no resting on their laurels.

There is still room for improvement. And that improvement can come in the form of the law itself.

The Pay-to-Play Law is a tangled web of state statutes, executive orders, local ordinances, loopholes, contribution limits, disclosure requirements, and sometime incomprehensible legalese.

Pay-to-Play should meet its goals because it is an effective law enacted to serve the public interest, not because it cannot be understood.

The very history of the law is one of twists and turns, additions and subtractions.

Pay-to-Play was first enacted in 2004 to take effect on January 1, 2006. Initially, the law applied to all state, legislative, county, and municipal contracts.

The law, which limited contractor donations to \$300 for public contracts of \$17,500 or more, contained a significant loophole,

however. As long as the bidding process was publicly advertised Pay-to-Play did not apply.

Former Governor James McGreevey, through Executive Order 134, partially remedied that problem. The loophole, known as "fair and open," was closed for all state contracts.

This change was made law in March 2005. The "fair and open" loophole, however, still applied to county and municipal contracting, and remains so today.

Ironically, changes to the law were taking place even before the law went into effect. But there would be more to come.

Five days after the initial law and amendments went into effect, the law was amended again. Chapter 271 allows municipalities, counties, boards of education and fire districts to establish their own ordinances, separate, apart, and not preemptable by state law.

Further, this amendment required disclosure of donations by contractors to the respective governmental units issuing said contract. It also mandated annual disclosure to the Election Law Enforcement Commission (ELEC) when a contractor receives \$50,000 or more in public work Statewide.

Subsequently, Chapter 271 was amended to remove non-profits from the provisions of the law.

Yet, more changes were still to come.

On November 15, 2008, former Governor Jon Corzine issued two Executive Orders, Numbers 117 and 118.

Executive Order 117 defines business entity to now include officers, partners, members and persons controlling 10 percent or more of stock, and spouses and civil union partners.

The order further extended limitations on contributions that were applicable to state contracts only. The limit now entails contributions to candidates for governor, the governor, to political parties, legislative leadership committees, and county and municipal party committees.

Executive Order 118 applied the same restrictions to redevelopers, insuring that those entities receiving public grants and involved with eminent domain would be covered.

Finally, in January 2010, Governor Chris Christie issued Executive Order 7, which extended Pay-to-Play restrictions to labor unions.

This Executive Order was vacated by the New Jersey Appellate Court, which stated that the authority to include labor unions required legislation.

The Pay-to-Play Law is certainly working in so far as it is reducing chances for corruption and the amount of money in the electoral process.

But is the price of that success bought on the back of a law so confusing that many people simply throw up their hands and say, "I just won't give."

I suggest that there is a better way. ELEC has set forth several common sense proposals that would simplify the law and bring about even greater disclosure.

First, the Commission proposes that there be one state law that applies universally across the board. Second, it proposes that the "fair and open" loophole be eliminated for all levels of government. Third, ELEC proposes that contractors disclose contributions on contracts of \$17,500 or more and not after receiving \$50,000 worth of public work statewide. Fourth, that a somewhat higher contribution limit between \$300 and \$1,000 be established. And fifth, that guidelines for establishing PACs be made more stringent.

These proposals, if enacted, would end confusion surrounding the law, end the onerous loophole that allows vendors to circumvent the law, enhance disclosure, stop contractors from circumventing the law by easily creating PACs, and allow candidates to raise enough money to communicate their message to the voters.

It is hoped that the Legislature will consider these reforms to make a well-intended law less confusing, and even more effective.

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*The opinions presented here are his own and not necessarily those of the Commission.*