

'Hallmark of Confusion,' Complicated Pay-to-Play Law Needs Reform

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SPECIAL COMMENTARY

The Attorney General's recent indictment of Birdsall Services Group has put a huge spotlight on New Jersey's Pay-to-Play Law.

On March 26, Attorney General Jeff Chiesa alleged that the Eatontown-based engineering firm not only skirted pay-to-play restrictions, but also took part in a six-year money laundering scheme.

Overlooked in the news coverage is a central issue involving the Pay-to-Play Law: it is way too complicated.

Benjamin Franklin said: "Laws too gentle are seldom obeyed; too severe, seldom executed."

Put another way: Laws with loopholes are often ignored; too convoluted, difficult to enforce.

New Jersey's Pay-to-Play statutes pose both problems.

Perhaps the biggest loophole is the "Fair and Open" provision that applies to local officials but not state officials.

"Fair and Open" allows municipal and county governments to forego pay-to-play rules by simply advertising bids. It doesn't require that local officials pick the lowest bid.

Making matters worse, the Pay-to-Play Law allows for municipalities and counties to pass their own ordinances "as long as they are consistent with the theme of pay-to-play."

While local laws almost always can be more restrictive than state law, this broad language implies that local pay-to-play laws can be less restrictive as well.

Finally, besides State law and almost 60 local ordinances, several gubernatorial executive orders have been issued dealing with contracting at the State level. The level of complexity is mind-boggling.

About the only thing the law is clear on is that any contractor receiving over \$50,000 in public contracts statewide is required to report contracts and contributions by March 30 of each year with the New Jersey Election Law Enforcement Commission (ELEC).

There are three state entities that share responsibility for enforcing pay-to-play: The Department of the Treasury; the Department of Community Affairs; and ELEC.

ELEC's primary responsibility is disclosure. On April 8, the Commission will disclose hundreds of annual reports filed by contractors for 2012 while also releasing its latest analysis of the impact of the law based on those reports.

But, the agency has been doing more than that. For the past three years it has been urging the Legislature to reform the law.

While the Pay-to-Play Law has worked to reduce money going directly to candidates and party entities, because of its complexity it has often led to the circumvention of not only the law itself but of general contribution limits.

When this happens, transparency suffers.

To strengthen, standardize, and simplify the law, the Commission has proposed that one law apply across the board to state, county and local officials.

The Commission has also proposed eliminating the "Fair and Open" loophole.

Further, to enhance disclosure, the Commission recommends lowering the \$50,000 disclosure threshold for reporting contracts and contributions to \$17,500.

Finally, the Commission proposed that the \$300 contribution limit on contractors under pay-to-play law except in fair and open communities be raised to \$1,000. This combination of reforms may well discourage contractors from attempting to skirt the law and at the same time promote transparency.

The recommendations, if enacted, would bring clarity and commonsense to a law that is a hallmark of confusion.

Jeff Brindle is the Executive Director of the New Jersey Election Law Enforcement Commission. The opinions presented here are his own and not necessarily those of the Commission.