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NJ Pay-to-Play Laws – There Should be Only One

JEFF BRINDLE | September 8, 2022, 12:18 pm | in Caucus Room

The State's pay-to-play law should be simplified and strengthened, with disclosure enhanced.

Though in the public interest, the law, nevertheless, is complicated and convoluted, difficult to comply with and enforce, encouraging some to seek ways to legally circumvent it while discouraging others from participating in electoral politics.

The pay-to-play law, which went into effect in 2006, was designed to help the public connect the dots between a public contract and a contribution. Another intent was to reduce the influence of donations over the solicitation process by limiting contractor donations to $300 for government contracts of $17,500 or more.

After an encouraging start, however, the pay-to-play law went from being a state law applying across the board uniformly to a tangled web of multiple state statutes and gubernatorial executive orders, changing regulations involving everything from contribution limits and disclosure requirements, more changes caused by local ordinances, and yes, loopholes.

When the law was enacted in 2004 to take effect on January 1, 2006, it applied equally to all state, legislative, county, and municipal contracts.

The goal was to have one state law on public contracting that would apply at all levels of government. Despite this intent, the law contained a significant loophole: as long as the bidding process was publicly advertised in a "Fair and Open" manner, the law would not apply.

In other words, a "Fair and Open" publicly advertised solicitation process allowed contractors to forego the $300 contribution limit.

To his credit, former Governor James McGreevey partially remedied the issue. Through Executive Order 134, ultimately enacted into law in March 2005, McGreevey eliminated the

“Fair and Open” loophole for state contracts. However, his executive order did not extend to county and municipal contracts, leaving that loophole in place at those levels of government.

While the former governor’s executive order brought pay-to-play closer to its original intent of one state law, other changes would take place that would result in a law whose tapestry is confusing, easy to get-around, and difficult to enforce.

Just five days after the law and amendments went into effect in 2006, the law was amended again to allow municipalities, counties, boards of education, and fire districts to establish their own ordinances, distinct from, and not preemptable, by state law.

On the plus side, this amendment, Chapter 271, required disclosure of donations by contractors to the respective governmental units issuing said contracts and mandated annual disclosure to the Election Law Enforcement Commission (ELEC) when a public contractor received $50,000 or more in public work statewide.

But Chapter 271 was also amended to remove non-profits from the provisions of the law.

This was only the beginning. In November 2008 former Governor Jon Corzine issued Executive Orders 117 and 118.

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

The executive order further extended limitations on contributions applicable to State contracts only, including contributions to candidates for governor, the governor, political parties, legislative leadership committees, and county and municipal party committees.

Executive Order 118 applied identical restrictions to redevelopers, making sure that redevelopers that receive public grants and are involved with eminent domain would be covered.

Finally, in early January 2010, then Governor Chris Christie extended pay-to-play restrictions to labor unions via Executive Order 7, which was ultimately vacated by the New Jersey Appellate Court. It stated that the authority to include labor unions required legislation, which never materialized.

This dizzying array of amendments, executive orders, and loopholes has resulted in a law that is difficult for the public to understand, for contractors to follow, and for regulators to enforce. It necessitates the need for a law that is simplified and strengthened with more disclosure.

To accomplish these goals, ELEC has been advocating legislative reforms for more than a decade.

In order to simplify the law and strengthen disclosure, ELEC recommends one state law applicable across all governmental levels, disclosure of contracts over $17,500 and an end to the “Fair and Open” loophole.

Moreover, the Commission has endorsed sunsetting the ability of local governments to enact their own ordinances. These local laws often differ from the state law but are frequently changed as the result of new officials elected to office.

To discourage contractors from trying to legally skirt the law, the Commission has proposed that special interest PACs be included under the law and disclosure of contractor contributions to PACs and independent groups such as Super PACs and 501c4 social welfare groups.

Finally, the tight $300 limit on contraction contributions should no longer apply to political parties, which are accountable and transparent. In cases where the low contractor contribution limit does still apply, the threshold should be raised to $1000 instead of $300. A $1,000 limit still is well below limits that apply to other donors.

Recent bi-partisan legislation (S2866/A4372) co-sponsored by Senate President Nicholas Scutari (D-Union) and Senate Minority Leader Steve Oroho (R-Sussex) as well as Assembly Majority Leader Louis Greenwald (D-Camden) is a genuine step in the direction of improving the pay-to-play law.

Though the law retains the “Fair and Open” provision, it does sunset local ordinances (of which there are about 160 different ones).

Further, the legislation places accountability on officeholders responsible for awarding contracts and prohibits officeholders from accepting contractor contributions for a period of time prior to the vote to award said contracts.

The legislation would strengthen political parties by permitting larger contractor donations to them and at the same time enhance disclosure of their contributions by requiring the

Commission to establish a new business entity database, leading to greater transparency of political activity by businesses entering public contracts.

The Scutari/Oroho legislation represents a positive step in the direction of transparency and accountability, as well as simplification in the pay-to-play law.

Hopefully, the “Elections Transparency Act” will be given further consideration as the Legislature returns in the fall.

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