

Political Law Update

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New Jersey Governor Signs Significant Pay-to-Play and Campaign Finance Bill

On April 3, 2023, New Jersey Gov. Phil Murphy signed into law the Elections Transparency Act (A4372), which makes a number of changes to the state's pay-to-play and campaign finance laws. The act's pay-to-play provisions (except the lowering of *de minimis* limits under several pay-to-play laws, discussed below) take effect retroactively on January 1, 2023. The act's campaign finance provisions largely take effect after the 2023 primary election, to be held on June 6, and apply to the 2023 general election and all subsequent elections, unless a later date is specified. The act does not state who could set the later date, but if one is set, it would presumably be chosen by the state's Election Law Enforcement Commission (ELEC).

Pay-to-Play

Current State of the Law

Below is a summary of existing pay-to-play laws under New Jersey law.

- **Chapter 51/Executive Order 117 and Chapter 19 pay-to-play bans:** New Jersey has four statutory pay-to-play bans. Public Law 2005, Chapter 51 (C. 51) imposes a ban covering executive branch and independent authority contracts, while Public Law 2004, Chapter 19 (C. 19) imposes bans covering legislative branch, county and municipal contracts. The bans cover "reportable contributions," meaning currency contributions and contributions by other means exceeding \$300 in the aggregate, per election for candidates, joint candidate committees and political committees (*i.e.*, PACs generally lasting only one election cycle) and per calendar year for party committees, legislative leadership committees and continuing political committees (*i.e.*, PACs generally lasting more than one election cycle).
- **Executive branch ban:** This ban covers contracts exceeding \$17,500 with a state executive branch agency or independent authority. Under the statute, a company is subject to a ban on covered contracts if the company, its subsidiaries, a person who owns or controls more than 10% of the company (>10% owners), or a PAC controlled by a covered donor, makes or solicits a reportable contribution to (i) the governor or lieutenant governor or a candidate for either office or (ii) a state or county party committee. The ban lasts from 18 months to five-and-a-half years, depending on the recipient and timing of the contribution. Also, a company with a covered contract and its covered donors may not make or solicit reportable contributions to the above recipients during the contract term. Executive Order

Political Law Update

117 (Corzine) (EO 117) extended the pay-to-play ban to cover additional donors, notably corporate officers and the spouse, civil union partner and resident children of a covered individual. EO 117 generally exempts contributions made by a spouse, civil union partner or resident child to a candidate for whom the contributor is entitled to vote or to a party committee within whose jurisdiction the contributor resides. EO 117 also extends the ban to cover legislative leadership committees and municipal party committees.

- **Legislative branch ban:** This ban covers contracts of more than \$17,500 with a state legislative branch agency that requires approval by a “presiding officer” of the state Assembly or state Senate. The term “presiding officer” is undefined but presumably refers to the Assembly speaker and Senate president, who are referred to as the presiding officers of their respective chambers in other contexts. A company is barred from the award of a covered contract if it or its >10% owners made a reportable contribution in the prior one-year period to (i) the presiding officer whose approval is required for the contract, (ii) the state party committee for the party of which the presiding officer is a member or (iii) a legislative leadership committee established by the presiding officer. Additionally, a company with a covered contract and its >10% owners may not make reportable contributions to the above recipients during the contract term. The ban exempts contracts awarded under a fair and open process (*i.e.*, a process that, at a minimum, is publicly advertised, where proposals are publicly solicited and where a contract is publicly awarded pursuant to written criteria established prior to solicitation).
- **County ban:** This ban covers contracts of more than \$17,500 with a county or county agency, except those awarded under a fair and open process. A company is barred from the award of a covered contract if it or its >10% owners made a reportable contribution in the prior one-year period to (i) a county party committee, if at the time of the contract award at least one elected county official is a member of that party or (ii) a person serving as a county elected official at the time of the contract award. Moreover, a company with a covered contract and its >10% owners may not make reportable contributions to the above recipients during the contract term.
- **Municipal ban:** This ban covers contracts of more than \$17,500 with a municipality or municipal agency, except those awarded under a fair and open process. A company is barred from the award of a covered contract if it or its >10% owners made a reportable contribution in the prior one-year period to (i) a municipal party committee, if at the time of the contract award at least one municipal elected official is a member of that party or (ii) a person serving as a municipal

elected official at the time of the contract award. Additionally, a company with a covered contract and its >10% owners may not make reportable contributions to the above recipients during the contract term.

Please note that New Jersey has historically taken the view that contributions from a company’s PAC are not covered under the C. 19 bans covering legislative and local contracts, but the state could revisit this position in light of the changes made by this act.

- **Chapter 271 pay-to-play reporting requirements:** Under Public Law 2005, Chapter 271 (C. 271), a business entity must file an annual Business Entity (BE) Report if in the prior calendar year it received \$50,000 or more from New Jersey state or local contracts. Reportable contributions by the company or its covered donors to New Jersey state or local elected officials, candidates and committees trigger itemized disclosure of all of the company’s state and local contracts. The company’s covered donors are its principals, partners, officers and directors and their spouses, its state PACs and subsidiaries, and its >10% owners. Additionally, there is the C. 271 Political Contribution Disclosure, which is filed with bids for non-fair and open state and local contracts exceeding \$17,500, disclosing certain reportable contributions made by the company and its above covered donors in the prior 12 months.
- **Other state pay-to-play rules:** There also is a state pay-to-play rule specific to school board contracts, a state pay-to-play ban under Executive Order 118 (Corzine) for certain state redevelopment agreements, and a State Investment Council rule specific to investment management services provided to state pension funds. We did not summarize these bans herein, given the bill does not amend them (except for lowering the *de minimis* limits under the school board ban and the redeveloper executive order, as discussed below).
- **Local pay-to-play ordinances:** There are more than 300 county and municipal pay-to-play ordinances in New Jersey, which go beyond the state pay-to-play laws that apply locally.

Changes to the Law

Below is a summary of the main changes the act makes to the state’s pay-to-play laws.

- **Largely removes political parties and legislative leadership committees from pay-to-play laws:** The act exempts state and local party committees and legislative leadership committees from the C. 51 and C. 19 bans and C. 271 disclosure requirements. Note that it is unclear if the C. 51 ban (for executive branch and independent authority contracts) will still cover municipal party committees and legislative leadership committees, given that they are covered under the ban via EO 117.

Political Law Update

However, it is likely that EO 117 will be amended to remove party committees and legislative leadership committees from coverage.

- **Preempts local pay-to-play bans:** The act preempts all existing and future pay-to-play restrictions adopted by a county, municipality, local independent authority, board of education or fire district. Although certain state pay-to-play laws still apply locally as described above, this change is significant, as local pay-to-play bans are in many cases more restrictive than those state bans, such as by covering more donors (*e.g.*, company officers and directors), more recipients (*e.g.*, PACs active in local races), nonreportable contributions and contracts awarded pursuant to a fair and open process.
- **Lowers pay-to-play *de minimis* limits:** The act lowers the threshold under which contributions are exempt from itemized disclosure on campaign finance filings from \$300 to \$200. Given that the C. 51 and C. 19 bans and C. 271 disclosure requirements, as well as the school board ban and redeveloper executive order, all exempt nonreportable contributions, this change effectively lowers their *de minimis* limits from \$300 to \$200. Note that unlike the act's other pay-to-play provisions, this change does not apply retroactively, as described above.
- **Extends the fair and open process exemption to the executive branch and independent authority contracts:** The act applies the "fair and open process" exemption to the C. 51 ban (for executive branch and independent authority contracts). The act also codifies existing guidance stating that contracts awarded pursuant to public bidding or competitive contracting (*i.e.*, through the use of RFPs for certain specialized goods and services) under state and local contract laws are covered under this exemption.

Campaign Finance

Below is a summary of the major changes the act makes to the state's campaign finance laws. Please note that the act does not amend the state regulated entity ban, which prohibits certain regulated entities (*e.g.*, banks and insurance companies) and their affiliates from making corporate contributions in the state.

- **Increases contribution limits:** The act increases contribution limits as follows for individuals, federal PACs and corporations not subject to the regulated entity ban:
 - \$2,600 to \$5,200 per election to state and local candidates (other than candidates for governor and lieutenant governor);
 - \$7,200 to \$14,400 per election to political committees;
 - \$7,200 to \$14,400 per calendar year to continuing political committees and municipal party committees;

- \$25,000 to \$75,000 per calendar year to state party committees and legislative leadership committees; and
- \$37,000 to \$75,000 per calendar year to county party committees.

Contributions from state PACs are subject to the same limits above, except state PACs maintain a higher limit for contributions to candidates (other than for governor and lieutenant governor), which will double from \$8,200 to \$16,400 per election.

Note that the limit for contributions to candidates for governor and lieutenant governor, who run jointly, will remain \$4,900 per election.

- **Requires indexing of contribution limits:** The act requires ELEC to index all contribution limits for inflation. Currently, once every four years, ELEC indexes limits for candidates for governor and lieutenant governor while merely recommending to the legislature index adjustments for all other contribution limits (which have not been adjusted for nearly 20 years). Under the act, ELEC will still index contribution limits for candidates for governor and lieutenant governor once every four years, but will index all other limits once every two years, starting July 1, 2024.
- **Creates party housekeeping accounts:** The act permits the Democratic and Republican state and county party committees to create housekeeping accounts to raise funds for nonpolitical expenses. The limit for a party's housekeeping account will equal half the limit for a party's main account. Thus, given the limit increases above, the limit for both state and county party housekeeping accounts will be \$37,500 per calendar year. Permissible nonpolitical expenses will include expenses for legal activity, accounting, compliance, human resources, collective bargaining, capital expenses and party convention expenses. Gubernatorial campaigns also will be able to use housekeeping funds after an election for nonpolitical purposes. This likely means that gubernatorial campaigns will be able to use housekeeping funds to pay for inaugural expenses; notably, the use of such funds is exempt from the state's current \$500 limit for a gubernatorial inaugural fundraising event.
- **Requires 501(c)(4)s, 501(c)(6)s and 527 groups making independent expenditures to disclose donors:** The act requires 501(c)(4)s, 501(c)(6)s and 527 groups that make independent expenditures (IEs) exceeding \$7,500 in the aggregate per election to register as IE committees. IE committees will be required to file pre- and post-election reports if they make IEs within 30 days of a primary or 60 days of a general election. The reports will disclose donors who gave more than \$7,500 for the purpose of furthering an IE and all IEs made since the

Political Law Update

start of the prior calendar year. An IE is defined as a non-coordinated expenditure for a communication that either (i) expressly advocates for or against the election or defeat of a candidate or the passage or defeat of a ballot measure or (ii) is the functional equivalent of express advocacy (*i.e.*, a communication that is not susceptible to any reasonable interpretation other than as an appeal to vote for or against a specific candidate or ballot measure).

Currently, contributions to a 501(c)(4), 501(c)(6) or 527 group are not reportable under New Jersey campaign finance law, unless the organization is registered as a state PAC (which is only required for entities whose major purpose is to influence New Jersey state and local elections). While New Jersey law

separately covers IE committees, there is a permanent injunction against the law, as the definition of an IE — which covers grassroots lobbying activity — was found to be unconstitutionally broad.

The act also makes some structural changes to ELEC. It retains ELEC's current structure, with a four-member commission, but grants the governor the one-time authority to appoint a new slate of commissioners without Senate confirmation. The act also shortens the statute of limitations for enforcement actions by ELEC from 10 years to two years following the occurrence of the alleged violation.

Please contact us with any questions.

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