



## The Requirements of Various 'Pay-to-Play' Laws

*NJ Business Solutions is a service to the members of the New Jersey Business & Industry Association and the readers of New Jersey Business magazine. These articles are intended to help New Jersey employers deal with practical issues affecting their business operations.*

*By Laurence D. Laufer, Esq. & Jisha V. Dymond, Esq.*

On September 18, 2007, The New Jersey Business & Industry Association (NJBIA) held a well-attended seminar discussing the requirements for filing the calendar year 2006 Business Entity Annual Statement with the NJ Election Law Enforcement Commission ("ELEC"). The seminar – conducted 10 days before the September 28, 2007 deadline – specifically focused on helping businesses prepare and meet the requirements for disclosure. According to ELEC, over 1,672 businesses filed disclosure statements.

While the first annual deadline has come and gone, it is important for business owners to understand that the requirements of "pay-to-play" laws are here to stay. In fact, this year's deadline is on March 30, 2008,<sup>1</sup> which will cover all calendar year 2007 contributions.

There are three state pay-to-play laws currently in effect: Chapter 271 (N.J.S.A. 19:44A-20.26); Chapter 19 (N.J.S.A. 19:44A-20.3 et seq.); and Chapter 51 (N.J.S.A.19:44A-20.13 et seq.)

<sup>1</sup> The annual deadline from this point forward is March 30.

The March 30 annual disclosure deadline is pursuant to Chapter 271. The other two laws – Chapters 19 and 51 - have separate disclosure requirements. In addition, at last count, over 120 municipalities and counties have their own pay-to-play ordinances. This article summarizes the disclosure requirements of these laws.

The disclosure requirements apply to "reportable" contribu-

tions. A "reportable" contribution is one in excess of \$300 in the aggregate per election to candidate committees (including joint candidate committees) and political committees; and \$300 in the aggregate per calendar year to political party committees, legislative leadership committees and continuing political committees.

### Chapter 271

Chapter 271 contains disclosure requirements only. Unlike Chapters 19 and 51 and most local ordinances, it does not prohibit any conduct, nor does it affect the eligibility of business entities to be awarded contracts.

The first disclosure obligation requires a business entity receiving a "non-fair and open" government contract worth more than \$17,500 at the state, county or municipal level to file, no later than 10 days before entering the contract, a disclosure statement with the contracting government entity. The statement requires disclosure of certain contributions made by the business entity and associated persons (e.g., principals, officers, directors, political committees



Jisha V. Dymond, Esq.



Laurence D. Laufer, Esq.

“indirectly or directly” controlled by the entity and subsidiaries “directly or indirectly” controlled by the entity).

The second obligation requires a business entity that has received \$50,000 or more in the aggregate during a calendar year through contracts with New Jersey government entities to file an annual disclosure with ELEC. The annual disclosure form requires listing of every reportable contribution made by the business entity and associated persons for the previous calendar year. The form also requires listing of all contracts, whether bid or no-bid, for which the business received payment during the previous year.

## Chapter 19

Chapter 19 requires both pre- and post-contract award disclosures for county, municipal and state legislative contracts awarded through a process that is *not* “fair and open.” Pre-contract, a business entity must certify to the contracting entity that neither it nor anyone holding a greater than 10 percent interest has made a reportable contribution to a covered recipient during the preceding 12 months. During the contract, there

is a duty to report contributions to covered recipients that violate this law.

## Chapter 51

Chapter 51 applies only to state contracts and restricts reportable contributions made and/or solicited to a gubernatorial candidate committee, state political party committee or county political party committee. Like the other two laws, Chapter 51 has two disclosure requirements: pre-contract and post-contract.

A business entity must provide a pre-contract certification to the contracting entity that neither it nor covered persons have made and/or solicited reportable contributions to covered recipients during prescribed time periods. Additionally, the business entity must disclose to the contracting entity all reportable contributions to New Jersey continuing political committees that qualify as a 527 organization under the Internal Revenue Code (i.e., political action committees or “PACs”) that have been made during the preceding four years (and on or after October 15, 2004). This latter disclosure obligation for contributions to PACs continues throughout the term of the contract.

## Local Ordinances

Chapter 271 also authorized local pay-to-play ordinances. Currently, over 120 New Jersey counties and municipalities have their own ordinances in place. In general, most of these have a pre-contract requirement that requires the business entity and covered persons to certify that no prohibited contributions have been made as specified in the ordinance. Additionally, many ordinances have an outright prohibition on the making of contributions during the negotiation and term of the contract.

Every business entity that seeks

or has government contracts must therefore adopt a strategy to address pre-contract, post-contract and annual disclosures required by the various laws, as well as to maintain compliance with the numerous associated contribution limits and prohibitions.

*For more information please visit [www.corporatepoliticalactivitylaw.com](http://www.corporatepoliticalactivitylaw.com).* §

## About the Author:

*Laurence D. Laufer is a partner at Genova, Burns & Vernoia where he heads the Corporate Political Activity Law Practice Group. Jisha V. Dymond is an associate in that practice group. Both can be reached at 212-566-7188 or by visiting [www.gbvlaw.com](http://www.gbvlaw.com).*

## SCORE

*Continued from page 72*

can wake up at 3 a.m. and ask ; Can I afford the lease that I am about to sign?”, says Hagelberg.

SCORE counselors are listed by skill inventory, and online visitors can choose a counselor based on his or her skills and location. That counselor must respond within 48 hours. Face-to-face counseling sessions can also be arranged. The nine chapters have about 25 locations for this type of meeting.

“Small business is the backbone of the economy and not everyone can get help, especially those who work,” says Hagelberg. He stresses it is important to have a service like SCORE because it is available in the evenings, on weekends, and at anytime through e-mail.

Entrepreneurs have access to knowledge and advice from people who know what they are talking about. And this is not only for a few sessions – these relationships and advice opportunities can last for years. §