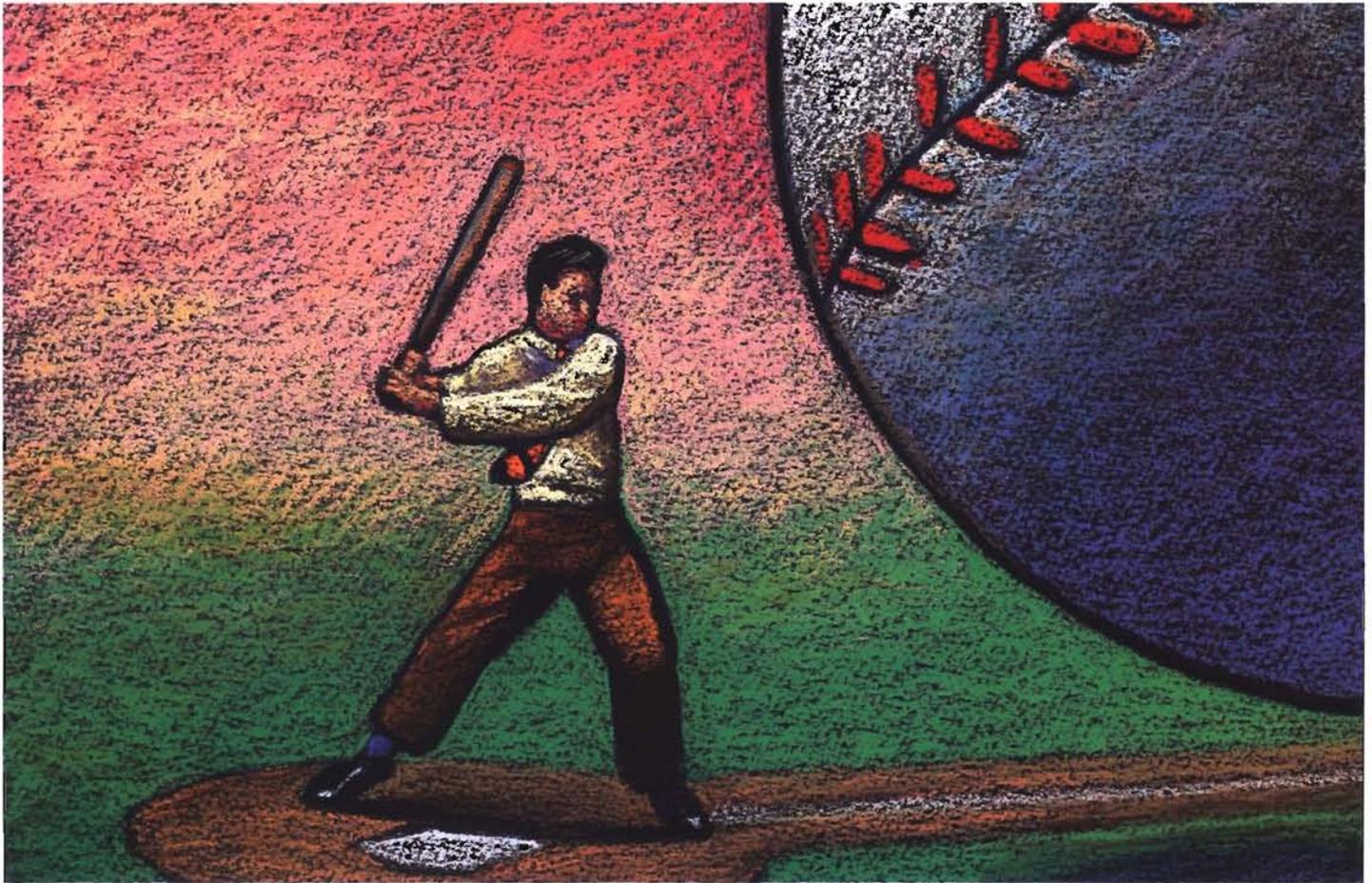


# Fixing Pay-to-Play

Why a Simpler, Stronger Law Would Benefit Government and Business

By Jeff Brindle, Executive Director, Election Law Enforcement Commission



**T**he 19th Century French novelist and playwright Honore de Balzac said, “Laws are spider webs through which big flies pass and little ones get caught.”

This quote describes the current state of New Jersey’s Pay-to-Play Law. The big flies circumvent it and the little ones throw up their hands and stop participating and contributing.

Neither situation is good for New Jersey’s political and electoral systems.

The Pay-to-Play Law, though well intended, is convoluted with too many layers of authority, making it difficult to understand and obey. It needs to be simplified and strengthened.

The law requires a business that has been awarded a state contract to disclose its political donations to the State Treasurer. Likewise, a business awarded a legislative, county, or municipal contract has a similar obligation. Those contribu-

tions must be reported to the Legislature, or applicable county or municipality.

Additionally, any business that receives more than \$50,000 worth of public contracts statewide is required to report its contributions and public contracts to the Election Law Enforcement Commission (ELEC) on an annual basis.

The law bans businesses from receiving a contract of more than \$17,500 if it made a contribution of more than \$300, during the 18-month period prior to the contract being awarded and for the term of the contract. Further, the ban applies to all candidates, officeholders, and political parties that have any involvement with the decision to grant a contract.

There is an exemption for contracts awarded during times of emergency.

In the case of a state contract, the foregoing restrictions always apply. But that is not the case with local government entities.

Municipal and county governments and other local entities, such as school boards and authorities, can opt to be subject to state law. However, they can also decide against subjecting themselves to state law.

Under “Fair and Open” none of the features of the state Play-to-Play Law apply, including the \$300 contribution limit. This Fair and Open provision applies to local authorities, boards of education, and fire districts, as well as municipalities and counties.

New Jersey’s law is difficult to untangle and despite good motives, it has had

unintended consequences. It can cause a business to forfeit a public contract, even in the middle of performing the contract; if the business, a partner, or a spouse inadvertently makes a contribution of \$300 or more.

**Declining participation and accountability** First, the law has forced many business people to withdraw from

While this option appeals to many at the local level, the problem is that the exemption contributes to instability and confusion.

**Pay-to-Play options** In this case, local governments have two options. First, the law allows counties, municipalities, county and municipal authorities, boards of education, and fire districts to pass their own pay-to-play ordinances. At last count, 176 municipalities, school districts, and authorities had written their own rules. Moreover, seven counties had adopted their own ordinances.

While this option appeals to many at the local level, the problem is that the exemption contributes to instability and confusion. Examples include Moorestown and Bergen County, where play-to-play laws locally are subject to frequent modification as local governing bodies change.

**The Fair and Open Provision** Even if local government entities opt out of writing their own laws, a second option, known as the Fair and Open Provision, remains available for avoiding state law. Fair and Open simply allows municipalities and counties to get out from under state law if they publicly advertise their bidding process.

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political participation. This fact is evidenced through the drastic decline in fundraising by candidates and political parties. Unfortunately, these are the same entities that are most accountable to the public.

Second, instead of making our campaign system more transparent, the law has had the opposite effect. Contributions are now harder to track.

Where did the money go? It went to two places, neither of which is subject to Pay-to-Play. More donors have been directing their money to political action committees (PACs), many of which have been established by party operatives, presumably to avoid Pay-to-Play restrictions. This makes it harder to track the flow of money. The public is left in the dark in terms of the intent of Pay-to-Play, which is to connect the dots between contributions and contracts. In addition to the increase in PAC activity,

independent, outside groups are now dominating politics in New Jersey.

**Rise of independent groups** Over \$40 million was spent by independent groups in last year's legislative and gubernatorial elections. That's three times what was spent by the state parties and four legislative leadership committees.

These independent groups have become surrogate political parties. They are assuming the traditional roles played by parties, such as getting-out-the-vote, registering voters, voter targeting, and conducting polls.

And of course, they are spending heavily on radio, TV, and direct mail.

Clearly, the Pay-to-Play Law is not solely responsible for this trend. It started nationally with the McCain/Feingold reform in 2002 and sped up following the Citizens United case in 2010.

But undeniably, much contractor cash has flowed to these groups rather

than to candidates and parties. They are less transparent and not subject to Pay-to-Play.

**Attempts to skirt Pay-to-Play** Finally, the era of the current Pay-to-Play Law has witnessed at least one company allegedly attempting to illegally skirt the law.

Several Birdsall Engineering executives have been indicted on charges of laundering money through their employees, who in turn allegedly made \$300 contributions to various public officials and political parties. This scheme was an alleged illegal attempt to skirt the Pay-to-Play Law in an effort to secure public contracts.

**Improving Pay-to-Play** So is there anything to be done? The New Jersey Election Law Enforcement Commission believes so. It has put forth a plan to amend the law, which is supported by Governor Christie and incorporated into a bill reintroduced by State Senator James Beach.

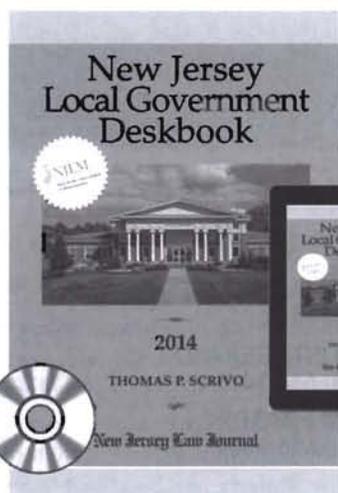
The plan calls for the Legislature to enact one state law that would apply at all levels of government. Second, it calls for the Fair and Open loophole to be abolished and for enhancing disclosure by requiring any business that receives a contract of \$17,500 or more to disclose the contractual contributions made. Finally, the proposal calls for the contribution limit applying to public contractors to be increased from \$300 to \$1,000.

These straightforward reforms will simplify the law and make it easier to understand and follow. They will eliminate a loophole that makes a mockery of the law. They will strengthen disclosure and enhance transparency and they will help to return fundraising prowess to accountable parties and candidates by increasing the contribution limit.

In the coming year, the Legislature has an opportunity to fix a well intended Pay-to-Play Law that, unfortunately, has backfired. ❧

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.

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