



MODEL LAW FOR PUBLIC CONTRACTING (“PAY-TO-PLAY”) REFORM

Absent of proper controls, public contracting is increasingly dominated by “pay-to-play” practices where large campaign contributions are traded for lucrative government contracts. In the process, taxpayers pay more for lower quality services and local elections become too costly for everyday Americans to contemplate running. Public contracting reform severs the link between campaign contributions and government contracts, ensuring that merit and cost effectiveness drive the contract process while leveling the playing field to run for political office.

Key Components:

- ✓ Sets limits on contributions from professionals, such as attorneys, auditors, and engineers in the year prior to negotiations.
- ✓ Bans all political contributions by contractors from the beginning of negotiations through the performance of the contract.
- ✓ Limits contributions to \$300 to town candidates and local political parties, \$500 to county political parties, and \$2,500 in aggregate.
- ✓ Includes contracts awarded through a “fair and open” process.
- ✓ Individuals who break the law, or try to circumvent it are banned from receiving no-bid contracts for 4 years.

WHAT IS PAY-TO-PLAY?

“Pay-to-play” is the all too common practice in which large campaign contributions are traded for lucrative government contracts.

Unfortunately, the people who really pay are not the contractors who give the big political contributions, but New Jersey’s taxpayers.

For in a public contract system driven by political contributions, merit and cost-effectiveness fall by the wayside. The result is that taxpayers pay more for lower quality services.

Recently, the state paid more than \$100 million in cost overruns for an auto emissions system that failed because the state hired a company with a history of over-billing and no proven track record. The company’s major qualification for the job was the \$500,000 in political contributions.

And there are more stories of the taxpayer waste caused by pay-to-play—at the State, County, & Municipal level. The simple and cost-efficient solution is public contracting reform — which severs the link between campaign contributions and government contracts.

Citizens can help put an end to pay-to-play by presenting a model public contracting, pay-to-play reform law to their town council.

Q & A

What about a person's 1st amendment right to contribute?

Our pay-to-play law is constitutional because municipalities have the power to set the conditions of contracts for professional services. In other words, this is not broad campaign finance reform, but public contract reform.

Can the town limit contributions to the county party committee?

No, towns can't dictate what county parties accept in contributions. But municipalities can set their own standards and refuse to do business with professionals who contribute to the county.

Why are only professional contracts included?

Professional Service contracts are "no-bid" contracts. This means that municipalities can set their own standards for hiring professionals- like attorneys, engineers, and auditors. Contracts for such things as snow removal automatically go to the lowest bidder. A town doesn't necessarily want the lowest bid professional, therefore the council has broad discretion.

Can we include developers?

No, regulations pertaining to developers fall under the NJ Land Use law. A separate ordinance is needed, which can be obtained through our office, called the *Redevelopment Pay-to-Play Reform* ordinance.

How does pay-to-play impact public tax dollars?

It boosts costs to taxpayers by limiting competition and enabling the favored contractors to pad their charges to cover their political expenditures. It's corrupt and it should be outlawed.

What towns have passed pay-to-play reform?

As of October, 2007, about 60 municipalities & three counties have adopted the model ordinance, they are: *Asbury Park, Atlantic County, Atlantic Highlands, Belmar, Berkeley Twp, Bradley Beach, Cherry Hill, Collingswood, Dover Twp, East Greenwich, East Windsor, Edison Twp, Emerson, Ewing, Evesham, Fair Lawn, Freehold Twp, Hamilton, Hasbrouck Hts, Hightstown, Highland Park, Hillsdale, Hoboken, Holmdel Twp, Hopewell Twp, Lawrence Twp, Lavallette, Manchester, Margate, Marlboro, Mercer County, Metuchen, Millstone Twp, Monmouth County, Monroe (Middlesex), Montgomery, New Providence, Newark, Ocean City, Oceanport, Oradell, Pennington, Ramsey, Red Bank, Ringwood, Saddle River, Sayreville, South Brunswick, Spring Lake, Teaneck, Tinton Falls, Trenton, Upper Freehold, Washington Twp (Mercer), West Milford, Washington (Gloucester), West Windsor, Woodbridge.*

Should towns wait for Comprehensive State legislation?

No, Pay-to-play reform is a simple first-step to reducing the municipal portion of property taxes. A recent state law was passed, giving towns & counties the authority to control how professional service contracts are awarded. By passing this ordinance, contracts would be awarded on merit and cost-effectiveness, and the result is likely to be significantly lower costs.

By adopting pay-to-play reform, won't individually wealthy people only be able to afford to run for office?

In fact, pay-to-play provides an insurance policy for career politicians. Since incumbent politicians award the contracts, they get the overwhelming majority of pay-to-play dollars. These pay-to-play funded war chests discourage challengers and eliminate competition.

Even worse, pay-to-play helps build the power of party bosses. Since county party organizations can take up to \$35,000 annually from an individual contributor or business entity, they become the best conduit for contributions aimed at winning or maintaining government contracts.

These dollars go overwhelmingly to the party who controls county government and allows them to maintain that control and stamp out any opposition. This is why county freeholder boards that used to have a mixture of Democrats and Republicans have moved to nearly all Democratic or all Republican.

Eliminating pay-to-play will help level the playing field and restore competition to elections at all levels of government. It will reduce the advantage that incumbent politicians currently have in fund raising over potential challengers.

Further, ending pay-to-play may motivate some candidates to adopt new techniques for fund raising such as the very successful Internet fund raising from small-and medium-sized donors pioneered by Howard Dean and used with tremendous results by Sen. Kerry and President Bush.

While candidates for state, county and local office cannot hope to duplicate the results of a presidential candidate, there is still much untapped potential in this approach.

Who wrote this ordinance?

Constitutional law experts from the Brennan Center for Justice and members of the Citizens' Campaign Legal Task Force.

A statewide Pay-to-Play reform law went into effect 1/1/06. Why should a town/county pass this model ordinance when there are already public contracting regulations from the state?

1. The state law established a very loose standard, which allows towns to opt out of the contribution limits and award contracts through a "fair and open" process. Any professional that receives a professional service contract through a "fair and open" process, does not have to abide by any contribution limits.

* The model ordinance sets limits for any professional service contract, whether given through a non-fair or "fair and open" process.

2. The "Fair and Open Process" is loophole laden and doesn't address the post-contract award period. There are no protections from pay-to-play after a contract has been awarded and there is no more competition.

3. The state law only sets limits on contributions to the governing bodies that are awarding the contracts. For example, if a lawyer is giving a contribution to the mayor of Smallville, then that lawyer couldn't get a contract from Smallville. However, that lawyer could give a contribution to the county political party where Smallville is located. That money can then be funneled down to the mayor of Smallville from the county party.

* Our ordinance limits contributions to the county and local parties.

A law was signed January 5, 2006 (Local Pay-to-Play Authority, aka: "Enabling Legislation"), what does it do?

1. ensures the preservation of over 60 local pay-to-play reform laws
2. authorizes the passage of future pay-to-play reform laws in counties, municipalities, independent authorities, school boards, & fire districts
3. expands the authority of local government to limit contributions to professionals receiving contracts with school boards, fire districts & independent authorities
4. requires all contractors to disclose political contributions for last 12 months for contracts greater than \$17,500 ten days prior to entering into a contract.
5. requires all public contractors receiving an aggregate of \$50,000 worth of contracts in a calendar year to file an annual disclosure form with ELEC

REFORM AT THE LOCAL LEVEL

Municipalities across New Jersey have begun passing local public contracting laws in order to protect the town's contracting from political contribution influence and to send a message to state leaders. The main purpose of the law is to ensure that merit and cost-effectiveness drive the contracting process—not political contributions.

The local model pay-to-play law would set limits on political contributions to local candidates and political parties from professionals seeking town contracts.

Here are some major components:

1. Sets limits on contributions from professionals, such as attorneys, auditors, and engineers in the year prior to negotiations.
2. Limits contributions to \$300 to town candidates and local political parties, \$500 to county political parties, and \$2,500 in aggregate.
3. Bans all political contributions by contractors from the beginning of negotiations through the performance of the contract.
4. Individuals who break the law, or try to circumvent it are banned from receiving no-bid contracts for 4 years.

ADVOCATING FOR REFORM

1. **Research.** Find out if your town has already considered or adopted a model pay-to-play ordinance. A good place to start is at the Town Clerk's Office.
2. **Communicate.** Write a letter to your local officials asking them to consider adopting the ordinance—attach a copy of the model ordinance to the letter, and send a copy to the township attorney. Make sure to provide the specific date and time of the council meeting that you will be presenting the ordinance.
3. **Follow-Through.** Make follow-up calls to confirm they received the letter & ordinance. While making the calls you may even ask a council member to offer to sponsor it for you.
4. **Contact Media.** Before the council meeting call the local newspapers to let them know you will be making a presentation. This way they can assign the story to one of their reporters.
5. **Show Respect.** Speak politely and dress professionally.
6. **Be Early.** Show up to the council meeting 15 minutes early. This will give you an opportunity to talk to the council members and reporters.
7. **Public Presentation.** Make sure you know the rules for citizen input at council meetings. Sometimes you must sign up before hand. When making the presentation, speak loudly and clearly, you want not only the council, but the reporters and other citizens to hear what you have to say.
8. **Get a Commitment.** Be sure to ask for the date by which the council might introduce the pay-to-play reform law. If the law is referred to the town attorney, ask when they will report back their findings.
9. **Keep up the pressure.** It's important to keep attending the council meetings. First, you can make sure the council is following through on their commitment. Or, if they're not, it shows them that you are committed and not letting the issue die.

10. Win or lose - Keep going to council meetings.