

PUBLIC POLICY ALERT

NEW JERSEY PAY-TO-PLAY UPDATE

On September 24, 2008, New Jersey Governor John Corzine significantly expanded the state's pay-to-play law by issuing Executive Orders 117, 118, 119 and 120 (EOs). New Jersey is already one of the most highly regulated states with regard to contributions by state contractors as evidenced by various counties and municipalities adopting their own pay-to-play rules. The newly issued EOs expand the prohibitions against contributions and solicitations for contributions by state contractors, establish a local government ethics task force and enhance financial disclosure requirements for state officials. The provisions dealing with contributions are outlined below.

CURRENT PROHIBITIONS

Under New Jersey's pay-to-play law, contributions and solicitations made by a state contractor are prohibited. The prohibition applies to contributions to a gubernatorial candidate, incumbent governor or a state or county party committee by the contractor, a company or person who owns or controls at least 10% of the contractor, a subsidiary of the contractor or a political action committee (PAC) of the contractor. If a prohibited contribution is made, it could trigger a ban on contracting with state agencies for up to five and a half years.

UPDATES

The contribution and solicitation prohibition applies to *covered donors*. Under the EOs, the definition of a *covered donor* has been expanded to include all forms of business entities—

- a corporation, any officer of the corporation and any person or business entity that owns or controls 10% or more of the stock of the corporation
- a partnership and any partner
- a limited partnership and any partner
- a professional corporation and any shareholder or officer
- a limited liability company and any member
- a limited liability partnership and any partner
- a sole proprietorship and the proprietor

- any other form of entity organized under the laws of New Jersey or any other state or foreign jurisdiction, and any principal, officer or partner thereof.

Additionally, the new EOs expand the list of covered recipients beyond the governor, gubernatorial candidates and state or county party committees to include legislative leadership committees, municipal political party committees, candidate committees or election funds for the lieutenant governor.

A new provision affects business entities that have or seek a *redevelopment agreement* with any state governmental entity that is authorized to implement redevelopment projects. *Redeveloper* means a business entity as described above, and also includes certain subcontractors of a business entity hired to perform professional, consulting or lobbying services related to the project. *Redevelopment agreement* means an agreement or contract for “the redevelopment or rehabilitation of an area in need of redevelopment, or an area in need of rehabilitation, or any part thereof, or other work forming a part of a redevelopment or rehabilitation project.” For entities covered under this rule, from the point of the issuance of a request for proposal (RFP) or similar solicitation throughout the term of the contract, if awarded, current or prospective redevelopers may not make contributions to the following—

- candidate committees and election funds for governor or lieutenant governor
- state, county and municipal party committees and legislative leadership committees
- candidate committees or election funds for any candidate for, or holder of, a state legislative, county or municipal elective public office in a state legislative district, county or municipality in which any property subject to the redevelopment agreement in question is located.

Prospective redevelopers must also report all contributions made in the previous four years to organizations considered to be continuing political committees under New Jersey law. This obligation includes a certification that no prohibited contributions have been made and continues throughout the term of the contract. If the redeveloper hires another entity to perform professional, consulting or lobbying services related to the project, the redeveloper must also disclose any contributions made by that third party. Should a prospective redeveloper make a prohibited contribution during the term of the agreement, so long as the contribution is refunded within 30 days, no violation will have occurred. The “cure” will not be available for those contributions made within 60 days of a June primary or general election.

As a result of these new EOs, New Jersey continues to be one of the most highly regulated states in terms of pay-to-play rules with both state- and local-level restrictions.

CONTACT INFORMATION

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