

19:44A-20.7

LEGISLATIVE HISTORY CHECKLIST

Compiled by the NJ State Law Library

LAWS OF: 2005 **CHAPTER:** 51

NJSA: 19:44A-20.7 (Prohibits campaign contributions by business entities seeking or holding State contracts)

BILL NO: A1500 (Substituted for S2052)

SPONSOR(S): Greenstein and others

DATE INTRODUCED: October 21, 2004

COMMITTEE: **ASSEMBLY:**
SENATE: State Government

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** October 25, 2004, Re-enacted March 14, 2005

SENATE: February 28, 2005, Re-enacted March 21, 2005

DATE OF APPROVAL: March 22, 2005

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) 1st reprint enacted

A1500

[SPONSOR'S STATEMENT:](#) (Begins on page 7 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

S2052

[SPONSOR'S STATEMENT:](#) (Begins on page 7 original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

[SENATE:](#) [Yes](#)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

[VETO MESSAGE:](#) [Yes](#)

[GOVERNOR'S PRESS RELEASE ON SIGNING:](#) [Yes](#)

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext. 103 or <mailto:refdesk@njstatelib.org>

REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

Yes

"Codey signs into law pay-to-play ban," 3-23-2005 The Times, p.A4

"Codey enacts ban on 'pay-to-play' that's not airtight," 3-23-2005 Star Ledger, p.24.

"Codey signs ban on pay-to-play," 3-23-2005 The Record, p.A3

"Codey signs law banning pay-to-play for state contracts," 3-23-2005 Philadelphia Inquirer, p.B5

"Codey signs bill to put an end to 'pay-to-play,'" 3-23-2005 New York Times, p.B5

IS 4/5/07

§§1-13
C.19:44A-20.13
to 19:44A-20.25
§16
Repealer
§17
Superseder
§18
Note to §§1-17

P.L. 2005, CHAPTER 51, *approved March 22, 2005*
Assembly, No. 1500 (*First Reprint*)

1 AN ACT concerning campaign contributions by certain business
2 entities seeking or holding State contracts, supplementing
3 P.L.1973, c.83 (C.19:44A-1 et seq.), amending P.L.2004, c.19, and
4 repealing section 1 of P.L.2004, c.19 (C.19:44A-20.2).

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8

9 1. (New section) The Legislature finds and declares that:

10 In our representative form of government, it is essential that
11 individuals who are elected to public office have the trust, respect and
12 confidence of the citizenry; and

13 All individuals, businesses, associations, and other persons have a
14 right to participate fully in the political process of New Jersey,
15 including making and soliciting contributions to candidates, political
16 parties and holders of public office; and

17 When a person or business interest makes or solicits major
18 contributions to obtain a contract awarded by a government agency or
19 independent authority, this constitutes a violation of the public's trust
20 in government and raises legitimate public concerns about whether the
21 contract has been awarded on the basis of merit; and

22 The growing infusion of funds donated by business entities into the
23 political process at all levels of government has generated widespread
24 cynicism among the public that special interest groups are "buying"
25 favors from elected officeholders; and

26 For the purposes of protecting the integrity of government
27 contractual decisions and of improving the public's confidence in
28 government, it is a compelling interest of this State to prohibit
29 awarding government contracts to business entities which are also
30 contributors to candidates, political parties and the holders of public
31 office; and

32 There exists the perception that campaign contributions are often
33 made to a State or county political party committee by an individual

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly amendments adopted in accordance with Governor's recommendations March 7, 2005.

1 or business seeking favor with State elected officials, with the
2 understanding that the money given to such a committee will be
3 transmitted to other committees in other parts of the State, or is
4 otherwise intended to circumvent legal restrictions on the making of
5 political contributions or gifts directly to elected State officials, thus
6 again making elected State officials beholden to those contributors;
7 and

8 County political party committees, through their powers of
9 endorsement, fundraising, ballot slogan or party line designation, and
10 other means, exert significant influence over the gubernatorial primary
11 and general election process; and

12 Although the right of individuals and businesses to make campaign
13 contributions is unequivocal, that right may be limited, even
14 abrogated, when such contributions promote the actuality or
15 appearance of public corruption; and

16 It is essential that the public have confidence that the selection of
17 State contractors is based on merit and not on political contributions
18 made by such contractors and it is essential that the public have trust
19 in the processes by which taxpayer dollars are spent; and

20 It has long been the public policy of this State to secure for the
21 taxpayers the benefits of competition, to promote the public good by
22 promoting the honesty and integrity of bidders for public contracts and
23 the system, and to guard against favoritism, improvidence,
24 extravagance and corruption in order to benefit the taxpayers; and

25 In the procurement process, our public policy grants to the State
26 broad discretion, taking into consideration all factors, to award a
27 contract to a bidder whose proposal will be most advantageous to the
28 State; and

29 The operations of the State government must be effectively and
30 fairly managed to ensure public order and prosperity, and malfeasance,
31 in whatever form it may take, must be confronted and uprooted; and

32 The Legislature must safeguard the integrity of State government
33 procurement by imposing restrictions on State agencies and
34 independent authorities to insulate the negotiation and award of State
35 contracts from political contributions that pose the risk of improper
36 influence, purchase of access, or the appearance thereof.

37

38 2. (New section) The State or any of its purchasing agents or
39 agencies or those of its independent authorities, as the case may be,
40 shall not enter into an agreement or otherwise contract to procure
41 from any business entity services or any material, supplies or
42 equipment, or to acquire, sell, or lease any land or building, where the
43 value of the transaction exceeds \$17,500, if that business entity has
44 solicited or made any contribution of money, or pledge of
45 contribution, including in-kind contributions to a candidate committee
46 or election fund of any candidate or holder of the public office of

1 Governor, or to any State or county political party committee: (i)
2 within the eighteen months immediately preceding the commencement
3 of negotiations for the contract or agreement; (ii) during the term of
4 office of a Governor, in the case of contributions to a candidate
5 committee or election fund of the holder of that office, or to any State
6 or county political party committee of a political party nominating
7 such Governor in the last gubernatorial election preceding the
8 commencement of such term; or (iii) within the eighteen months
9 immediately preceding the last day of the term of office of Governor,
10 in which case such prohibition shall continue through the end of the
11 next immediately following term of the office of Governor, in the case
12 of contributions to a candidate committee or election fund of the
13 holder of that office, or to any State or county political party
14 committee of a political party nominating such Governor in the last
15 gubernatorial election preceding the commencement of the latter term.

16

17 3. (New section) No business entity which agrees to any
18 contract or agreement with the State or any department or agency
19 thereof or its independent authorities either for the rendition of
20 services or furnishing of any material, supplies or equipment or for the
21 acquisition, sale, or lease of any land or building, if the value of the
22 transaction exceeds \$17,500, shall knowingly solicit or make any
23 contribution of money, or pledge of a contribution, including in-kind
24 contributions, to a candidate committee or election fund of any
25 candidate or holder of the public office of Governor or to any State or
26 county political party committee prior to the completion of the
27 contract or agreement.

28

29 4. (New section) For the purposes of this act, a "contribution"
30 means a contribution reportable by the recipient under "The New
31 Jersey Campaign Contributions and Expenditures Reporting Act, "
32 P.L.1973, c.83 (C.19:44A-1 et seq.) made on or after the effective
33 date of this act.

34

35 5. (New section) For the purposes of this act, a "business entity"
36 means any natural or legal person, business corporation, professional
37 services corporation, limited liability company, partnership, limited
38 partnership, business trust, association or any other legal commercial
39 entity organized under the laws of this State or any other state or
40 foreign jurisdiction. The definition of a business entity includes: (i)
41 all principals who own or control more than 10 percent of the profits
42 or assets of a business entity or 10 percent of the stock in the case of
43 a business entity that is a corporation for profit, as appropriate; (ii) any
44 subsidiaries directly or indirectly controlled by the business entity; (iii)
45 any political organization organized under section 527 of the Internal
46 Revenue Code that is directly or indirectly controlled by the business

1 entity, other than a candidate committee, election fund, or political
2 party committee; and (iv) if a business entity is a natural person, that
3 person's spouse or child, residing therewith, are also included within
4 this definition.

5
6 6. (New section) Prior to awarding any contract or agreement
7 to procure services or any material, supplies or equipment from, or for
8 the acquisition, sale, or lease of any land or building from or to, any
9 business entity, the State or any of its purchasing agents or agencies,
10 as the case may be, shall require, as part of the procurement process,
11 the business entity to report all contributions the business entity made
12 during the preceding four years to any political organization organized
13 under section 527 of the Internal Revenue Code that also meets the
14 definition of a "continuing political committee" within the meaning of
15 section 3 of P.L.1973, c.83 (C.19:44A-3). Such reporting shall be
16 made in a manner and form to be developed by the State Treasurer
17 with the advice of the New Jersey Election Law Enforcement
18 Commission, which agencies shall promulgate regulations to effect and
19 implement this disclosure obligation. Such reports shall be subject to
20 review by the State Treasurer. If the State Treasurer determines that
21 any such contribution, or any other act that would constitute a breach
22 of contract pursuant to section 9 of this act, poses a conflict of interest
23 in the awarding of any contract or agreement, the State Treasurer shall
24 disqualify such business entity from bidding on or being awarded such
25 contract or agreement.

26
27 7. (New section) Prior to awarding any contract or agreement
28 to procure services or any material, supplies or equipment from, or for
29 the acquisition, sale, or lease of any land or building from or to, any
30 business entity, the State or any of its purchasing agents or agencies
31 or independent authorities, as the case may be, shall require the
32 business entity to provide a written certification that it has not made
33 a contribution that would bar the award of the contract pursuant to
34 this act. The business entity shall have a continuing duty to report any
35 contribution it makes during the term of the contract. Such reports
36 shall be subject to review by the State Treasurer. If the State
37 Treasurer determines that any such contribution poses a conflict of
38 interest, such contribution shall be deemed a material breach of such
39 contract or agreement.

40
41 8. (New section) If a business entity inadvertently makes a
42 contribution that would otherwise bar it from receiving a contract or
43 makes a contribution during the term of a contract in violation of this
44 act, the entity may request a full reimbursement from the recipient and,
45 if such reimbursement is received within 30 days after the date on
46 which the contribution was made, the business entity would again be

1 eligible to receive a contract or would no longer be in violation, as
2 appropriate. It shall be presumed that contributions made within 60
3 days of a gubernatorial primary or general election were not made
4 inadvertently.

5
6 9. (New section) It shall be a breach of the terms of the
7 government contract for a business entity to: (i) make or solicit a
8 contribution in violation of this act; (ii) knowingly conceal or
9 misrepresent a contribution given or received; (iii) make or solicit
10 contributions through intermediaries for the purpose of concealing or
11 misrepresenting the source of the contribution; (iv) make or solicit any
12 contribution on the condition or with the agreement that it will be
13 contributed to a campaign committee of any candidate or holder of the
14 public office of Governor, or to any State or county party committee;
15 (v) engage or employ a lobbyist or consultant with the intent or
16 understanding that such lobbyist or consultant would make or solicit
17 any contribution, which if made or solicited by the business entity
18 itself, would subject that entity to the restrictions of this act; (vi) fund
19 contributions made by third parties, including consultants, attorneys,
20 family members, and employees; (vii) engage in any exchange or
21 contributions to circumvent the intent of this act, or (viii) directly or
22 indirectly, through or by any other person or means, do any act which
23 would subject that entity to the restrictions of this act.

24
25 10. (New section) This act shall not prohibit the awarding of a
26 contract when the public exigency requires the immediate delivery of
27 goods or performance of services as determined by the State
28 Treasurer.

29
30 11. (New section) This act shall apply to all State agencies
31 including any of the principal departments in the Executive Branch,
32 and any division, board, bureau, office, commission or other
33 instrumentality within or created by such department and any
34 independent State authority, board, commission, instrumentality or
35 agency.

36
37 12. (New Section) Every contract and bid application and
38 specifications promulgated in connection therewith covered by this act
39 shall contain a provision describing the requirements of this act and a
40 statement that compliance with this act shall be a material term and
41 condition of said contract or bid application and binding upon the
42 parties thereto upon the entry of all applicable contracts.

43
44 ¹13. (New section) The provisions of sections 1 through 12 of this
45 act, P.L. ., c. (now pending before the Legislature as this bill), shall
46 not: a. apply in circumstances when it is determined by the federal

1 government or a court of competent jurisdiction that its application
2 would violate federal law or regulation; or b. prevent the State, its
3 executive departments, agencies or independent authorities from
4 complying with all of the requirements, conditions and obligations of
5 the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et
6 seq.), as amended and supplemented.¹

7
8 ¹[13.] 14.¹ Section 6 of P.L.2004, c.19 (19:44A-20.7) is amended
9 to read as follows:

10 6. As used in sections [1] 2 through 12 of this act:

11 "business entity" means any natural or legal person, business
12 corporation, professional services corporation, limited liability
13 company, partnership, limited partnership, business trust, association
14 or any other legal commercial entity organized under the laws of this
15 State or of any other state or foreign jurisdiction;

16 "interest" means the ownership or control of more than 10% of the
17 profits or assets of a business entity or 10% of the stock in the case of
18 a business entity that is a corporation for profit, as appropriate;

19 "fair and open process" means, at a minimum, that the contract shall
20 be: publicly advertised in newspapers or on the Internet website
21 maintained by the public entity in sufficient time to give notice in
22 advance of the contract; awarded under a process that provides for
23 public solicitation of proposals or qualifications and awarded and
24 disclosed under criteria established in writing by the public entity prior
25 to the solicitation of proposals or qualifications; and publicly opened
26 and announced when awarded. The decision of a public entity as to
27 what constitutes a fair and open process shall be final.

28 ["State agency in the Executive Branch" means any of the principal
29 departments in the Executive Branch of the State Government, and
30 any division, board, bureau, office, commission or other
31 instrumentality within or created by such department and any
32 independent State authority, board, commission, instrumentality or
33 agency.]

34 "State agency in the Legislative Branch" means the Legislature of
35 the State and any office, board, bureau or commission within or
36 created by the Legislative Branch.

37 (cf: P.L.2004, c.19, s.6)

38
39 ¹[14.] 15.¹ Section 7 of P.L.2004, c.19 (C.19:44A-20.8) is
40 amended to read as follows:

41 7. a. Prior to awarding any contract, except a contract that is
42 ¹[not]¹ awarded pursuant to a fair and open process, a State agency
43 in the [Executive or] Legislative [Branches] Branch, a county, or a
44 municipality shall require the business entity to which the contract is
45 to be awarded to provide a written certification that it has not made a
46 contribution that would bar the award of a contract pursuant to this

1 act.

2 b. A business entity shall have a continuing duty to report to the
3 Election Law Enforcement Commission any contributions that
4 constitute a violation of this act that are made during the duration of
5 a contract.

6 (cf: P.L.2004, c.19, s.7)

7

8 ¹[15.] 16.¹ Section 1 of P.L.2004, c.19 (C.19:44A-20.2) is
9 repealed.

10

11 ¹17. Executive Order No. 134 (2004) is hereby superseded.¹

12

13 ¹[16. This] 18. Sections 14, 15 and 16 shall take effect on the
14 original effective date of P.L.2004, c.19 (C.19:44A-20.2 et seq.), and
15 the remainder of this¹ act shall take effect immediately and shall be
16 retroactive to October 15, 2004 and shall apply to contributions made
17 and contracts awarded on or after October 15, 2004.

18

19

20

21

22 Prohibits campaign contributions by business entities seeking or
23 holding State contracts in certain circumstances.

ASSEMBLY, No. 1500

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED OCTOBER 21, 2004

Sponsored by:

Assemblywoman LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

Assemblyman MICHAEL PANTER

District 12 (Mercer and Monmouth)

Assemblywoman LORETTA WEINBERG

District 37 (Bergen)

Assemblyman WILFREDO CARABALLO

District 29 (Essex and Union)

Co-Sponsored by:

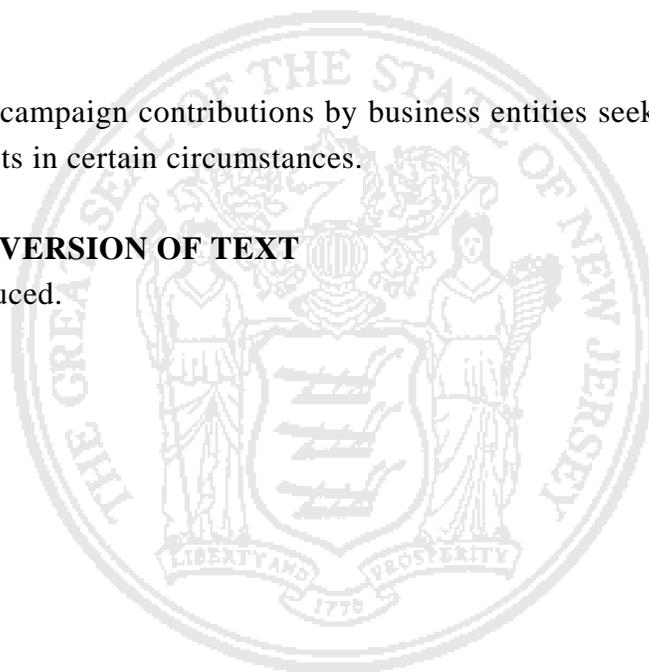
**Assemblymen Mayer, Conaway, Senators Codey, Karcher, Baer, Adler,
Vitale, Buono, Scutari, Lesniak, Turner, Gill and Girgenti**

SYNOPSIS

Prohibits campaign contributions by business entities seeking or holding State contracts in certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/15/2005)

1 AN ACT concerning campaign contributions by certain business
2 entities seeking or holding State contracts, supplementing
3 P.L.1973, c.83 (C.19:44A-1 et seq.), amending P.L.2004, c.19, and
4 repealing section 1 of P.L.2004, c.19 (C.19:44A-20.2).

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8

9 1. (New section) The Legislature finds and declares that:

10 In our representative form of government, it is essential that
11 individuals who are elected to public office have the trust, respect and
12 confidence of the citizenry; and

13 All individuals, businesses, associations, and other persons have a
14 right to participate fully in the political process of New Jersey,
15 including making and soliciting contributions to candidates, political
16 parties and holders of public office; and

17 When a person or business interest makes or solicits major
18 contributions to obtain a contract awarded by a government agency or
19 independent authority, this constitutes a violation of the public's trust
20 in government and raises legitimate public concerns about whether the
21 contract has been awarded on the basis of merit; and

22 The growing infusion of funds donated by business entities into the
23 political process at all levels of government has generated widespread
24 cynicism among the public that special interest groups are "buying"
25 favors from elected officeholders; and

26 For the purposes of protecting the integrity of government
27 contractual decisions and of improving the public's confidence in
28 government, it is a compelling interest of this State to prohibit
29 awarding government contracts to business entities which are also
30 contributors to candidates, political parties and the holders of public
31 office; and

32 There exists the perception that campaign contributions are often
33 made to a State or county political party committee by an individual
34 or business seeking favor with State elected officials, with the
35 understanding that the money given to such a committee will be
36 transmitted to other committees in other parts of the State, or is
37 otherwise intended to circumvent legal restrictions on the making of
38 political contributions or gifts directly to elected State officials, thus
39 again making elected State officials beholden to those contributors;
40 and

41 County political party committees, through their powers of
42 endorsement, fundraising, ballot slogan or party line designation, and
43 other means, exert significant influence over the gubernatorial primary

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 and general election process; and

2 Although the right of individuals and businesses to make campaign
3 contributions is unequivocal, that right may be limited, even
4 abrogated, when such contributions promote the actuality or
5 appearance of public corruption; and

6 It is essential that the public have confidence that the selection of
7 State contractors is based on merit and not on political contributions
8 made by such contractors and it is essential that the public have trust
9 in the processes by which taxpayer dollars are spent; and

10 It has long been the public policy of this State to secure for the
11 taxpayers the benefits of competition, to promote the public good by
12 promoting the honesty and integrity of bidders for public contracts and
13 the system, and to guard against favoritism, improvidence,
14 extravagance and corruption in order to benefit the taxpayers; and

15 In the procurement process, our public policy grants to the State
16 broad discretion, taking into consideration all factors, to award a
17 contract to a bidder whose proposal will be most advantageous to the
18 State; and

19 The operations of the State government must be effectively and
20 fairly managed to ensure public order and prosperity, and malfeasance,
21 in whatever form it may take, must be confronted and uprooted; and

22 The Legislature must safeguard the integrity of State government
23 procurement by imposing restrictions on State agencies and
24 independent authorities to insulate the negotiation and award of State
25 contracts from political contributions that pose the risk of improper
26 influence, purchase of access, or the appearance thereof.

27

28 2. (New section) The State or any of its purchasing agents or
29 agencies or those of its independent authorities, as the case may be,
30 shall not enter into an agreement or otherwise contract to procure
31 from any business entity services or any material, supplies or
32 equipment, or to acquire, sell, or lease any land or building, where the
33 value of the transaction exceeds \$17,500, if that business entity has
34 solicited or made any contribution of money, or pledge of
35 contribution, including in-kind contributions to a candidate committee
36 or election fund of any candidate or holder of the public office of
37 Governor, or to any State or county political party committee: (i)
38 within the eighteen months immediately preceding the commencement
39 of negotiations for the contract or agreement; (ii) during the term of
40 office of a Governor, in the case of contributions to a candidate
41 committee or election fund of the holder of that office, or to any State
42 or county political party committee of a political party nominating
43 such Governor in the last gubernatorial election preceding the
44 commencement of such term; or (iii) within the eighteen months
45 immediately preceding the last day of the term of office of Governor,
46 in which case such prohibition shall continue through the end of the

1 next immediately following term of the office of Governor, in the case
2 of contributions to a candidate committee or election fund of the
3 holder of that office, or to any State or county political party
4 committee of a political party nominating such Governor in the last
5 gubernatorial election preceding the commencement of the latter term.

6
7 3. (New section) No business entity which agrees to any
8 contract or agreement with the State or any department or agency
9 thereof or its independent authorities either for the rendition of
10 services or furnishing of any material, supplies or equipment or for the
11 acquisition, sale, or lease of any land or building, if the value of the
12 transaction exceeds \$17,500, shall knowingly solicit or make any
13 contribution of money, or pledge of a contribution, including in-kind
14 contributions, to a candidate committee or election fund of any
15 candidate or holder of the public office of Governor or to any State or
16 county political party committee prior to the completion of the
17 contract or agreement.

18
19 4. (New section) For the purposes of this act, a "contribution"
20 means a contribution reportable by the recipient under "The New
21 Jersey Campaign Contributions and Expenditures Reporting Act, "
22 P.L.1973, c.83 (C.19:44A-1 et seq.) made on or after the effective
23 date of this act.

24
25 5. (New section) For the purposes of this act, a "business entity"
26 means any natural or legal person, business corporation, professional
27 services corporation, limited liability company, partnership, limited
28 partnership, business trust, association or any other legal commercial
29 entity organized under the laws of this State or any other state or
30 foreign jurisdiction. The definition of a business entity includes: (i)
31 all principals who own or control more than 10 percent of the profits
32 or assets of a business entity or 10 percent of the stock in the case of
33 a business entity that is a corporation for profit, as appropriate; (ii) any
34 subsidiaries directly or indirectly controlled by the business entity; (iii)
35 any political organization organized under section 527 of the Internal
36 Revenue Code that is directly or indirectly controlled by the business
37 entity, other than a candidate committee, election fund, or political
38 party committee; and (iv) if a business entity is a natural person, that
39 person's spouse or child, residing therewith, are also included within
40 this definition.

41
42 6. (New section) Prior to awarding any contract or agreement
43 to procure services or any material, supplies or equipment from, or for
44 the acquisition, sale, or lease of any land or building from or to, any
45 business entity, the State or any of its purchasing agents or agencies,
46 as the case may be, shall require, as part of the procurement process,

1 the business entity to report all contributions the business entity made
2 during the preceding four years to any political organization organized
3 under section 527 of the Internal Revenue Code that also meets the
4 definition of a "continuing political committee" within the meaning of
5 section 3 of P.L.1973, c.83 (C.19:44A-3). Such reporting shall be
6 made in a manner and form to be developed by the State Treasurer
7 with the advice of the New Jersey Election Law Enforcement
8 Commission, which agencies shall promulgate regulations to effect and
9 implement this disclosure obligation. Such reports shall be subject to
10 review by the State Treasurer. If the State Treasurer determines that
11 any such contribution, or any other act that would constitute a breach
12 of contract pursuant to section 9 of this act, poses a conflict of interest
13 in the awarding of any contract or agreement, the State Treasurer shall
14 disqualify such business entity from bidding on or being awarded such
15 contract or agreement.

16

17 7. (New section) Prior to awarding any contract or agreement
18 to procure services or any material, supplies or equipment from, or for
19 the acquisition, sale, or lease of any land or building from or to, any
20 business entity, the State or any of its purchasing agents or agencies
21 or independent authorities, as the case may be, shall require the
22 business entity to provide a written certification that it has not made
23 a contribution that would bar the award of the contract pursuant to
24 this act. The business entity shall have a continuing duty to report any
25 contribution it makes during the term of the contract. Such reports
26 shall be subject to review by the State Treasurer. If the State
27 Treasurer determines that any such contribution poses a conflict of
28 interest, such contribution shall be deemed a material breach of such
29 contract or agreement.

30

31 8. (New section) If a business entity inadvertently makes a
32 contribution that would otherwise bar it from receiving a contract or
33 makes a contribution during the term of a contract in violation of this
34 act, the entity may request a full reimbursement from the recipient and,
35 if such reimbursement is received within 30 days after the date on
36 which the contribution was made, the business entity would again be
37 eligible to receive a contract or would no longer be in violation, as
38 appropriate. It shall be presumed that contributions made within 60
39 days of a gubernatorial primary or general election were not made
40 inadvertently.

41

42 9. (New section) It shall be a breach of the terms of the
43 government contract for a business entity to: (i) make or solicit a
44 contribution in violation of this act; (ii) knowingly conceal or
45 misrepresent a contribution given or received; (iii) make or solicit
46 contributions through intermediaries for the purpose of concealing or

1 misrepresenting the source of the contribution; (iv) make or solicit any
2 contribution on the condition or with the agreement that it will be
3 contributed to a campaign committee of any candidate or holder of the
4 public office of Governor, or to any State or county party committee;
5 (v) engage or employ a lobbyist or consultant with the intent or
6 understanding that such lobbyist or consultant would make or solicit
7 any contribution, which if made or solicited by the business entity
8 itself, would subject that entity to the restrictions of this act; (vi) fund
9 contributions made by third parties, including consultants, attorneys,
10 family members, and employees; (vii) engage in any exchange or
11 contributions to circumvent the intent of this act, or (viii) directly or
12 indirectly, through or by any other person or means, do any act which
13 would subject that entity to the restrictions of this act.

14

15 10. (New section) This act shall not prohibit the awarding of a
16 contract when the public exigency requires the immediate delivery of a
17 goods or performance of services as determined by the State
18 Treasurer.

19

20 11. (New section) This act shall apply to all State agencies
21 including any of the principal departments in the Executive Branch,
22 and any division, board, bureau, office, commission or other
23 instrumentality within or created by such department and any
24 independent State authority, board, commission, instrumentality or
25 agency.

26

27 12. (New Section) Every contract and bid application and
28 specifications promulgated in connection therewith covered by this act
29 shall contain a provision describing the requirements of this act and a
30 statement that compliance with this act shall be a material term and
31 condition of said contract or bid application and binding upon the
32 parties thereto upon the entry of all applicable contracts.

33

34 13. Section 6 of P.L.2004, c.19 (19:44A-20.7) is amended to read
35 as follows:

36 6. As used in sections ~~[1]~~ 2 through 12 of this act:

37 "business entity" means any natural or legal person, business
38 corporation, professional services corporation, limited liability
39 company, partnership, limited partnership, business trust, association
40 or any other legal commercial entity organized under the laws of this
41 State or of any other state or foreign jurisdiction;

42 "interest" means the ownership or control of more than 10% of the
43 profits or assets of a business entity or 10% of the stock in the case of
44 a business entity that is a corporation for profit, as appropriate;

45 "fair and open process" means, at a minimum, that the contract shall
46 be: publicly advertised in newspapers or on the Internet website

1 maintained by the public entity in sufficient time to give notice in
2 advance of the contract; awarded under a process that provides for
3 public solicitation of proposals or qualifications and awarded and
4 disclosed under criteria established in writing by the public entity prior
5 to the solicitation of proposals or qualifications; and publicly opened
6 and announced when awarded. The decision of a public entity as to
7 what constitutes a fair and open process shall be final.

8 ["State agency in the Executive Branch" means any of the principal
9 departments in the Executive Branch of the State Government, and
10 any division, board, bureau, office, commission or other
11 instrumentality within or created by such department and any
12 independent State authority, board, commission, instrumentality or
13 agency.]

14 "State agency in the Legislative Branch" means the Legislature of
15 the State and any office, board, bureau or commission within or
16 created by the Legislative Branch.

17 (cf: P.L.2004, c.19, s.6)

18
19 14. Section 7 of P.L.2004, c.19 (C.19:44A-20.8) is amended to
20 read as follows:

21 7. a. Prior to awarding any contract, except a contract that is not
22 awarded pursuant to a fair and open process, a State agency in the
23 [Executive or] Legislative [Branches] Branch, a county, or a
24 municipality shall require the business entity to which the contract is
25 to be awarded to provide a written certification that it has not made a
26 contribution that would bar the award of a contract pursuant to this
27 act.

28 b. A business entity shall have a continuing duty to report to the
29 Election Law Enforcement Commission any contributions that
30 constitute a violation of this act that are made during the duration of
31 a contract.

32 (cf: P.L.2004, c.19, s.7)

33
34 15. Section 1 of P.L.2004, c.19 (C.19:44A-20.2) is repealed.

35
36 16. This act shall take effect immediately and shall be retroactive
37 to October 15, 2004 and shall apply to contributions made and
38 contracts awarded on or after October 15, 2004.

39
40
41 STATEMENT

42
43 Under this bill, no State agency, including an independent authority,
44 can enter into a contract of any type with a business entity when the
45 value of the contract exceeds \$17,500 if that business entity has made
46 any contribution to a candidate for or the holder of the office of

1 Governor or to any State or county political party committee of a
2 political party nominating that Governor: 1) within 18 months before
3 the start of negotiations for the contract; 2) during the term of the
4 Governor; or 3) within 18 months before the last day of the Governor's
5 term and through the next term of that Governor.

6 No business entity which agrees to any contract or agreement with
7 the State or any department or agency thereof or its independent
8 authorities either for the rendition of services or furnishing of any
9 material, supplies or equipment or for the acquisition, sale, or lease of
10 any land or building, if the value of the transaction exceeds \$17,500,
11 can knowingly solicit or make any contribution of money, or pledge of
12 a contribution, including in-kind contributions, to a candidate
13 committee or election fund of any candidate or holder of the public
14 office of Governor or to any State or county political party committee
15 prior to the completion of the contract or agreement.

16 The State, prior to awarding any contract, will require a business
17 entity to report all contributions it has made to a 527 political
18 organization that also meets the definition of a continuing political
19 committee under current State law. The reporting must be in a manner
20 and form developed by the State Treasurer and the Election Law
21 Enforcement Commission and will be subject to review by the
22 Treasurer. Any business entity that makes such contributions and is
23 found in violation of the provisions of the bill would be disqualified
24 from bidding on or being awarded the contract.

25 The State, prior to awarding any contract, will require a business
26 entity to provide a written certification that it has not made a
27 contribution that would bar the award of a contract pursuant to the
28 provisions of the bill. The business entity must continue to report any
29 contribution it makes while the contract is in effect and such reports
30 will be reviewed by the State Treasurer. If, as a result of the review,
31 the Treasurer finds that any contribution poses a conflict of interest,
32 the contribution will be considered a breach of the contract.

33 If a business entity makes a contribution by mistake that would
34 otherwise bar it from receiving a contract, the entity can request full
35 reimbursement from the recipient and if received within 30 days of the
36 date of the contribution, the entity would not be barred from receiving
37 a contract.

38 The provisions of the bill do not apply to a contract awarded when
39 a public emergency requires the immediate delivery of goods or
40 services, as determined by the State Treasurer.

41 The bill defines a "business entity" as any natural or legal person,
42 business corporation, professional services corporation, limited
43 liability company, partnership, limited partnership, business trust,
44 association or any other legal commercial entity organized under the
45 laws of this State or any other state or foreign jurisdiction.

46 The bill repeals section 1 of P.L.2004, c.19 (C.19:44A-20.2) a

A1500 GREENSTEIN, PANTER

9

1 recently enacted provision that prohibits the awarding of certain State
2 contracts to certain business entities that make campaign
3 contributions, beginning on January 1, 2006.

4 This bill is modeled on Governor McGreevey's Executive Order 134
5 of 2004.

SENATE STATE GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1500

STATE OF NEW JERSEY

DATED: NOVEMBER 15, 2004

The Senate State Government Committee reports favorably Assembly, No. 1500.

Under this bill, no State agency, including an independent authority, can enter into a contract of any type with a business entity when the value of the contract exceeds \$17,500 if that business entity has made any contribution to a candidate for or the holder of the office of Governor or to any State or county political party committee of a political party nominating that Governor: 1) within 18 months before the start of negotiations for the contract; 2) during the term of the Governor; or 3) within 18 months before the last day of the Governor's term and through the next term of that Governor.

No business entity which agrees to any contract or agreement with the State or any department or agency thereof or its independent authorities either for the rendition of services or furnishing of any material, supplies or equipment or for the acquisition, sale, or lease of any land or building, if the value of the transaction exceeds \$17,500, can knowingly solicit or make any contribution of money, or pledge of a contribution, including in-kind contributions, to a candidate committee or election fund of any candidate or holder of the public office of Governor or to any State or county political party committee prior to the completion of the contract or agreement.

The State, prior to awarding any contract, will require a business entity to report all contributions it has made to a 527 political organization that also meets the definition of a continuing political committee under current State law. The reporting must be in a manner and form developed by the State Treasurer and the Election Law Enforcement Commission and will be subject to review by the Treasurer. Any business entity that makes such contributions and is found in violation of the provisions of the bill would be disqualified from bidding on or being awarded the contract.

The State, prior to awarding any contract, will require a business entity to provide a written certification that it has not made a contribution that would bar the award of a contract pursuant to the provisions of the bill. The business entity must continue to report any contribution it makes while the contract is in effect and such reports will be reviewed by the State Treasurer. If, as a result of the review, the Treasurer finds that any contribution poses a conflict of interest, the contribution will be considered a breach of the contract.

If a business entity makes a contribution by mistake that would otherwise bar it from receiving a contract, the entity can request full reimbursement from the recipient and if received within 30 days of the date of the contribution, the entity would not be barred from receiving a contract.

The provisions of the bill do not apply to a contract awarded when a public emergency requires the immediate delivery of goods or services, as determined by the State Treasurer.

The bill defines a "business entity" as any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this State or any other state or foreign jurisdiction.

The bill repeals section 1 of P.L.2004, c.19 (C.19:44A-20.2) a recently enacted provision that prohibits the awarding of certain State contracts to certain business entities that make campaign contributions, beginning on January 1, 2006.

This bill is modeled on Governor McGreevey's Executive Order 134 of 2004.

The bill is identical to Senate, No. 2052 of 2004.

SENATE, No. 2052

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED NOVEMBER 8, 2004

Sponsored by:

Senator RICHARD J. CODEY

District 27 (Essex)

Co-Sponsored by:

**Senators Karcher, Baer, Adler, Vitale, Buono, Scutari, Lesniak, Turner,
Gill and Girgenti**

SYNOPSIS

Prohibits campaign contributions by business entities seeking or holding State contracts in certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



S2052 CODEY

2

1 AN ACT concerning campaign contributions by certain business
2 entities seeking or holding State contracts, supplementing
3 P.L.1973, c.83 (C.19:44A-1 et seq.), amending P.L.2004, c.19, and
4 repealing section 1 of P.L.2004, c.19 (C.19:44A-20.2).

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8

9 1. (New section) The Legislature finds and declares that:

10 In our representative form of government, it is essential that
11 individuals who are elected to public office have the trust, respect and
12 confidence of the citizenry; and

13 All individuals, businesses, associations, and other persons have a
14 right to participate fully in the political process of New Jersey,
15 including making and soliciting contributions to candidates, political
16 parties and holders of public office; and

17 When a person or business interest makes or solicits major
18 contributions to obtain a contract awarded by a government agency or
19 independent authority, this constitutes a violation of the public's trust
20 in government and raises legitimate public concerns about whether the
21 contract has been awarded on the basis of merit; and

22 The growing infusion of funds donated by business entities into the
23 political process at all levels of government has generated widespread
24 cynicism among the public that special interest groups are "buying"
25 favors from elected officeholders; and

26 For the purposes of protecting the integrity of government
27 contractual decisions and of improving the public's confidence in
28 government, it is a compelling interest of this State to prohibit
29 awarding government contracts to business entities which are also
30 contributors to candidates, political parties and the holders of public
31 office; and

32 There exists the perception that campaign contributions are often
33 made to a State or county political party committee by an individual
34 or business seeking favor with State elected officials, with the
35 understanding that the money given to such a committee will be
36 transmitted to other committees in other parts of the State, or is
37 otherwise intended to circumvent legal restrictions on the making of
38 political contributions or gifts directly to elected State officials, thus
39 again making elected State officials beholden to those contributors;
40 and

41 County political party committees, through their powers of
42 endorsement, fundraising, ballot slogan or party line designation, and
43 other means, exert significant influence over the gubernatorial primary

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

S2052 CODEY

1 and general election process; and

2 Although the right of individuals and businesses to make campaign
3 contributions is unequivocal, that right may be limited, even
4 abrogated, when such contributions promote the actuality or
5 appearance of public corruption; and

6 It is essential that the public have confidence that the selection of
7 State contractors is based on merit and not on political contributions
8 made by such contractors and it is essential that the public have trust
9 in the processes by which taxpayer dollars are spent; and

10 It has long been the public policy of this State to secure for the
11 taxpayers the benefits of competition, to promote the public good by
12 promoting the honesty and integrity of bidders for public contracts and
13 the system, and to guard against favoritism, improvidence,
14 extravagance and corruption in order to benefit the taxpayers; and

15 In the procurement process, our public policy grants to the State
16 broad discretion, taking into consideration all factors, to award a
17 contract to a bidder whose proposal will be most advantageous to the
18 State; and

19 The operations of the State government must be effectively and
20 fairly managed to ensure public order and prosperity, and malfeasance,
21 in whatever form it may take, must be confronted and uprooted; and

22 The Legislature must safeguard the integrity of State government
23 procurement by imposing restrictions on State agencies and
24 independent authorities to insulate the negotiation and award of State
25 contracts from political contributions that pose the risk of improper
26 influence, purchase of access, or the appearance thereof.

27

28 2. (New section) The State or any of its purchasing agents or
29 agencies or those of its independent authorities, as the case may be,
30 shall not enter into an agreement or otherwise contract to procure
31 from any business entity services or any material, supplies or
32 equipment, or to acquire, sell, or lease any land or building, where the
33 value of the transaction exceeds \$17,500, if that business entity has
34 solicited or made any contribution of money, or pledge of
35 contribution, including in-kind contributions to a candidate committee
36 or election fund of any candidate or holder of the public office of
37 Governor, or to any State or county political party committee: (i)
38 within the eighteen months immediately preceding the commencement
39 of negotiations for the contract or agreement; (ii) during the term of
40 office of a Governor, in the case of contributions to a candidate
41 committee or election fund of the holder of that office, or to any State
42 or county political party committee of a political party nominating
43 such Governor in the last gubernatorial election preceding the
44 commencement of such term; or (iii) within the eighteen months
45 immediately preceding the last day of the term of office of Governor,
46 in which case such prohibition shall continue through the end of the

S2052 CODEY

1 next immediately following term of the office of Governor, in the case
2 of contributions to a candidate committee or election fund of the
3 holder of that office, or to any State or county political party
4 committee of a political party nominating such Governor in the last
5 gubernatorial election preceding the commencement of the latter term.

6

7 3. (New section) No business entity which agrees to any
8 contract or agreement with the State or any department or agency
9 thereof or its independent authorities either for the rendition of
10 services or furnishing of any material, supplies or equipment or for the
11 acquisition, sale, or lease of any land or building, if the value of the
12 transaction exceeds \$17,500, shall knowingly solicit or make any
13 contribution of money, or pledge of a contribution, including in-kind
14 contributions, to a candidate committee or election fund of any
15 candidate or holder of the public office of Governor or to any State or
16 county political party committee prior to the completion of the
17 contract or agreement.

18

19 4. (New section) For the purposes of this act, a "contribution"
20 means a contribution reportable by the recipient under "The New
21 Jersey Campaign Contributions and Expenditures Reporting Act, "
22 P.L.1973, c.83 (C.19:44A-1 et seq.) made on or after the effective
23 date of this act.

24

25 5. (New section) For the purposes of this act, a "business entity"
26 means any natural or legal person, business corporation, professional
27 services corporation, limited liability company, partnership, limited
28 partnership, business trust, association or any other legal commercial
29 entity organized under the laws of this State or any other state or
30 foreign jurisdiction. The definition of a business entity includes: (i)
31 all principals who own or control more than 10 percent of the profits
32 or assets of a business entity or 10 percent of the stock in the case of
33 a business entity that is a corporation for profit, as appropriate; (ii) any
34 subsidiaries directly or indirectly controlled by the business entity; (iii)
35 any political organization organized under section 527 of the Internal
36 Revenue Code that is directly or indirectly controlled by the business
37 entity, other than a candidate committee, election fund, or political
38 party committee; and (iv) if a business entity is a natural person, that
39 person's spouse or child, residing therewith, are also included within
40 this definition.

41

42 6. (New section) Prior to awarding any contract or agreement
43 to procure services or any material, supplies or equipment from, or for
44 the acquisition, sale, or lease of any land or building from or to, any
45 business entity, the State or any of its purchasing agents or agencies,
46 as the case may be, shall require, as part of the procurement process,

S2052 CODEY

1 the business entity to report all contributions the business entity made
2 during the preceding four years to any political organization organized
3 under section 527 of the Internal Revenue Code that also meets the
4 definition of a "continuing political committee" within the meaning of
5 section 3 of P.L.1973, c.83 (C.19:44A-3). Such reporting shall be
6 made in a manner and form to be developed by the State Treasurer
7 with the advice of the New Jersey Election Law Enforcement
8 Commission, which agencies shall promulgate regulations to effect and
9 implement this disclosure obligation. Such reports shall be subject to
10 review by the State Treasurer. If the State Treasurer determines that
11 any such contribution, or any other act that would constitute a breach
12 of contract pursuant to section 9 of this act, poses a conflict of interest
13 in the awarding of any contract or agreement, the State Treasurer shall
14 disqualify such business entity from bidding on or being awarded such
15 contract or agreement.

16

17 7. (New section) Prior to awarding any contract or agreement
18 to procure services or any material, supplies or equipment from, or for
19 the acquisition, sale, or lease of any land or building from or to, any
20 business entity, the State or any of its purchasing agents or agencies
21 or independent authorities, as the case may be, shall require the
22 business entity to provide a written certification that it has not made
23 a contribution that would bar the award of the contract pursuant to
24 this act. The business entity shall have a continuing duty to report any
25 contribution it makes during the term of the contract. Such reports
26 shall be subject to review by the State Treasurer. If the State
27 Treasurer determines that any such contribution poses a conflict of
28 interest, such contribution shall be deemed a material breach of such
29 contract or agreement.

30

31 8. (New section) If a business entity inadvertently makes a
32 contribution that would otherwise bar it from receiving a contract or
33 makes a contribution during the term of a contract in violation of this
34 act, the entity may request a full reimbursement from the recipient and,
35 if such reimbursement is received within 30 days after the date on
36 which the contribution was made, the business entity would again be
37 eligible to receive a contract or would no longer be in violation, as
38 appropriate. It shall be presumed that contributions made within 60
39 days of a gubernatorial primary or general election were not made
40 inadvertently.

41

42 9. (New section) It shall be a breach of the terms of the
43 government contract for a business entity to: (i) make or solicit a
44 contribution in violation of this act; (ii) knowingly conceal or
45 misrepresent a contribution given or received; (iii) make or solicit
46 contributions through intermediaries for the purpose of concealing or

S2052 CODEY

1 misrepresenting the source of the contribution; (iv) make or solicit any
2 contribution on the condition or with the agreement that it will be
3 contributed to a campaign committee of any candidate or holder of the
4 public office of Governor, or to any State or county party committee;
5 (v) engage or employ a lobbyist or consultant with the intent or
6 understanding that such lobbyist or consultant would make or solicit
7 any contribution, which if made or solicited by the business entity
8 itself, would subject that entity to the restrictions of this act; (vi) fund
9 contributions made by third parties, including consultants, attorneys,
10 family members, and employees; (vii) engage in any exchange or
11 contributions to circumvent the intent of this act, or (viii) directly or
12 indirectly, through or by any other person or means, do any act which
13 would subject that entity to the restrictions of this act.

14

15 10. (New section) This act shall not prohibit the awarding of a
16 contract when the public exigency requires the immediate delivery of
17 goods or performance of services as determined by the State
18 Treasurer.

19

20 11. (New section) This act shall apply to all State agencies
21 including any of the principal departments in the Executive Branch,
22 and any division, board, bureau, office, commission or other
23 instrumentality within or created by such department and any
24 independent State authority, board, commission, instrumentality or
25 agency.

26

27 12. (New Section) Every contract and bid application and
28 specifications promulgated in connection therewith covered by this act
29 shall contain a provision describing the requirements of this act and a
30 statement that compliance with this act shall be a material term and
31 condition of said contract or bid application and binding upon the
32 parties thereto upon the entry of all applicable contracts.

33

34 13. Section 6 of P.L.2004, c.19 (19:44A-20.7) is amended to read
35 as follows:

36 6. As used in sections [1] 2 through 12 of this act:

37 "business entity" means any natural or legal person, business
38 corporation, professional services corporation, limited liability
39 company, partnership, limited partnership, business trust, association
40 or any other legal commercial entity organized under the laws of this
41 State or of any other state or foreign jurisdiction;

42 "interest" means the ownership or control of more than 10% of the
43 profits or assets of a business entity or 10% of the stock in the case of
44 a business entity that is a corporation for profit, as appropriate;

45 "fair and open process" means, at a minimum, that the contract shall
46 be: publicly advertised in newspapers or on the Internet website

1 maintained by the public entity in sufficient time to give notice in
2 advance of the contract; awarded under a process that provides for
3 public solicitation of proposals or qualifications and awarded and
4 disclosed under criteria established in writing by the public entity prior
5 to the solicitation of proposals or qualifications; and publicly opened
6 and announced when awarded. The decision of a public entity as to
7 what constitutes a fair and open process shall be final.

8 ["State agency in the Executive Branch" means any of the principal
9 departments in the Executive Branch of the State Government, and
10 any division, board, bureau, office, commission or other
11 instrumentality within or created by such department and any
12 independent State authority, board, commission, instrumentality or
13 agency.]

14 "State agency in the Legislative Branch" means the Legislature of
15 the State and any office, board, bureau or commission within or
16 created by the Legislative Branch.

17 (cf: P.L.2004, c.19, s.6)

18
19 14. Section 7 of P.L.2004, c.19 (C.19:44A-20.8) is amended to
20 read as follows:

21 7. a. Prior to awarding any contract, except a contract that is not
22 awarded pursuant to a fair and open process, a State agency in the
23 [Executive or] Legislative [Branches] Branch, a county, or a
24 municipality shall require the business entity to which the contract is
25 to be awarded to provide a written certification that it has not made a
26 contribution that would bar the award of a contract pursuant to this
27 act.

28 b. A business entity shall have a continuing duty to report to the
29 Election Law Enforcement Commission any contributions that
30 constitute a violation of this act that are made during the duration of
31 a contract.

32 (cf: P.L.2004, c.19, s.7)

33
34 15. Section 1 of P.L.2004, c.19 (C.19:44A-20.2) is repealed.

35
36 16. This act shall take effect immediately and shall be retroactive
37 to October 15, 2004 and shall apply to contributions made and
38 contracts awarded on or after October 15, 2004.

39
40
41 STATEMENT

42
43 Under this bill, no State agency, including an independent authority,
44 can enter into a contract of any type with a business entity when the
45 value of the contract exceeds \$17,500 if that business entity has made
46 any contribution to a candidate for or the holder of the office of

S2052 CODEY

1 Governor or to any State or county political party committee of a
2 political party nominating that Governor: 1) within 18 months before
3 the start of negotiations for the contract; 2) during the term of the
4 Governor; or 3) within 18 months before the last day of the Governor's
5 term and through the next term of that Governor.

6 No business entity which agrees to any contract or agreement with
7 the State or any department or agency thereof or its independent
8 authorities either for the rendition of services or furnishing of any
9 material, supplies or equipment or for the acquisition, sale, or lease of
10 any land or building, if the value of the transaction exceeds \$17,500,
11 can knowingly solicit or make any contribution of money, or pledge of
12 a contribution, including in-kind contributions, to a candidate
13 committee or election fund of any candidate or holder of the public
14 office of Governor or to any State or county political party committee
15 prior to the completion of the contract or agreement.

16 The State, prior to awarding any contract, will require a business
17 entity to report all contributions it has made to a 527 political
18 organization that also meets the definition of a continuing political
19 committee under current State law. The reporting must be in a manner
20 and form developed by the State Treasurer and the Election Law
21 Enforcement Commission and will be subject to review by the
22 Treasurer. Any business entity that makes such contributions and is
23 found in violation of the provisions of the bill would be disqualified
24 from bidding on or being awarded the contract.

25 The State, prior to awarding any contract, will require a business
26 entity to provide a written certification that it has not made a
27 contribution that would bar the award of a contract pursuant to the
28 provisions of the bill. The business entity must continue to report any
29 contribution it makes while the contract is in effect and such reports
30 will be reviewed by the State Treasurer. If, as a result of the review,
31 the Treasurer finds that any contribution poses a conflict of interest,
32 the contribution will be considered a breach of the contract.

33 If a business entity makes a contribution by mistake that would
34 otherwise bar it from receiving a contract, the entity can request full
35 reimbursement from the recipient and if received within 30 days of the
36 date of the contribution, the entity would not be barred from receiving
37 a contract.

38 The provisions of the bill do not apply to a contract awarded when
39 a public emergency requires the immediate delivery of goods or
40 services, as determined by the State Treasurer.

41 The bill defines a "business entity" as any natural or legal person,
42 business corporation, professional services corporation, limited
43 liability company, partnership, limited partnership, business trust,
44 association or any other legal commercial entity organized under the
45 laws of this State or any other state or foreign jurisdiction.

46 The bill repeals section 1 of P.L.2004, c.19 (C.19:44A-20.2) a

S2052 CODEY

9

1 recently enacted provision that prohibits the awarding of certain State
2 contracts to certain business entities that make campaign
3 contributions, beginning on January 1, 2006.

4 This bill is modeled on Governor McGreevey's Executive Order 134
5 of 2004.

SENATE STATE GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 2052

STATE OF NEW JERSEY

DATED: NOVEMBER 15, 2004

The Senate State Government Committee reports favorably Senate, No. 2052.

Under this bill, no State agency, including an independent authority, can enter into a contract of any type with a business entity when the value of the contract exceeds \$17,500 if that business entity has made any contribution to a candidate for or the holder of the office of Governor or to any State or county political party committee of a political party nominating that Governor: 1) within 18 months before the start of negotiations for the contract; 2) during the term of the Governor; or 3) within 18 months before the last day of the Governor's term and through the next term of that Governor.

No business entity which agrees to any contract or agreement with the State or any department or agency thereof or its independent authorities either for the rendition of services or furnishing of any material, supplies or equipment or for the acquisition, sale, or lease of any land or building, if the value of the transaction exceeds \$17,500, can knowingly solicit or make any contribution of money, or pledge of a contribution, including in-kind contributions, to a candidate committee or election fund of any candidate or holder of the public office of Governor or to any State or county political party committee prior to the completion of the contract or agreement.

The State, prior to awarding any contract, will require a business entity to report all contributions it has made to a 527 political organization that also meets the definition of a continuing political committee under current State law. The reporting must be in a manner and form developed by the State Treasurer and the Election Law Enforcement Commission and will be subject to review by the Treasurer. Any business entity that makes such contributions and is found in violation of the provisions of the bill would be disqualified from bidding on or being awarded the contract.

The State, prior to awarding any contract, will require a business entity to provide a written certification that it has not made a contribution that would bar the award of a contract pursuant to the provisions of the bill. The business entity must continue to report any contribution it makes while the contract is in effect and such reports will be reviewed by the State Treasurer. If, as a result of the review, the Treasurer finds that any contribution poses a conflict of interest, the contribution will be considered a breach of the contract.

If a business entity makes a contribution by mistake that would otherwise bar it from receiving a contract, the entity can request full reimbursement from the recipient and if received within 30 days of the date of the contribution, the entity would not be barred from receiving a contract.

The provisions of the bill do not apply to a contract awarded when a public emergency requires the immediate delivery of goods or services, as determined by the State Treasurer.

The bill defines a "business entity" as any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this State or any other state or foreign jurisdiction.

The bill repeals section 1 of P.L.2004, c.19 (C.19:44A-20.2) a recently enacted provision that prohibits the awarding of certain State contracts to certain business entities that make campaign contributions, beginning on January 1, 2006.

This bill is modeled on Governor McGreevey's Executive Order 134 of 2004.

The bill is identical to Assembly, No. 1500 of 2004.

ASSEMBLY BILL NO. 1500

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 1500 with my recommendations for reconsideration.

A. Summary of Bill

This bill is intended to codify Executive Order No. 134 (2004), which banned campaign contributions from vendors doing business or attempting to do business with State agencies under certain circumstances (otherwise known as the practice of "pay-to-play").

Under this bill, no State agency or independent State authority would be permitted to enter into a contract of any type with a business entity, when the value of the contract exceeds \$17,500, if that business entity has made any contribution to either a candidate committee or election fund of any candidate for the office of Governor, or to any State or county political party committee under the following circumstances: 1) within 18 months immediately preceding the start of negotiations for the contract; 2) during the term of the Governor in the case of contributions for that office; or 3) within 18 months before the last day of the Governor's term and through the next term of that Governor.

Similarly, business entities that enter into contracts valued over \$17,500 with State agencies or authorities would be prevented from making contributions to either a candidate committee or election fund of any candidate for the public office of Governor, or to any State or county political party committee prior to the completion of the contract.

Another provision of the bill would mandate that the State, as part of its procurement process, require an interested business entity to report all contributions it made during the preceding four years to a "political organization" as that term is defined under Section 527 of the Internal Revenue Code and relevant State

law. The State Treasurer and the Election Law Enforcement Commission would dictate the manner of reporting. The State Treasurer would be authorized to disqualify any business entity from bidding on or being awarded a contract when a conflict of interest is presented.

The bill further provides that the State will require a business entity bidding on a contract to provide a written certification that it has not made a contribution that would bar the award of a contract under the bill's provisions. In addition, once awarded a contract, the business entity would have a continuing duty to report any contribution made during the contract's duration. If the State Treasurer finds that any such contribution poses a conflict of interest, the contribution would constitute a material breach of contract.

The bill specifies that if a business entity makes a contribution inadvertently, it can request full reimbursement from the recipient and, if received within 30 days of the date of the contribution, the entity would not be barred from receiving a contract. It is presumed under the bill, however, that contributions made within 60 days of a gubernatorial primary or general election are not inadvertent.

The bill would not prohibit the awarding of a contract when a public exigency requires immediate delivery of goods or services, as determined by the State Treasurer.

The bill defines a "business entity" as any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this State or any other state or foreign jurisdiction.

Finally, the bill would repeal N.J.S.A. 19:44A-20.2, a recently enacted provision that will prohibit, as of January 1,

2006, the awarding of certain State contracts to certain business entities because of campaign contributions.

B. Recommended Action

I commend the sponsors of this bill and the Legislature for enacting a permanent ban on pay-to-play, which is a critical aspect of genuine ethics reform. I have fought long and hard to restore the public trust in the integrity of government, and I will continue to do so. Banning the practice known as pay-to-play for State contracts is an integral part of this ethics reform.

However, despite its merits, I return the bill because it does not address a situation that is currently ongoing between the federal government and the State of New Jersey which must be addressed. The federal government has taken the position that, despite its beneficial public purpose, the pay-to-play ban contained in Executive Order No. 134 (2004) poses a threat to competition and violates federal law. As a result, the United States opted to withhold \$350 million in essential federal transportation funds from the State, a decision that New Jersey is challenging in federal court. The federal government's decision to withhold these needed monies also prompted me to issue Executive Order No. 18 (2005), which exempted New Jersey Department of Transportation projects from the pay-to-play ban, if those projects are to be funded with federal dollars. Since the issuance of Executive Order No. 18, other federal agencies have threatened to withhold federal funds for other State projects.

This recent experience has made clear that the State's pay-to-play ban must contain a limited exemption where the federal government or a court of competent jurisdiction determines that application of the ban would violate federal law or regulation. I am therefore returning the bill with a recommendation that language be added to it expressly exempting contracts from the ban in these limited circumstances.

In addition, I believe the bill should contain an additional exemption in circumstances where the State seeks to exercise its power of eminent domain. The absence of such an exemption allows an individual or entity whose real property is about to be taken by the State for a lawful and necessary public purpose under the eminent domain laws to thwart that process by making a prohibited political contribution. This anomalous result should not be permitted to occur, and I am convinced that the processes contained in the Eminent Domain Act are sufficient to ensure that pay-to-play practices do not enter into the equation in these circumstances. I am therefore recommending that language be added to the bill to address the eminent domain situation as well.

Finally, for the sake of clarity, I am recommending that language be added to the bill that expressly states that Executive Order No. 134 (2004) is superseded by the enactment of this bill, and I am also correcting language contained in P.L. 2004, c.19.

Therefore, I herewith return Assembly Bill No. 1500 and recommend that it be amended as follows:

- Page 6, Section 13, Line 34: After "13.", insert "(New section) The provisions of sections 1 through 12 of this act, P.L. ,c. (now pending before the Legislature as this bill), shall not: a. apply in circumstances when it is determined by the federal government or a court of competent jurisdiction that its application would violate federal law or regulation; or b. prevent the State, its executive departments, agencies or independent authorities from complying with all of the requirements, conditions and obligations of the "Eminent Domain Act of 1971," P.L.1971, c. 361 (C.20:3-1 et seq.), as amended and supplemented."
- Page 6, Section 13, Line 34: Before "Section 6 of P.L.2004," insert "14."
- Page 7, Section 14, Line 19: Delete "14." and insert "15."
- Page 7, Section 14, Line 21: Delete "not"

Page 7, Section 15, Line 34: Delete "15." and insert "16."
Page 7, Section 15, Line 35: Insert "17. Executive Order No. 134 (2004) is hereby superseded."
Page 7, Section 16, Line 36: Delete "16." and insert "18."
Page 7, Section 16, Line 38: After "16." Delete "This" and insert "Sections 14, 15 and 16 shall take effect on the original effective date of P.L.2004, c.19(C.19:44A-20.2 et seq.), and the remainder of this"

Respectfully,

/s/ Richard J. Codey

Acting Governor

[seal]

Attest:

/s/ Paul T. Fader

Chief Counsel to the Governor

PO BOX 004
TRENTON, NJ 08625

Contact: Kelley Heck
609-777-2600

RELEASE: March 22, 2005

Codey Signs Pay-To-Play Ban into Law

(TRENTON)—Acting Governor Richard J. Codey today enacted one of the nation's strongest statewide pay-to-play bans, by signing into law the bill A-1500/S-2052 which prohibits campaign contributions by business entities seeking or holding State contracts in certain circumstances.

As Senate President Codey was a primary sponsor of the bill. The other primary sponsors were Assembly members Linda R. Greenstein, Michael J. Panter, Loretta Weinberg and Wilfredo Caraballo.

Harry Pozycki, founder of the Citizens' Campaign and Chairman of Common Cause New Jersey, also attended as Codey signed the bill during a public ceremony in the Governor's Outer Office.

"It was a long road that got us to this day. There was some suspense, a few twists and turns, and even an argument or two. But some achievements are worth a struggle. This bill signing is one of them. This is a signature moment in the history of our state," Codey said.

"For the past couple of years people have been talking about ethics in government, about the need to bring back accountability, the need to ban pay-to-play and the need to restore the public's trust. Some people complained about it. Some people tried to get it done. Today, we are getting it done. Today we have backed up our words with action. And New Jersey should be proud," Codey continued.

"New Jersey residents now will have a greater measure of assurance that state policy will be directed by the needs of the people, not the wishes of a few well-heeled state contractors," Assemblywoman Greenstein said. "This new law further strengthens what already is among the most rigid anti-pay-to-play laws in the country. More importantly, it ensures that our state does not lose the hundreds of millions of dollars in federal aid we need to undertake essential repairs to our roads and bridges."

"This ensures that the flow of political contributions by state contractors gets turned off and stays off," said Assemblyman Panter. "This is another victory for the cause of reform as we seek to restore the public's confidence in state government and the political process."

"This is the final step in ensuring that our 'pay-to-play' reforms will not be undone because of legal ambiguity," said Assemblywoman Weinberg. "The ultimate product of our work

will be an air-tight statute that will enhance further New Jersey's status as having the toughest anti-pay-to-play laws in the country.”

“Today’s signing codifies the Legislature's intent to crack down on campaign contribution abuses by constructing a firewall between political fundraising and government decision making,” said Assemblyman Caraballo.

Pozycki, of the Citizens’ Campaign and Common Cause New Jersey, said, “Today New Jersey takes a major step forward in the fight to restore merit, integrity and cost-effectiveness to the awarding of government contracts and in the broader battle to change our state’s political culture. This success is due in no small measure to the leadership and dedication of Acting Governor Codey. But it is also a result of a four-year effort by citizens throughout New Jersey who have built momentum for this landmark legislation by advocating and realizing the adoption of pay-to-play reforms in their own hometowns. The adoption of this law – the strongest of its kind in the country – shows that organized and dedicated citizens can not only make their voice heard; they can achieve significant victories. This bodes well for the future of our state.”

The bill’s full text, and statements on its specific rules regarding political contributions and state contracts, can be found by doing a “Bill Search” for A1500 or S2052 at the Legislature’s website, <http://www.njleg.state.nj.us/>.

Today’s bill signing is part of Codey’s broader effort to restore accountability and the public’s trust in government.

Codey’s other accomplishments toward that goal include:

- A proposed Fiscal 2006 budget with the largest investment in public accountability in recent memory, with nearly \$7 million in new funding for the Commission on Ethical Standards, Office of the Inspector General, State Commission on Investigation, Office of the Public Advocate and Election Law Enforcement Commission.
- Creation of the Special Counsel on Ethics Reform, which recently completed an unprecedented, thorough audit into the ethics codes that apply to employees of state Executive Branch. The Counsel recommended sweeping reforms that will be enacted under Codey’s investment in the Fiscal 2006 budget.
- The appointment of Mary Jane Cooper as New Jersey’s first Inspector General, with a mandate to root out waste, mismanagement and fraud.