



**LFN 2023-14**

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# Local Finance Notice

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## Pay-to-Play Law Updates for Local Governments

[P.L. 2023, c. 30](#), known as the “Elections Transparency Act,” (the Act) made various significant changes to New Jersey’s pay-to-play laws. This Notice identifies key changes relevant to local government pursuant to N.J.S.A. 19:44A-20.4 and 20.5.

The term “business entity,” used in this Notice as an umbrella term for vendors or contractors, is defined by N.J.S.A. 19:44A-20.7 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 of any other state or foreign jurisdiction.”

Section 13 of the Act amended the definition of “fair and open process” in N.J.S.A. 19:44A-20.7 to expressly include contracts awarded under a public bidding or competitive contracting process pursuant to the Local Public Contracts Law.

### Campaign Contribution Reporting Threshold; Non-Fair and Open Contract Awards

Although the statutory pay-to-play threshold remains in excess of \$17,500, Section 4 of the Act amended N.J.S.A. 19:44A-8 to reduce the Election Law Enforcement Commission (ELEC) contribution reporting threshold from over \$300 to over **\$200**. Please note that cash contributions of any size by business entities are prohibited.

Pursuant to N.J.S.A. 19:44A-20.4 and 20.5, a county (or any agency or instrumentality thereof) may now award a non-fair and open contract over \$17,500 to a business entity making reportable contributions under N.J.S.A. 19:44A-8 toward any county committee of a political party in that county. Likewise, a municipality (or any agency or instrumentality thereof) may now award a non-fair and open contract over \$17,500 to a business entity making reportable contributions under N.J.S.A. 19:44A-8 toward any municipal committee of a political party in that municipality. Business entities being awarded non-fair and open contracts are no longer prohibited from making reportable contributions under N.J.S.A. 19:44A-8 toward a political party’s county or municipal committee during the term of their contract.

The award of non-fair and open contracts to business entities making reportable contributions toward candidate committees remains **prohibited**, and business entities having been awarded non-fair and open contracts are still barred from making reportable contributions toward candidate committees during the contract term.

Here are some examples of permissible and non-permissible contributions in the context of a non-fair and open contract award:

Business entity contributes over \$200 to the Democratic Party Committee of XX County during the preceding one-year period.	The County (or any agency or instrumentality thereof) <u>is allowed to</u> award a non-fair and open contract to the business entity.
Business entity contributes over \$200 to the Republican Party Committee of XX Municipality during the preceding one-year period.	The Municipality (or any agency or instrumentality thereof) <u>is allowed to</u> award a non-fair and open contract to the business entity.
Business entity contributes over \$200 to the Committee to Elect Smith & Jones to the Board of County Commissioners during the preceding one-year period.	The County (or any agency or instrumentality thereof) <u>cannot</u> award a non-fair and open contract to the business entity.
Business entity contributes over \$200 to the Committee to Elect Smith & Jones to Borough Council during the preceding one-year period.	The Municipality (or any agency or instrumentality thereof) <u>cannot</u> award a non-fair and open contract to the business entity.

Section 20 of the Act further amends the Chapter 271 Political Contribution Disclosure (N.J.S.A. 19:44A-20.26) that is required of all business entities having been awarded a non-fair and open contract to eliminate the obligation to disclose reportable contributions made to any State, county, or municipal committee of a political party, or any legislative leadership committee. An updated model of the [Political Contribution Disclosure Form](#) can be found on the Division’s Pay-to-Play webpage. The new form still requires business entities to disclose reportable contributions (i.e. over \$200) made to:

- Any continuing political committee (PAC); and
- Any candidate committee of a candidate for, or holder of, an elected office of:
  - the local unit;
  - of that county in which that local unit is located;
  - of another local unit within that county; and
  - of a legislative district in which that local unit is located (when the local unit is a county, this includes any legislative district that encompasses all or part of the county).

The [Business Entity Disclosure Certification](#) (N.J.S.A. 19:44A-20.8) is required to be filed by business entities prior to the award of a non-fair and open contract, along with the model [Non-Fair and Open Contract Award Resolution](#), [Non-Fair and Open Contract Contribution Prohibition sample contract language](#) and Lists of Agencies with Elected Officials Required for Political Contribution Disclosure (N.J.S.A.19:44A-20.26), which have been similarly updated to reflect the Act's changes. Broken down by county, updated agency lists are on the [Division's Pay-to-Play webpage](#) and the Appendix to this Notice. The Business Entity Annual Statement is available on the [ELEC Pay-to-Play webpage](#).

### **“Window” Contracts between Pay-to-Play and Qualified Purchasing Agent Bid Thresholds**

Sections 11 and 12 of the Act amend N.J.S.A. 19:44A-20.4 and 20.5, respectively, to clarify that the governing body of a municipality or county (or any agency or instrumentality thereof) may delegate the authority to award a contract having an anticipated value in excess of \$17,500 but below the increased bid threshold of a Local Public Contracts Law contracting unit with a qualified purchasing agent (i.e. a “window contract”) to the QPA. This delegation of authority should be incorporated into the resolution adopted pursuant to N.J.S.A. 40A:11-3 increasing the bid threshold.

### **State Pay-to-Play Law Now Preempts Local Pay-to-Play Restrictions**

Local government entities are now prohibited from imposing pay-to-play provisions that are more restrictive than those in State law. Section 37 of the Act repealed N.J.S.A. 40A:11-51, the law that previously authorized counties, municipalities, independent authorities, fire districts, and boards of education to adopt additional local pay-to-play restrictions to further limit the award of public contracts to business entities making political contributions, and limited the contributions that individuals or entities awarded a contract can make during the term of the contract. The repeal is effective retroactive to January 1, 2023. As a matter of housekeeping, any local pay-to-play ordinances or resolutions originally authorized or grandfathered by N.J.S.A. 40A:11-51 that are currently in effect should be repealed.

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Approved: Jacquelyn A. Suárez, Director

<b>Document</b>	<b>Internet Address</b>
Elections Transparency Act (P.L. 2023, c. 30)	<a href="https://pub.njleg.state.nj.us/Bills/2022/PL23/30_.PDF">https://pub.njleg.state.nj.us/Bills/2022/PL23/30_.PDF</a>
DLGS Pay-to-Play webpage	<a href="https://www.nj.gov/dca/divisions/dlgs/programs/pay_2_play.html">https://www.nj.gov/dca/divisions/dlgs/programs/pay_2_play.html</a>
ELEC Pay-to-Play webpage	<a href="https://www.elec.nj.gov/pay2play/p2p.html">https://www.elec.nj.gov/pay2play/p2p.html</a>
c. 271 Political Contribution Disclosure Form	<a href="https://www.nj.gov/dca/divisions/dlgs/programs/lpcl_docs/polit_contrib_disc_form.doc">https://www.nj.gov/dca/divisions/dlgs/programs/lpcl_docs/polit_contrib_disc_form.doc</a>
Business Entity Disclosure Certif.	<a href="https://www.nj.gov/dca/divisions/dlgs/programs/lpcl_docs/p2pbusedntdiscert.doc">https://www.nj.gov/dca/divisions/dlgs/programs/lpcl_docs/p2pbusedntdiscert.doc</a>
Non-Fair & Open Contract Award Resolution	<a href="https://www.nj.gov/dca/divisions/dlgs/programs/lpcl_docs/p2pnfoawardres.doc">https://www.nj.gov/dca/divisions/dlgs/programs/lpcl_docs/p2pnfoawardres.doc</a>
Sample Contract Language - Non-Fair and Open	<a href="https://www.nj.gov/dca/divisions/dlgs/programs/lpcl_docs/p2pcontractlanguage.doc">https://www.nj.gov/dca/divisions/dlgs/programs/lpcl_docs/p2pcontractlanguage.doc</a>

### Appendix

#### Lists of Agencies with Elected Officials Required for Political Contribution Disclosure N.J.S.A. 19:44A-20.26

<a href="#"><u>Atlantic</u></a>	<a href="#"><u>Bergen</u></a>	<a href="#"><u>Burlington</u></a>
<a href="#"><u>Camden</u></a>	<a href="#"><u>Cape May</u></a>	<a href="#"><u>Cumberland</u></a>
<a href="#"><u>Essex</u></a>	<a href="#"><u>Gloucester</u></a>	<a href="#"><u>Hudson</u></a>
<a href="#"><u>Hunterdon</u></a>	<a href="#"><u>Mercer</u></a>	<a href="#"><u>Middlesex</u></a>
<a href="#"><u>Monmouth</u></a>	<a href="#"><u>Morris</u></a>	<a href="#"><u>Ocean</u></a>
<a href="#"><u>Passaic</u></a>	<a href="#"><u>Salem</u></a>	<a href="#"><u>Somerset</u></a>
<a href="#"><u>Sussex</u></a>	<a href="#"><u>Union</u></a>	<a href="#"><u>Warren</u></a>