

# Comment Period Open for New Jersey Pay-to-Play, Lobbying, and Campaign Finance Regulations

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A 60-day comment period is currently open for the New Jersey Election Law Enforcement Commission's (ELEC) readoption of its regulations, which include many of the state's campaign finance, lobbying, and pay-to-play provisions. Organizations subject to New Jersey's regulations have the opportunity to submit written comments to ELEC until June 30.

On March 27, the ELEC narrowly avoided automatic expiration of its regulations by voting to file a **Notice of Proposed Readoption**. Under a sunset provision of New Jersey state law, ELEC's regulations actually expired on March 25; however, the Commission was able to toll this expiration date for 180 days by filing its Notice on March 27 – the next business day following the Saturday expiration date. Now, written comments on the agency's readoption proposal may be submitted until June 30.

As described in the Notice, ELEC seeks to readopt its regulations in their current form, without amendments. The comment period for these regulations thus provides a valuable opportunity for organizations to weigh in on New Jersey's regulatory requirements in the campaign finance and lobbying space. In particular, business entities covered by New Jersey's pay-to-play laws may be interested in commenting on ELEC's regulations for the annual pay-to-play disclosure report, which are broader than the statute they implement.

For example, under the statute, a business entity that receives \$50,000 or more in a calendar year from contracts or agreements with a public entity in New Jersey must file an annual report disclosing

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details about its state contracts if the business entity (or its principals, partners, officers, directors, or any of their spouses) makes a political contribution of more than \$300 to a candidate or public officeholder “having ultimate responsibility for the awarding of public contracts.” N.J. Stat. Ann. § 19:44A-20.27.<sup>1</sup> The statute does not enumerate which offices fall into this category, but a plain language reading suggests that a public officeholder such as a state legislator – whose job responsibilities do not include awarding state contracts – would be excluded from the scope of the reporting requirements.

Nevertheless, relying on a signing statement made by then-Governor Richard Codey, ELEC unilaterally expanded the scope of the law to cover all contributions made to any public officer mentioned by the Governor in his statement. As a result, ELEC’s regulations do not – as the statute mandates – require the annual report only when a business entity contributes to a candidate or public officeholder with “ultimate responsibility for the awarding of public contracts”; instead, a business entity triggers the report by making any contribution to a candidate or officeholder for any of the following offices: Governor, State Senate, General Assembly, county executive, freeholder, sheriff, clerk, surrogate, and member of a municipal, school board, and fire district governing body. See N.J. Admin. Code § 19:25-26.4(b)(3)(i).

This regulation is a drastic expansion of the New Jersey legislature’s intent expressed in the statute requiring the business entity annual report.