New Ethics, Lobbying and Campaign Contribution Reforms

The past several months have seen a flurry of legislative activity on ethics, campaign contributions, and the scope of the lobbying laws in New Jersey. A select few of these new laws may require significant revisions to the way our clients do business.

For more information, please call Riker Danzig’s Trenton office to speak with one of our attorneys or para-professionals. This document is for informational purposes only and should not be relied upon as a legal opinion. An attorney should be consulted to determine the implications of these laws in specific situations.

Contributions and Contracts

"Pay to Play"

Under current statutes, business entities that receive contracts from the State, counties or municipalities are not barred from contributing to candidates for office or to political parties.

P. L. 2004, c. 19, which becomes law in January 2006, among other things, seeks to bar business entities or owners of a 10% interest or more from receiving a no bid contract in excess of $17,500 from a unit of government if that business entity or owner contributed to a candidate for an office, or holder of an office, or the political party committee of the candidate office holder’s party whose unit of government is awarding the contract. For example, an architectural firm which contributed to a candidate for Governor could not receive a no bid contract from a State agency to design a State office building, but that firm would not be barred from receiving a no bid contract from a county so long as that firm did not contribute at the county level.

However, Governor McGreevey recently issued Executive Order 134 which took effect on October 15, 2004. That Order seeks, among other things, to prohibit State departments, agencies and authorities from awarding a
contract in excess of $17,500 to any business entity which has contributed to any candidate for Governor, to the Governor, to any State political party committee or to any county party committee in the 18-month period prior to an election or during the Governor’s term of office. The Executive Order is not 100% clear that it applies to all contracts including competitively bid contracts. The Executive Order also appears to disqualify entities which contribute to candidates or to the political party of candidates even if those candidates are not elected. For example, a contribution to a Republican gubernatorial candidate would bar the contributing business entity from receiving a no bid contract from an elected Democratic Governor.

To further complicate this already muddy picture, Senator Codey, who is slated to become Acting Governor, has issued a press release stating that neither the Senate Democratic leadership committee nor his personal senatorial campaign committee will accept contributions from State "vendors" after November 16, 2004 until his term of office is over. The Treasurer has issued limited guidance, as well as questions and answers for vendors on Executive Order 134 at:

www.state.nj.us/treasury/purchase/execorder134.htm

There have already been new legislative measures under consideration to codify Executive Order 134 and also to allow municipalities and counties with existing Pay to Play bans in effect from being superseded by Chapter 19.

We are continuing our analysis and seeking clarification of the issues raised by the foregoing law, Executive Order and press release, as well as monitoring legislative and regulatory developments in this area. In the meantime, any business or 10% or more owner of a business which might bid or seek a contract from a State agency in the future should consult with an attorney as to whether a contribution to a State political party committee, a gubernatorial candidate committee, a Senate leadership committee or a county political party committee will bar it from receiving a contract.

**Lobbying Changes**

In addition to regulating grassroots lobbying, the scope of lobbying activities was significantly revised by the Legislature in June.
Lobbying and "Governmental Process"

P.L. 2004, c.27 renames the existing Legislative Activities Disclosure Act the "Legislative and Governmental Process Activities Disclosure Act" and expands the activities for which disclosure and reporting are necessary by legislative agents (now known as governmental affairs agents) and their clients. The new provisions took effect immediately on June 16, 2004.

A "governmental affairs agent" will now include not only those engaged in the business of influencing legislative or regulatory processes, but also those who seek to influence "governmental processes." Such influence includes "any attempt, whether successful or not," to assist a represented entity or group to engage in communication with, or to secure information from, an officer or staff member of the Executive Branch, or any authority, board, commission or other agency or instrumentality of the Executive Branch of State Government, empowered by law to administer a governmental process or perform other functions that relate to such processes.

For purposes of this new law, "governmental processes" have been defined to mean:

- Promulgation of executive orders
- Rate setting
- Development, negotiation, award, modification or cancellation of public contracts
- Issuance, denial, modification, renewal, revocation or suspension of permits, licenses, or waivers
- Procedures for bidding
- Imposition or modification of fines and penalties
- Procedures for purchasing
- Rendition of administrative determinations and
- Award, denial, modification, renewal or termination of financial assistance, grants and loans

The new law continues the requirement that any person that is engaged as a governmental affairs agent must file a signed notice of representation with ELEC, identifying the client and general nature of the proposed services as a governmental affairs agent for such persons. Likewise, it continues the quarterly and annual reporting requirements of the previous law, including activity on influencing governmental processes.

There are several exceptions to the disclosure and reporting requirements as they relate to influencing governmental processes. The Act will not apply to any communication, matter or act of an attorney covered by the attorney-client privilege while engaging in the practice of law to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer. This includes representation in the regular course of
litigation or administrative proceedings. It will not apply to any communications involving collective negotiations, or
the interpretation or violation of collective negotiation agreements, of a labor organization of any kind which exists
or is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers
concerning the grievances, terms or conditions of employment, or of other mutual aid or protection in connection
with employment.

ELEC has advised that it is in the process of developing regulations to implement these new provisions. There is no
registration or recordkeeping requirement for the new governmental affairs activities at this time, but ELEC wants
recordkeeping to begin on January 1, 2005. ELEC has issued two documents to provide initial guidance on the issue, see:


and http://www.elec.state.nj.us/pdffiles/NewLaw/lobbyingfactsheet.pdf

At this time, it is not anticipated that ELEC will require mass registration of internal procurement, rate-setting and
permitting teams or sweep many more lobbyists into registration than the currently registered 550 lobbyists.

The punishment for violations of the law range from monetary fines to a crime of the fourth degree. As with the
original lobbying act, ELEC plans to be lenient in enforcement for the first year and to phase it in reasonably.

New Benefit Passing Law

Conflicts of Interest Law Amendments
Prior to the end of the last legislative session, the New Jersey Legislature passed a law to amend the State Conflicts
of Interest Law to restrict legislators and State officers and employees from soliciting or receiving any
compensation, reward, employment, gift, honoraria, or other things of value from sources other than the State for
matters related to performance of their official duties (e.g., speaking engagements). P.L. 2003, chapter 255. This
new law also limits the receipt of travel or subsistence expenses related to official duties. The travel or subsistence
can be reimbursed for actual and reasonable expenditures if the travel is within the state or up to $500 for travel
outside the state, but legislators will have to receive approval of the presiding officer and minority officer before
accepting such reimbursement.

The Conflicts Law was also amended to prohibit an officer or staff member on the Executive Branch, or legislator
or staff member in the Legislative Branch for accepting any compensation, reward, employment, gift, honorarium or
other thing of value totaling more than $250 in a calendar year, from any lobbyist or legislative agent. The $250 limit
also applies to each legislator’s immediate family.

**Lobbying Law Amendments**
Chapter 255 also restricts lobbyists and governmental affairs agents from offering any compensation, reward, employment, gift, honorarium or other thing of value in excess of $250 per calendar year to an officer or staff member of the Executive Branch or member of the Legislature or legislative staff. The prohibition does not apply if the amount is fully reimbursed within 90 days. This limit also applies to the legislators’ immediate family.

**Criminal Code Amendments** Lastly, the new law amended Title 2C of the Criminal Code concerning the acceptance, receipt or offer of unlawful benefits by or to a public servant for official behavior. Most of the Act's provisions took effect on April 14, 2004.

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**The Reforms**

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<thead>
<tr>
<th>P.L. 2003, c.255</th>
<th>Regulates receipt of things of value by the Legislature and Executive Branch officials</th>
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<tbody>
<tr>
<td>P.L. 2004, c.19</td>
<td>Prohibits campaign contributions by certain businesses performing State, county and municipal contracts</td>
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<tr>
<td>P.L. 2004, c.20</td>
<td>Extends lobbying financial disclosure requirements to grassroots lobbying conducted through advertising and direct mail to the general public</td>
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<tr>
<td>P.L. 2004, c.21</td>
<td>Prohibits solicitation and making of political contributions on State property</td>
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<td>P.L. 2004, c.22</td>
<td>Requires campaign treasurers to be trained and certified by the Election Law Enforcement Commission (ELEC)</td>
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<td>P.L. 2004, c.23</td>
<td>Prohibits a legislator from acting on legislation in which the legislator or a family member has a personal interest</td>
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<td>P.L. 2004, c.24</td>
<td>Changes the membership of the Executive Commission on Ethical Standards and the Joint Legislative Committee on Ethical Standards</td>
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<td>P.L. 2004, c.25</td>
<td>Increases the monetary penalties for violations of the Conflicts of Interest Law</td>
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<tr>
<td>P.L. 2004, c.26</td>
<td>Requires Gubernatorial candidates to disclose whether they have been convicted of a criminal offense</td>
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<tr>
<td>P.L. 2004, c.27</td>
<td>Expands the definition of lobbyist and legislative agent to include those who influence government processes</td>
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<td>P.L. 2004, c.28</td>
<td>Changes the minimum amount of a campaign contribution to $300 to trigger ELEC reporting requirements and requires reporting of all cash contributions</td>
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<td>P.L. 2004, c.29</td>
<td>Requires professional campaign fundraisers to register and report to ELEC</td>
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<td>P.L. 2004, c.30</td>
<td>Adds recorded telephone call messages to definition of campaign communications that are required to contain an identification of their funding source</td>
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<td>P.L. 2004, c.31</td>
<td>Requires ELEC to review its Internet site and recommend changes</td>
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<td>P.L. 2004, c.32</td>
<td>Increases the monetary penalties for violations of the campaign contribution and expenditure limits, reporting requirements, and remuneration restrictions</td>
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<td>P.L. 2004, c.33</td>
<td>Requires election committees to report with ELEC within 48 hours of making an expenditure in excess of $800 in the period close to an election</td>
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<td>P.L. 2004, c.34</td>
<td>Bars legislators, the Governor, and department heads from lobbying activities for one year after leaving office</td>
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<td>P.L. 2004, c.35</td>
<td>Prohibits the employment of relatives of certain Executive Branch members and members of independent authorities and interstate agencies</td>
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<td>P.L. 2004, c.36</td>
<td>Requires ELEC to conduct random audits of records kept by legislative agents</td>
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<td>P.L. 2004, c.37</td>
<td>Directs ELEC to collect $100 annual fee from legislative agents and dedicates moneys annually to ELEC</td>
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<td>P.L. 2004, c.38</td>
<td>Prohibits legislative agents from accepting contingency fees to influence legislation or regulation</td>
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<td>P.L. 2004, c.123</td>
<td>Appropriates $2 million to ELEC and imposes one-time $50 assessment on legislative agents for ELEC’s Internet upgrade</td>
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<td>P.L. 2004, c.121</td>
<td>Establishes the New Jersey Fair and Clean Elections Pilot Project for the public financing of candidates seeking election in the General Assembly</td>
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Governmental Affairs