

CHAPTER 19

AN ACT concerning certain campaign contributions by certain business entities and county political party committees, supplementing P.L.1973, c.83 (C.19:44A-1 et seq.), and amending P.L.1973, c.83.

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

C.19:44A-20.2 Contributors to State committee of Governor's political party; eligibility for State contracts.

1. Notwithstanding the provisions of any other law to the contrary:

a State agency in the Executive Branch shall not enter into a contract having an anticipated value in excess of \$17,500, as determined in advance and certified in writing by the State agency, with a business entity, except a contract that is awarded pursuant to a fair and open process, if, during the preceding one-year period, that business entity has made a contribution, reportable by the recipient under P.L.1973, c.83 (C.19:44A-1 et seq.), to the State committee of the political party of which the Governor, serving when the contract is awarded, is a member or to any candidate committee of that Governor; and

a business entity that has entered into a contract having an anticipated value in excess of \$17,500 with a State agency in the Executive Branch, except a contract that is awarded pursuant to a fair and open process, shall not make a contribution, reportable by the recipient under P.L.1973, c.83 (C.19:44A-1 et seq.), to the State committee of the political party of which the Governor, serving when the contract is awarded, is a member or to any candidate committee of that Governor, during the term of that contract.

No such committee shall accept such a contribution from a business entity during the term of its contract with a State agency in the Executive Branch.

C.19:44A-20.3 Contributors to State committee of presiding officer's political party; eligibility for contracts in Legislative branch.

2. Notwithstanding the provisions of any other law to the contrary:

a State agency in the Legislative Branch shall not enter into a contract having an anticipated value in excess of \$17,500, as determined in advance and certified in writing by the State agency, with a business entity, that requires approval by a presiding officer of either or both houses of the Legislature, except a contract that is awarded pursuant to a fair and open process, if, during the preceding one-year period, that business entity has made a contribution, reportable by the recipient under P.L.1973, c.83 (C.19:44A-1 et seq.), to the State committee of the political party of which that presiding officer, serving when the contract is awarded, is a member or to a legislative leadership committee or any candidate committee established by that presiding officer; and

a business entity that has entered into a contract having an anticipated value in excess of \$17,500 with a State agency in the Legislative Branch, that requires approval by a presiding officer of either or both houses of the Legislature, except a contract that is awarded pursuant to a fair and open process, shall not make a contribution, reportable by the recipient under P.L.1973, c.83 (C.19:44A-1 et seq.), to the State committee of the political party of which that presiding officer is a member or to a legislative leadership committee or any candidate committee established by that presiding officer, during the term of that contract.

No such committee shall accept such a contribution from a business entity during the term of its contract with a State agency in the Legislative Branch.

C.19:44A-20.4 Contributors to county committee of political party of elective officers; eligibility for county contracts.

3. Notwithstanding the provisions of any other law to the contrary:

a county, or any agency or instrumentality thereof, shall not enter into a contract having an

anticipated value in excess of \$17,500, as determined in advance and certified in writing by the county, agency or instrumentality, with a business entity, except a contract that is awarded pursuant to a fair and open process, if, during the preceding one-year period, that business entity has made a contribution that is reportable by the recipient under P.L.1973, c.83 (C.19:44A-1 et seq.), to any county committee of a political party in that county if a member of that political party is serving in an elective public office of that county when the contract is awarded or to any candidate committee of any person serving in an elective public office of that county when the contract is awarded; and

a business entity that has entered into a contract having an anticipated value in excess of \$17,500 with a county, or any agency or instrumentality thereof, except a contract that is awarded pursuant to a fair and open process, shall not make such a contribution, reportable by the recipient under P.L.1973, c.83 (C.19:44A-1 et seq.), to any county committee of a political party in that county if a member of that political party is serving in an elective public office of that county when the contract is awarded or to any candidate committee of any person serving in an elective public office of that county when the contract is awarded, during the term of that contract.

No such committee shall accept such a contribution from a business entity during the term of its contract with the county.

C.19:44A-20.5 Contributors to municipal committee of political party of elective officers; eligibility for municipal contracts.

4. Notwithstanding the provisions of any other law to the contrary:

a municipality, or any agency or instrumentality thereof, shall not enter into a contract having an anticipated value in excess of \$17,500, as determined in advance and certified in writing by the municipality, agency or instrumentality, with a business entity, except a contract that is awarded pursuant to a fair and open process, if, during the preceding one-year period, that business entity has made a contribution that is reportable by the recipient under P.L.1973, c.83 (C.19:44A-1 et seq.), to any municipal committee of a political party in that municipality if a member of that political party is serving in an elective public office of that municipality when the contract is awarded or to any candidate committee of any person serving in an elective public office of that municipality when the contract is awarded; and

a business entity that has entered into a contract having an anticipated value in excess of \$17,500 with a municipality, or any agency or instrumentality thereof, except a contract that is awarded pursuant to a fair and open process, shall not make such a contribution, reportable by the recipient under P.L.1973, c.83 (C.19:44A-1 et seq.), to any municipal committee of a political party in that municipality if a member of that political party is serving in an elective public office of that municipality when the contract is awarded or to any candidate committee of any person serving in an elective public office of that municipality when the contract is awarded, during the term of that contract.

No such committee shall accept such a contribution from a business entity during the term of its contract with the municipality.

C.19:44A-20.6 Certain contributions deemed as contributions by business entity.

5. When a business entity is a natural person, a contribution by that person's spouse or child, residing therewith, shall be deemed to be a contribution by the business entity. When a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein shall be deemed to be a contribution by the business entity.

C.19:44A-20.7 Definitions relative to certain campaign contributions.

6. As used in sections 1 through 12 of this act:

"business entity" means 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;

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

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

"State agency in the Executive Branch" means any of the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department and any independent State authority, board, commission, instrumentality or agency.

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

C.19:44A-20.8 Business entity to provide written certification, ELEC reports.

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

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

C.19:44A-20.9 Repayment of contribution.

8. If a business entity makes a contribution that would cause it to be ineligible to receive a public contract or, in the case of a contribution made during the term of a public contract, that would constitute a violation of this act, the business entity may request, in writing, within 60 days of the date on which the contribution was made, that the recipient thereof repay the contribution and, if repayment is received within those 60 days, the business entity would again be eligible to receive a contract or would no longer be in violation, as appropriate.

C.19:44A-20.10 Violations by business entities, penalties.

9. A business entity which is determined by the Election Law Enforcement Commission to have willfully and intentionally made a contribution or failed to reveal a contribution in violation of this act may be liable to a penalty of up to the value of its contract with the public entity and may be debarred by the State Treasurer from contracting with any public entity for up to five years.

C.19:44A-20.11 Penalty for acceptance of unlawful contribution.

10. Any person who is determined by the Election Law Enforcement Commission to have willfully and intentionally accepted a contribution in violation of the provisions of sections 1 through 4 of this act shall be liable to a penalty for each such violation equal to the penalties set

forth in subsection e. of section 22 of P.L.1973, c.83 (C.19:44A-22).

C.19:44A-20.12 Construction of act relative to public exigency.

11. Nothing contained in this act shall be construed as prohibiting the awarding of a contract when the public exigency requires the immediate delivery of goods or performance of emergency services as determined by the State Treasurer.

12. Nothing contained in this act shall be construed as affecting the eligibility of any business entity to perform a public contract because that entity made a contribution to any committee during the one-year period immediately preceding the effective date of this act.

C.19:44A-11.3a Limitations on receipt of contributions, certain, between county committees; violations, penalties.

13. In addition to any other applicable limit prescribed by law, between January 1 and June 30 of each year, a county committee of a political party shall not make a contribution to any other county committee of a political party, nor shall any such county committee accept a contribution from any other county committee during that time period. In addition to any other penalty provided by law, a county committee that willfully and intentionally violates this section, or willfully and intentionally makes a contribution to any candidate or committee with the intent, condition, understanding or belief that the candidate or committee has made or shall make a contribution to another county committee, shall be liable to a penalty equal to four times the amount of the contribution.

14. Section 22 of P.L.1973, c.83 (C.19:44A-22) is amended to read as follows:

C.19:44A-22 Violations; civil penalties; forfeiture.

22. a. (1) Except as provided in subsection e. or f., any person, including any candidate, treasurer, candidate committee or joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee, charged with the responsibility under the terms of this act for the preparation, certification, filing or retention of any reports, records, notices or other documents, who fails, neglects or omits to prepare, certify, file or retain any such report, record, notice or document at the time or during the time period, as the case may be, and in the manner prescribed by law, or who omits or incorrectly states or certifies any of the information required by law to be included in such report, record, notice or document, any person who proposes to undertake or undertakes a public solicitation, testimonial affair or other activity relating to contributions or expenditures in any way regulated by the provisions of this act who fails to comply with those regulatory provisions, and any other person who in any way violates any of the provisions of this act shall, in addition to any other penalty provided by law, be liable to a penalty of not more than \$3,000.00 for the first offense and not more than \$6,000.00 for the second and each subsequent offense.

(2) No person shall willfully and intentionally agree with another person to make a contribution to a candidate, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee with the intent, or upon the condition, understanding or belief, that the recipient candidate or committee shall make or have made a contribution to another such candidate or committee, but this paragraph shall not be construed to prohibit a county or municipal committee of a political party from making a contribution or contributions to any candidate, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee. A finding of a violation of this paragraph shall be made only upon clear and convincing evidence. A person who violates the

provisions of this paragraph shall be liable to a penalty equal to our times the amount of the contribution which that person agreed to make to the recipient candidate or committee.

b. Upon receiving evidence of any violation of this section, the Election Law Enforcement Commission shall have power to hold, or to cause to be held under the provisions of subsection d. of this section, hearings upon such violation and, upon finding any person to have committed such a violation, to assess such penalty, within the limits prescribed in subsection a. of this section, as it deems proper under the circumstances, which penalty shall be paid forthwith into the State Treasury for the general purposes of the State.

c. In assessing any penalty under this section, the Election Law Enforcement Commission may provide for the remission of all or any part of such penalty conditioned upon the prompt correction of any failure, neglect, error or omission constituting the violation for which said penalty was assessed.

d. The commission may designate a hearing officer to hear complaints of violations of this act. Such hearing officer shall take testimony, compile a record and make factual findings, and shall submit the same to the commission, which shall have power to assess penalties within the limits and under the conditions prescribed in subsections b. and c. of this section. The commission shall review the record and findings of the hearing officer, but it may also seek such additional testimony as it deems necessary. The commission's determination shall be by majority vote of the entire authorized membership thereof.

e. Any person who willfully and intentionally makes or accepts any contribution in violation of section 4 of P.L.1974, c.26 (C.19:44A-29) or section 18, 19 or 20 of P.L.1993, c.65 (C.19:44A-11.3, C.19:44A-11.4 or C.19:44A-11.5), shall be liable to a penalty of:

(1) Not more than \$5,000.00 if the cumulative total amount of those contributions is less than or equal to \$5,000.00;

(2) Not more than \$75,000.00 if the cumulative total amount of those contributions was more than \$5,000.00 but less than \$75,000; and

(3) n Not more than \$100,000.00 if the cumulative total amount of those contributions is equal to or more than \$75,000.00.

f. In addition to any penalty imposed pursuant to subsection e. of this section, a person holding any elective public office shall forfeit that public office if the Election Law Enforcement Commission determines that the cumulative total amount of the illegal contributions was more than \$50,000.00 and that the violation had a significant impact on the outcome of the election.

g. Any penalty prescribed in this section shall be enforced in a summary proceeding under the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

15. This act shall take effect on January 1, 2006.

Approved June 16, 2004.