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**Joan Claybrook, President**

January 26, 2004

The Honorable Albio Sires  
Speaker of the Assembly  
New Jersey Legislature  
Statehouse  
Trenton, New Jersey 08625  
FAX: 609-292-2386

Dear Assembly Speaker Sires:

The New Jersey legislature is to be applauded for attempting to address a difficult and pervasive problem threatening the integrity of government contracting decisions: the “pay-to-play” culture in awarding government contracts.

I understand that in the course of legislative discussions on the pay-to-play bill, there have been some questions regarding how the New Jersey proposal fares to pay-to-play regulations in other jurisdictions. In brief, the New Jersey proposal is based on the experiences of other jurisdictions, incorporating many of the more successful regulations while avoiding some of their weaknesses. New Jersey’s proposal is an effective pay-to-play regulation, appropriate for the problems of the state, yet not overly burdensome.

In the context of government contracting, pay-to-play is the all-too-common practice of a business entity making campaign contributions to a public official with the hope of gaining a lucrative government contract.

Rarely does pay-to-play constitute outright bribery for a government contract. Rather, pay-to-play usually involves a business entity buying access for consideration of a government contract. Nevertheless, the appearance of corruption – and the public cynicism – that arises when the timing of campaign contributions and the issuance of government contracts closely coincides warrants some prudent safeguards in government contracting procedures.

Assembly Bill 3482 offers such reasonable safeguards. The measure provides an effective yet narrowly-tailored set of procedures for awarding government contracts that will help ensure integrity in the process while not imposing undue burdens on legitimate business entities.

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## **A. Pay-to-Play Has Become a Serious Problem**

Though the apparent exchange of campaign contributions for government contracts has long tarnished the image of governments, pay-to-play has become a more prevalent problem in recent years as the stakes of government contracts have steadily increased. More than ever before, news accounts abound of allegations of improper government contracting procedures all across the nation.

Just a few of the recent scandals include:

- An unprecedented two governors have been accused of corruption in government contracting in one week. Gov. George Ryan of Illinois, who once was rumored to be in the running for a Nobel Peace Prize, has been indicted for issuing state contracts in exchange for financial contributions and gifts over a period of 10 years. Gov. John Rowland of Connecticut is currently under federal and state corruption probes for similar pay-to-play practices in issuing that state's government contracts. All Connecticut state contracts in excess of \$100,000 are now under review, and Rowland may well face impeachment hearings.
- A few years ago, the Pennsylvania Pension Board bought a \$100 million bond from American International Group and awarded the firm a \$1 million "placement fee." Six days later, the wife of one of the firm's executives gave \$10,000 to Gov. Rendell's campaign fund, which is the subject of a corruption investigation. In January 2004, the Pennsylvania Turnpike Commission awarded \$1.5 million in government contracts to Investment Management Advisory Group. The firm gave huge campaign donations to commissioners and is also now under investigation.
- Members of the Los Angeles Airport Commission have been accused by the city auditor of awarding millions of dollars in government contracts to business interests which are major contributors to favored city officials. Los Angeles Mayor James Hahn has suspended all new contracts pending an investigation by the District Attorney.
- Hawaii's Campaign Spending Commission has exposed, bit by bit, a scandal in which respected architects and engineers illegally made campaign contributions in the names of their employees, wives and children in order to win government contracts. The results of the investigation so far have resulted in \$1 million in fines, jail time for a prominent lawyer, resignation of a Honolulu police commissioner, and the election of Hawaii's first Republican governor in 40 years.

Clearly, New Jersey is not alone in the field of pay-to-play allegations. Nor is New Jersey immune to the damages and political consequences wrought by such scandals.

The infamous Parson's debacle a few years ago brought pay-to-play in New Jersey to the front page, and the issue has not gone away. The \$400 million government contract awarded to Parsons Infrastructure Technology Group, a major campaign contributor to targeted state officials of the then-Republican administration, amounted to nothing less than an indictment against New Jersey's government contracting process. In a scathing

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report, the State Commission of Investigation charged that the primary duty of government to safeguard citizen interests in government contracting was “set aside in favor of a deeply flawed initiative that cost too much and produced too little in the way of satisfactory results.” Despite pledges to the contrary, Parsons has retained and extended its contract under the McGreevy Administration (and the firm made a new \$25,000 campaign contribution to the state Democratic party).

And, unsurprisingly, the pay-to-play scandals in New Jersey continue. Allegations of impropriety in new government contracts abound, fueled by the fact that about 20% of campaign contributions received by the state Democratic party over the last election cycle came from government contractors.

## **B. Reform of Government Contracting Procedures**

Several federal, state and local jurisdictions have attempted to address the problems of pay-to-play in government contracting procedures. The federal government, the Securities and Exchange Commission (SEC), the American Bar Association (ABA), the states of Kentucky, Ohio, South Carolina and West Virginia, and numerous local jurisdictions across the country, have imposed varying regulatory regimes to curtail the perceived corruption between campaign contributions and government contracts.

Perhaps the most effective of these regimes governs municipal bond investors under the Securities and Exchange Commission. The SEC, under the leadership of former Chair Arthur Leavitt, developed Rule G-37 which prohibits brokers, dealers, municipal securities dealers, and their PACs from making campaign contributions in excess of \$250 to issuer officials for two years prior and through termination of the securities contract. In addition, the rule requires regular disclosure of campaign contributions from investment business entities to allow public scrutiny.

Under the supervision of Chair Leavitt, pay-to-play in the municipal bond market largely became a thing of the past. Under the new SEC leadership, however, the practice of pay-to-play is slowly making a come-back as some brokers and investors attempt to circumvent the regulation by making substantial campaign contributions to state and local party committees (see, for example, *The Bond Buyer*, December 22, 2003).

This is a loophole that New Jersey’s legislative proposal would keep closed.

Assembly Bill 3482, and the local ordinances based on the bill, draws from the experiences of pay-to-play regulations in other jurisdictions. The bill limits campaign contributions from potential contractors, their decisionmaking officers and their spouses and dependents, to \$250 to officeholders ultimately responsible for awarding the contract for a year prior to negotiations through termination of the contract. Additionally, the bill closes the party conduit loophole by including state and county party committees in an aggregate contribution limit for the business entity seeking a contract to no more than \$5,000 per year.

At the same time, New Jersey's pay-to-play proposal is not draconian. The measure recognizes the rights of individuals to political participation by placing reasonable limits on campaign contributions and targets those limits to those officeholders responsible for the contracts. Just as importantly, the measure provides business entities with the means to "cure" any excess contributions that could otherwise disqualify them from government contracts.

Assembly Bill 3482 is a narrow and appropriate response to a very troublesome and growing problem. By taking the simple step of divorcing large campaign contributions from government contracts, the pay-to-play bill will help ensure public confidence in the integrity of New Jersey's government contracting process. The measure also provides useful guidance to public officials in how to avoid the political minefield of pay-to-play that can endanger their careers. The nexus between large campaign contributions and government contracts, rightfully or wrongly, casts a pall over the motivations of public officials involved in the contracting process. The image of scandal alone is enough to undermine the career of an otherwise-honest official.

Respectfully Submitted,

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Public Citizen