S T A T E O F N E W Y O R K

4570

2011-2012 Regular Sessions

I N S E N A T E

April 12, 2011

Introduced by Sen. BALL -- (at request of the Division of Homeland Security and Emergency Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the state finance law, in relation to background checks in connection with certain contracts; and to amend the executive law, in relation to background checks of current and transferred employees of the division of homeland security and emergency services

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 10 of section 163 of the state finance law is amended by adding a new paragraph g to read as follows:

G. IN CONTRACTS FOR SERVICES RELATED TO CRITICAL INFRASTRUCTURE, A STATE AGENCY, DEPARTMENT, BOARD, BUREAU, DIVISION, COMMISSION, COMMITTEE, PUBLIC AUTHORITY, PUBLIC CORPORATION, COUNCIL, OFFICE OR OTHER GOVERNMENTAL AGENCY MAY INCLUDE IN CONTRACT DOCUMENTS, A REQUIREMENT THAT PERSONS EMPLOYED BY THE CONTRACTOR TO PERFORM WORK PURSUANT TO THE CONTRACT SHALL BE REQUIRED TO UNDERGO A STATE AND NATIONAL CRIMINAL HISTORY RECORD CHECK. WHEN REQUIRED, THE FINGERPRINTS OF SUCH AN EMPLOYEE SHALL BE SUBMITTED TO THE DIVISION OF CRIMINAL JUSTICE SERVICES AND THE DIVISION OF CRIMINAL JUSTICE SERVICES IS AUTHORIZED TO CHARGE A FEE IN CONNECTION WITH SUCH CRIMINAL HISTORY RECORD CHECK AND SUBMIT SUCH FINGERPRINTS TO THE FEDERAL BUREAU OF INVESTIGATION, IN ACCORDANCE WITH APPLICABLE RULES OR INFORMATION, IF ANY, CONCERNING SUCH EMPLOYEE, AND FOR A NATIONAL CRIMINAL HISTORY RECORD CHECK. THE CONTRACTOR SHALL BE RESPONSIBLE FOR INFORMING ITS EMPLOYEES THAT SUCH CRIMINAL HISTORY RECORD CHECKS SHALL BE CONDUCTED AND FOR OBTAINING THE FINGERPRINTS FOR TRANSMITTAL TO THE DIVISION OF CRIMINAL JUSTICE SERVICES IN THE FORM AND MANNER PRESCRIBED BY THE DIVISION. IN DETERMINING WHETHER TO INCLUDE SUCH REQUIREMENT IN CONTRACT DOCUMENTS, THE COMMISSIONER OR STATE AGENCY, DEPARTMENT, BOARD, BUREAU, DIVISION, COMMISSION, COMMITTEE, PUBLIC AUTHORITY, PUBLIC CORPORATION, COUNCIL, OFFICE OR OTHER GOVERNMENTAL

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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AGENCY SHALL CONSIDER, BUT NOT BE LIMITED TO CONSIDERING, WHETHER THE CONTRACTOR'S EMPLOYEES WILL ENTER, REMAIN OR OTHERWISE HAVE ACCESS TO CRITICAL INFRASTRUCTURE AS THAT TERM IS DEFINED IN SUBDIVISION FIVE OF SECTION EIGHTY-SIX OF THE PUBLIC OFFICERS LAW IN THE COURSE OF PERFORMING THE CONTRACT, OR HAVE ACCESS TO SENSITIVE SECURITY INFORMATION, AND WHETHER THE WORK IS OF A TYPE THAT, IF PERFORMED BY EMPLOYEES OF THE STATE, APPLICANTS FOR EMPLOYMENT WOULD BE REQUIRED BY THE STATE TO SUBMIT TO A CRIMINAL HISTORY RECORD CHECK PURSUANT TO SECTION FIFTY OF THE CIVIL SERVICE LAW OR ANY OTHER APPLICABLE LAW. A DETERMINATION ON WHAT CONSTITUTES CRITICAL INFRASTRUCTURE IN THE STATE SHALL BE MADE BY THE CONTRACTING STATE ENTITY IN CONSULTATION WITH THE OFFICE OF COUNTER TERRORISM. DETERMINATIONS ON THE SUITABILITY OF WHETHER A CONTRACT EMPLOYEE SHALL BE PERMITTED TO ENTER, REMAIN OR OTHERWISE HAVE ACCESS TO CRITICAL INFRASTRUCTURE OR SENSITIVE SECURITY INFORMATION IN THE COURSE OF PERFORMING THE CONTRACT SHALL BE MADE BY THE CONTRACTING STATE AGENCY, DEPARTMENT, BOARD, BUREAU, DIVISION, COMMISSION, COMMITTEE, PUBLIC AUTHORITY, PUBLIC CORPORATION, COUNCIL, OFFICE OR THE GOVERNMENTAL AGENCY IN ACCORDANCE WITH ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW.

S 2. Subdivision 2 of section 709 of the executive law is amended by adding a new paragraph (v) to read as follows:

(V) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, INCLUDING SUBDIVISION FOUR OF SECTION FIFTY OF THE CIVIL SERVICE LAW, REQUIRE CURRENT AND TRANSFERRED EMPLOYEES TO UNDERGO A STATE AND NATIONAL CRIMINAL HISTORY RECORD CHECK FOR PURPOSES OF CONDUCTING BACKGROUND CHECKS OF SUCH INDIVIDUALS. THE FINGERPRINTS OF SUCH INDIVIDUALS SHALL BE SUBMITTED TO THE DIVISION OF CRIMINAL JUSTICE SERVICES AND THE DIVISION OF CRIMINAL JUSTICE SERVICES IS AUTHORIZED TO CHARGE A FEE IN CONNECTION WITH SUCH CRIMINAL HISTORY RECORD CHECKS AND SUBMIT SUCH FINGERPRINTS TO THE FEDERAL BUREAU OF INVESTIGATION, IN ACCORDANCE WITH APPLICABLE RULES OR REGULATIONS PROMULGATED BY SUCH ENTITIES, IN ORDER TO OBTAIN CRIMINAL HISTORY RECORD INFORMATION CONCERNING SUCH INDIVIDUALS. THE DIVISION SHALL CONDUCT BACKGROUND INVESTIGATIONS OF ALL SUCH INDIVIDUALS. DETERMINATIONS ON THE EFFECT OF ANY CRIMINAL CONVICTIONS SHALL BE MADE IN ACCORDANCE WITH ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW.

S 3. The director of the office of counter terrorism in consultation with the commissioner of the division of criminal justice services shall promulgate rules and regulations necessary to implement paragraph g of subdivision 10 of section 163 of the state finance law.

S 4. This act shall take effect immediately; provided, however, that the amendments to subdivision 10 of section 163 of the state finance law made by section one of this act shall not affect the repeal of such section and shall be deemed repealed therewith.