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

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2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. ENGLEBRIGHT, P. RIVERA -- read once and referred to the Committee on Ways and Means

AN ACT to amend the state finance law, in relation to the regulation of public-private partnerships

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

Section 1. Short title. This act shall be known and may be cited as the "public-private partnership disclosure act".

S 2. Legislative findings and purpose. The legislature hereby finds that agreements between state entities and commercial entities known as "public-private partnerships" whereby private monies are made available for public purposes can be beneficial and in the public interest. However, the legislature further finds that such partnerships generating and expending funds outside of the normal state budgetary process may distort properly enacted public priorities. In addition, the legislature finds that such partnerships if not created with full disclosure and full opportunity for public comment have the potential for creating conflicts of interest. Therefore, it is the purpose of the legislature to provide for the establishment of standards and requirements for full disclosure and public comment for public-private partnerships.

S 3. The state finance law is amended by adding a new section 136-d to read as follows:

S 136-D. PUBLIC-PRIVATE PARTNERSHIPS. 1. AS USED IN THIS SECTION, THE TERM "PUBLIC-PRIVATE PARTNERSHIP" OR "PARTNERSHIP" SHALL MEAN AN AGREEMENT BETWEEN A STATE AGENCY AND A CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY OR OTHER PRIVATE COMMERCIAL ENTITY UNDER WHICH PRIVATE MONIES IN AN AMOUNT OF MORE THAN FIVE THOUSAND DOLLARS ARE MADE AVAILABLE FOR A PUBLIC CAPITAL PROJECT, A PUBLIC PROGRAM OR TO UNDERWRITE THE COST OF PUBLIC PERSONNEL IN RETURN FOR CONSIDERATION INCLUDING BUT NOT LIMITED TO NOTICE OR DISPLAY OF THE NAME OR LOGO OF THE PROVIDER OF THE PRIVATE MONIES.

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

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2. NO STATE AGENCY SHALL ENTER INTO A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT UNLESS IT HAS PROMULGATED RULES AND REGULATIONS ESTABLISHING STANDARDS AND PROCEDURES FOR SUCH PARTNERSHIPS. SUCH RULES AND REGULATIONS SHALL INCLUDE BUT NEED NOT BE LIMITED TO PROVISIONS FOR COST-BENEFIT ANALYSIS OF PARTNERSHIP PROPOSALS, REVIEW OF THE IMPACT OF PARTNERSHIP ARRANGEMENTS ON ESTABLISHED POLICIES AND PRIORITIES OF THE AGENCY, ADVERTISEMENT AND SOLICITATION OF BIDS FOR COMPETING OR OTHER PRIVATE ENTITIES TO DETERMINE THE MOST ADVANTAGEOUS PARTNERSHIP ARRANGEMENT, THE PUBLIC DISCLOSURE OF CAMPAIGN CONTRIBUTIONS TO CANDIDATES FOR STATE ELECTED OFFICES IN THE PRECEDING FOUR YEARS BY THE PRIVATE PARTNERSHIP ENTITY INCLUDING DIRECTORS AND OFFICERS THEREOF, PUBLIC NOTICE NOT LESS THAN FORTY-FIVE DAYS BEFORE ENTERING INTO A PARTNERSHIP AGREEMENT AND REASONABLE OPPORTUNITY FOR PUBLIC COMMENT. REQUIREMENTS AND PROCEDURES ESTABLISHED IN SUCH RULES AND REGULATIONS SHALL BE IN ADDITION TO EXISTING REQUIREMENTS IN LAW.

3. IN ANY YEAR THAT A STATE AGENCY ENTERS INTO ONE OR MORE PUBLIC-PRIVATE PARTNERSHIPS, IT SHALL PREPARE AND SUBMIT TO THE LEGISLATURE AND THE GOVERNOR A REPORT FULLY DESCRIBING THE PARTNERSHIP ARRANGEMENT, IDENTIFYING THE PUBLIC BENEFIT THEREFROM AND ANY IMPACT IT MAY HAVE HAD ON THE PRIORITIES AND ACTIVITIES OF THE REPORTING AGENCY. SUCH REPORT SHALL BE SUBMITTED ON OR BEFORE MARCH FIRST FOR THE PRECEDING CALENDAR YEAR.

S 4. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however that the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such date.