

4296--B

Cal. No. 285

2009-2010 Regular Sessions

I N A S S E M B L Y

February 3, 2009

Introduced by M. of A. BRODSKY -- read once and referred to the Committee on Corporations, Authorities and Commissions -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading -- again amended on third reading, ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the public authorities law, in relation to confidentiality agreements

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

- 1 Section 1. Legislative findings. The legislature finds that a free
2 society is maintained when government is responsive and responsible to
3 the public, and when the public is aware of governmental actions. The
4 more open a government is with its citizenry, the greater the under-
5 standing and participation of the public in government. The legislature
6 therefore declares that government is the public's business and absent
7 statutory limitations on the use of confidentiality agreements by state
8 and local authorities, the people's right to know the process of govern-
9 mental decision-making is impeded.
- 10 S 2. The public authorities law is amended by adding a new section
11 2852 to read as follows:
- 12 S 2852. CONFIDENTIALITY AGREEMENTS. 1. DEFINITIONS. FOR THE PURPOSES
13 OF THIS SECTION:
- 14 A. "CONFIDENTIALITY AGREEMENT" SHALL MEAN AN AGREEMENT ENTERED INTO
15 BETWEEN A STATE AUTHORITY OR A LOCAL AUTHORITY WITH A FORMER OR CURRENT
16 EMPLOYEE, OFFICER OR MEMBER OF THE GOVERNING BOARD OF SUCH AUTHORITY
17 THAT PREVENTS DISCLOSURE OF ANY RECORDS OR INFORMATION, AS DEFINED IN
18 SUBDIVISION FOUR OF SECTION EIGHTY-SIX OF THE PUBLIC OFFICERS LAW,
19 DURING OR AFTER THEIR EMPLOYMENT OR SERVICE.
- 20 B. "LOCAL AUTHORITY" SHALL MEAN A LOCAL AUTHORITY AS DEFINED IN
21 SECTION TWO OF THIS CHAPTER.

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

LBD06731-05-9

1 C. "STATE AUTHORITY" SHALL MEAN A STATE AUTHORITY AS DEFINED IN
2 SECTION TWO OF THIS CHAPTER.

3 2. NO STATE AUTHORITY OR LOCAL AUTHORITY SHALL ENTER INTO A CONFIDEN-
4 TIALITY AGREEMENT, UNLESS:

5 A. IT COVERS ONLY RECORDS OR INFORMATION THAT ARE EXEMPT FROM DISCLO-
6 SURE PURSUANT TO SUBDIVISIONS TWO AND FOUR OF SECTION EIGHTY-SEVEN OF
7 THE PUBLIC OFFICERS LAW AND ANY RULES PROMULGATED AND PUBLISHED THERETO;
8 OR

9 B. THE AGREEMENT COVERS BOTH RECORDS OR INFORMATION EXEMPT FROM
10 DISCLOSURE, AND THOSE SUBJECT TO DISCLOSURE UNDER SECTION EIGHTY-SEVEN
11 OF THE PUBLIC OFFICERS LAW, BUT ONLY IF:

12 (I) THE AGREEMENT DOES NOT PROHIBIT ANY DISCLOSURE OF RECORDS OR
13 INFORMATION RELATED TO COMPENSATION OR BENEFITS GIVEN TO AN EMPLOYEE,
14 OFFICER OR MEMBER OF THE GOVERNING BOARD OR OF ILLEGAL CONDUCT OR WRONG-
15 DOING BY THE AUTHORITY;

16 (II) THE AUTHORITY IS UNABLE TO SPECIFICALLY DETERMINE AT THE TIME THE
17 CONFIDENTIALITY AGREEMENT IS ENTERED INTO WHICH RECORDS OR INFORMATION
18 ARE EXEMPT FROM DISCLOSURE IN ACCORDANCE WITH SUBDIVISION TWO OF SECTION
19 EIGHTY-SEVEN OF THE PUBLIC OFFICERS LAW;

20 (III) THE AUTHORITY ESTABLISHES A PROCESS BY WHICH A CURRENT OR FORMER
21 EMPLOYEE, OFFICER OR MEMBER OF THE GOVERNING BOARD COVERED BY THE CONFI-
22 DENTIALITY AGREEMENT MAY OBTAIN A RULING FROM THE AUTHORITY AS TO WHETH-
23 ER HE OR SHE MAY DISCLOSE ANY RECORDS OR INFORMATION COVERED BY SUCH
24 AGREEMENT IN ACCORDANCE WITH THE PROCEDURES ESTABLISHED UNDER SUBDIVI-
25 SION FOUR OF SECTION EIGHTY-NINE OF THE PUBLIC OFFICERS LAW, INCLUDING
26 ANY RIGHT TO CHALLENGE THE AUTHORITY'S DECISION PROVIDED BY THAT
27 SECTION; AND

28 (IV) THE AUTHORITY NOTIFIES THE CURRENT OR FORMER EMPLOYEE, OFFICER OR
29 MEMBER OF THE GOVERNING BOARD IN THE AGREEMENT OF HIS OR HER RIGHT TO
30 SEEK SUCH A RULING.

31 3. NOTHING IN THIS SECTION SHALL REQUIRE DISCLOSURE OF INFORMATION
32 OTHERWISE PROTECTED FROM DISCLOSURE BY LAW.

33 4. ANY PROVISION IN ANY CONTRACT OR OTHER AGREEMENT ENTERED INTO IN
34 VIOLATION OF THIS SECTION SHALL HAVE NO FORCE AND EFFECT.

35 S 3. This act shall take effect immediately.