

1325

2009-2010 Regular Sessions

I N S E N A T E

January 28, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Elections

AN ACT to amend the election law, in relation to campaign finance enforcement

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

1 Section 1. Subdivisions 4 and 5 of section 3-104 of the election law,
2 as redesignated by chapter 9 of the laws of 1978, are renumbered subdivi-
3 sions 5 and 6 and a new subdivision 4 is added to read as follows:
4 4. IF, AFTER AN INVESTIGATION, THE STATE BOARD OF ELECTIONS FINDS
5 REASONABLE CAUSE TO BELIEVE A VIOLATION OF ARTICLE FOURTEEN OF THIS
6 CHAPTER HAS TAKEN PLACE, IT MAY INSTITUTE AN ADJUDICATORY PROCEEDING IN
7 ACCORDANCE WITH SECTION 3-109 OF THIS TITLE FOR THE PURPOSE OF DETERMIN-
8 ING WHETHER A VIOLATION HAS TAKEN PLACE AND ASSESSING A CIVIL PENALTY
9 PURSUANT TO SECTION 14-126 OF THIS CHAPTER.
10 S 2. Subdivision 5 of section 3-104 of the election law, as renumbered
11 by section one of this act, is amended to read as follows:
12 5. The state or other board of elections OR VILLAGE CLERK IN A
13 VILLAGE ELECTION WHERE THE CLERK IS THE FILING OFFICER may, where appro-
14 priate, commence a judicial proceeding [with respect to the filing or
15 failure to file any statement of receipts, expenditures, or contrib-
16 utions, under the provisions] SEEKING CIVIL PENALTIES PURSUANT TO SUBDI-
17 VISION ONE OF SECTION 14-126 of this chapter, and the state board of
18 elections may direct the appropriate other board of elections OR VILLAGE
19 CLERK IN A VILLAGE ELECTION WHERE THE CLERK IS THE FILING OFFICER to
20 commence such proceeding.
21 S 3. The election law is amended by adding a new section 3-109 to read
22 as follows:
23 S 3-109. ADJUDICATORY PROCEEDING. 1. EXCEPT AS OTHERWISE PROVIDED IN
24 THIS SECTION, AN ADJUDICATORY PROCEEDING TO DETERMINE WHETHER A
25 VIOLATION OF ARTICLE FOURTEEN OF THIS CHAPTER HAS TAKEN PLACE AND TO

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

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1 ASSESS A CIVIL PENALTY PURSUANT TO SECTION 14-126 OF THIS CHAPTER SHALL
2 BE CONDUCTED IN ACCORDANCE WITH ARTICLE THREE OF THE STATE ADMINISTRA-
3 TIVE PROCEDURE ACT.

4 2. SUCH PROCEEDING SHALL BE CONDUCTED BY A HEARING OFFICER SELECTED ON
5 A RANDOM BASIS BY THE STATE BOARD OF ELECTIONS FROM AN ACTIVE LIST OF AT
6 LEAST SIX ATTORNEYS WHO HAVE APPLIED FOR AND BEEN APPROVED BY THE BOARD
7 AS HEARING OFFICERS. SUCH HEARING OFFICER SHALL BE A STATE BOARD OF
8 ELECTIONS COMMISSIONER OR AN INDEPENDENT CONTRACTOR WHO SHALL BE COMPEN-
9 SATED ON A PER DIEM BASIS AT A RATE FIXED BY THIS BOARD IN ITS REGU-
10 LATIONS PROMULGATED PURSUANT TO THIS SECTION.

11 3. THE HEARING OFFICER SHALL PREPARE AND SUBMIT TO THE STATE BOARD OF
12 ELECTIONS, TOGETHER WITH THE ENTIRE RECORD OF THE PROCEEDING, A WRITTEN
13 REPORT CONTAINING FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDA-
14 TIONS CONCERNING THE IMPOSITION OF A CIVIL PENALTY.

15 4. AFTER REVIEWING THE RECORD, FINDINGS AND RECOMMENDATIONS OF THE
16 HEARING OFFICER, THE STATE BOARD SHALL MAKE A DETERMINATION AS TO WHETH-
17 ER A VIOLATION HAS OCCURRED, AND, WHENEVER APPROPRIATE, IMPOSE A PENALTY
18 CONSISTENT WITH SECTION 14-126 OF THIS CHAPTER. REGARDLESS OF WHETHER A
19 PENALTY IS ASSESSED, THE STATE BOARD OF ELECTIONS SHALL ISSUE A WRITTEN
20 DETERMINATION SETTING FORTH ITS FINDINGS AND CONCLUSIONS.

21 5. THE STATE BOARD OF ELECTIONS SHALL PROMULGATE RULES AND REGULATIONS
22 TO IMPLEMENT THE PROVISIONS OF THIS SECTION AND SUBDIVISION FOUR OF
23 SECTION 3-104 OF THIS TITLE, INCLUDING, BUT NOT LIMITED TO PROCEDURAL
24 RULES AS PROVIDED FOR IN SUBDIVISION THREE OF SECTION THREE HUNDRED ONE
25 OF THE STATE ADMINISTRATIVE PROCEDURE ACT, FACTORS TO BE CONSIDERED IN
26 SETTING A PENALTY AMOUNT PURSUANT TO SUBDIVISION ONE OF SECTION 14-126
27 OF THIS CHAPTER, A PER DIEM COMPENSATION RATE FOR HEARING OFFICERS, AND
28 ANY QUALIFICATIONS FOR HEARING OFFICERS WHICH THE BOARD DEEMS NECESSARY
29 IN ORDER TO INSURE THEIR OBJECTIVITY AND INDEPENDENCE. CONCERNING SUCH
30 QUALIFICATIONS, THE RULES AND REGULATIONS SHALL PROVIDE, AT A MINIMUM,
31 THAT HEARING OFFICERS BE MEMBERS IN GOOD STANDING OF THE BAR OF THIS
32 STATE, THAT THEY REFRAIN FROM APPEARING BEFORE THE STATE BOARD OF
33 ELECTIONS OR FROM ANY ACTIVITIES AS A LOBBYIST, AND THAT THEY HOLD NO
34 PUBLIC OFFICE OR PARTY POSITION.

35 6. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS LIMITING ANY EXISTING
36 POWERS OF THE STATE BOARD OF ELECTIONS, INCLUDING, BUT NOT LIMITED TO,
37 ITS INVESTIGATIVE POWERS, AND ITS POWERS TO REFER VIOLATIONS WARRANTING
38 CRIMINAL PROSECUTION TO THE APPROPRIATE DISTRICT ATTORNEY.

39 S 4. Subdivision 2 of section 14-116 of the election law, as amended
40 by chapter 260 of the laws of 1981, is amended to read as follows:

41 2. Notwithstanding the provisions of subdivision one of this
42 section, any corporation or an organization financially supported in
43 whole or in part, by such corporation may make expenditures, including
44 contributions, not otherwise prohibited by law, [for political purposes]
45 IN SUPPORT OR OPPOSITION OF CANDIDATES, in an amount not to exceed five
46 thousand dollars in the aggregate in any calendar year OR TO PROMOTE THE
47 SUCCESS OR DEFEAT OF A BALLOT ISSUE WITHOUT LIMITATION; provided that no
48 public utility shall use revenues received from the rendition of public
49 service within the state for contributions for political purposes unless
50 such cost is charged to the shareholders of such a public service corpo-
51 ration.

52 S 5. Section 14-118 of the election law is amended by adding a new
53 subdivision 4 to read as follows:

54 4. A. THE TREASURER OF A POLITICAL COMMITTEE SHALL BE RESPONSIBLE FOR
55 EXAMINING ALL CONTRIBUTIONS RECEIVED FOR THE PURPOSE OF ASCERTAINING
56 WHETHER CONTRIBUTIONS RECEIVED, WHEN AGGREGATED WITH OTHER CONTRIBUTIONS

FROM THE SAME CONTRIBUTOR, EXCEED THE APPLICABLE CONTRIBUTION LIMITS SET FORTH IN SECTIONS 14-114 AND 14-116 OF THIS ARTICLE. CONTRIBUTIONS WHICH ON THEIR FACE EXCEED THE APPLICABLE CONTRIBUTION LIMITS, AND CONTRIBUTIONS WHICH DO NOT APPEAR TO BE EXCESSIVE ON THEIR FACE BUT WHICH EXCEED THE APPLICABLE CONTRIBUTION LIMITS WHEN AGGREGATED WITH OTHER CONTRIBUTIONS FROM THE SAME CONTRIBUTOR, MUST BE RETURNED TO THE CONTRIBUTOR WITHIN TEN DAYS OF RECEIPT.

B. IN ADDITION, WITHIN TEN DAYS OF RECEIPT, THE TREASURER SHALL NOTIFY EACH CORPORATE CONTRIBUTOR WHICH CONTRIBUTED ONE THOUSAND DOLLARS OR MORE AT A TIME, BUT FOR WHICH THE TREASURER'S ACCOUNTS DO NOT INDICATE AN EXCESS CONTRIBUTION, THAT SECTION 14-116 OF THIS ARTICLE LIMITS THE AGGREGATE AMOUNT CORPORATIONS CAN CONTRIBUTE TO OR EXPEND IN SUPPORT OR OPPOSITION OF CANDIDATES TO FIVE THOUSAND DOLLARS IN ANY CALENDAR YEAR.

S 6. Subdivision 1 of section 14-126 of the election law, as amended by chapter 128 of the laws of 1994, is amended to read as follows:

1. Any person who [fails to file a statement required to be filed by this article] VIOLATES ANY OF THE PROVISIONS OF THIS ARTICLE shall be subject to a civil penalty, not in excess of [five hundred] TEN THOUSAND dollars, to be recoverable IN AN ADMINISTRATIVE PROCEEDING BROUGHT BY THE STATE BOARD OF ELECTIONS PURSUANT TO SUBDIVISION FOUR OF SECTION 3-104 OF THIS CHAPTER OR in a special proceeding or civil action to be brought by the state board of elections [or], other board of elections OR VILLAGE CLERK PURSUANT TO SUBDIVISION FIVE OF SECTION 3-104 OF THIS CHAPTER.

S 7. Section 16-114 of the election law, subdivisions 1, 2, 3 and 4 as redesignated by chapter 9 of the laws of 1978, is amended to read as follows:

S 16-114. Proceedings to compel filing of statements or corrected statements of campaign receipts, expenditures and contributions. 1. The supreme court or a justice thereof, in a proceeding instituted by any candidate voted for at the election or primary or by any five qualified voters or by the state or other board of elections OR VILLAGE CLERK IN A VILLAGE ELECTION WHERE THE VILLAGE CLERK IS THE FILING OFFICER may compel by order, any person required to file a statement of receipts, expenditures or contributions for campaign purposes, who has not filed any such statement within the time prescribed by ARTICLE FOURTEEN OF this chapter, to file such statement within five days after notice of the order.

2. The supreme court or a justice thereof, in a proceeding instituted by any candidate voted for at the election or primary or by any five qualified voters, or by the state or other board of elections OR VILLAGE CLERK IN A VILLAGE ELECTION WHERE THE CLERK IS THE FILING OFFICER in accordance with the provision of ARTICLE THREE OF this chapter may compel by order any person required under the provisions of ARTICLE FOURTEEN OF this chapter to file a statement of receipts, expenditures or contributions for campaign purposes, who has filed a statement which does not conform to the requirements of ARTICLE FOURTEEN OF this chapter in respect to its truth, sufficiency in detail or otherwise, to file a new or supplemental statement which shall make the statement or statements true and complete within five days after notice of the order. The state board of elections shall be a necessary party in any such proceeding.

3. The supreme court or a justice thereof, in a proceeding instituted by any candidate voted for at the election or primary or by any five qualified voters, or by the state or other board of elections OR VILLAGE CLERK IN A VILLAGE ELECTION WHERE THE CLERK IS THE FILING OFFI-

1 CER may compel by order any person who has failed to comply, or the
2 members of any committee which has failed to comply, with any of the
3 provisions of ARTICLE FOURTEEN OF this chapter, to comply therewith.
4 4. In every proceeding instituted under this section, except a
5 proceeding to compel the filing of a statement by a candidate for nomi-
6 nation to a public office at a primary election or for election thereto,
7 or by the treasurer of a political committee, who has failed to file any
8 statement, the petitioner or petitioners, upon the institution of the
9 proceeding shall file with the county clerk an undertaking in a sum to
10 be determined and with sureties to be approved by a justice of the
11 supreme court conditioned to pay any costs imposed against him or them;
12 provided, however, that no such undertaking shall be required in a
13 proceeding instituted by the state or other board of elections OR
14 VILLAGE CLERK.
15 S 8. This act shall take effect on the first of April next succeeding
16 the date on which it shall have become a law, except that the rules and
17 regulations promulgated by subdivision 5 of section 3-109 of the
18 election law, as added by section three of this act, shall take effect
19 immediately.