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

6433

I N S E N A T E

January 8, 2010

Introduced by Sen. SCHNEIDERMAN -- 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 establishing the whistleblower empowerment and notification act and to repeal section 1269-g of the public authorities law relating to requiring certain contractors to post information on employee rights

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

Section 1. This act shall be known and may be cited as the "whistleblower empowerment and notification act".

S 2. The state finance law is amended by adding a new article 13-A to read as follows:

ARTICLE 13-A

MANDATORY NOTIFICATION OF WHISTLEBLOWER RIGHTS

SECTION 195. DEFINITIONS.
196. DISCLOSURE REQUIREMENTS.
197. MANDATORY CONTRACT CLAUSES AND PENALTIES.

S 195. DEFINITIONS. AS USED IN THIS ARTICLE:

1. "STATE" SHALL INCLUDE THE STATE OF NEW YORK AND ANY STATE DEPARTMENT, BOARD, BUREAU, DIVISION, COMMISSION, COMMITTEE, PUBLIC BENEFIT CORPORATION, PUBLIC AUTHORITY, COUNCIL, OFFICE OR OTHER GOVERNMENTAL ENTITY PERFORMING A GOVERNMENTAL OR PROPRIETARY FUNCTION FOR THE STATE.

2. "LOCAL GOVERNMENT" SHALL INCLUDE ANY COUNTY, CITY, TOWN, VILLAGE, SCHOOL DISTRICT, BOARD OF COOPERATIVE EDUCATIONAL SERVICES, LOCAL PUBLIC BENEFIT CORPORATION OR OTHER MUNICIPAL CORPORATION OR POLITICAL SUBDIVISION OF THE STATE.

3. A. "COVERED PARTY" INCLUDES ANY CONTRACTOR, SUBCONTRACTOR OR GRANTEE, WHETHER AN INDIVIDUAL, PARTNERSHIP, CORPORATION OR OTHER BUSINESS ENTITY, THAT:

(1) RECEIVES, OR PURSUANT TO ONE OR MORE CONTRACTS OR GRANTS SHALL RECEIVE, FUNDS OR PROPERTY VALUED IN THE AGGREGATE IN AN AMOUNT EQUAL TO OR GREATER THAN THREE HUNDRED THOUSAND DOLLARS IN ANY TWELVE-MONTH PERIOD FROM:

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

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(A) THE STATE, ONE OR MORE LOCAL GOVERNMENTS, OR ANY COMBINATION THEREOF; OR

(B) ANY OTHER CONTRACTOR, SUBCONTRACTOR, GRANTEE OR OTHER RECIPIENT OF FUNDS OR PROPERTY THAT IS SPENT OR USED ON THE STATE OR A LOCAL GOVERNMENT'S BEHALF OR TO ADVANCE A STATE OR LOCAL GOVERNMENT PROGRAM OR INTEREST, WHERE SUCH STATE OR LOCAL GOVERNMENT EITHER (I) PROVIDES OR HAS PROVIDED ANY PORTION OF SUCH FUNDS OR PROPERTY, OR (II) WILL REIMBURSE SUCH CONTRACTOR, SUBCONTRACTOR, GRANTEE OR OTHER RECIPIENT FOR ANY PORTION OF THE MONEY OR PROPERTY RECEIVED; OR

(2) IS OBLIGATED TO PAY OR TRANSMIT FUNDS OR PROPERTY, OTHER THAN TAXES, TO THE STATE, ONE OR MORE LOCAL GOVERNMENTS, OR ANY COMBINATION THEREOF VALUED IN THE AGGREGATE IN AN AMOUNT EQUAL TO OR GREATER THAN THREE HUNDRED THOUSAND DOLLARS IN ANY TWELVE-MONTH PERIOD, PURSUANT TO OBLIGATIONS ARISING FROM ONE OR MORE EXPRESS OR IMPLIED CONTRACTUAL, GRANTOR-GRANTEE OR LICENSOR-LICENSEE RELATIONSHIPS, OR FROM FEE-BASED OR SIMILAR RELATIONSHIPS, OR FROM STATUTES OR REGULATIONS.

B. NOTWITHSTANDING PARAGRAPH A OF THIS SUBDIVISION:

(1) AN INDIVIDUAL SHALL NOT BE DEEMED TO BE A COVERED PARTY SOLELY BECAUSE OF ANY FUNDS RECEIVED AS COMPENSATION FOR WORK PERFORMED AS AN EMPLOYEE OF THE STATE OR A LOCAL GOVERNMENT, OR AS AN INCOME SUBSIDY WITH NO RESTRICTIONS ON THAT INDIVIDUAL'S USE OF THE MONEY OR PROPERTY.

(2) A CONTRACTOR, SUBCONTRACTOR, GRANTEE OR OTHER RECIPIENT SHALL NOT BE DEEMED TO BE A COVERED PARTY IF SUBJECT TO THE NOTIFICATION REQUIREMENTS SET FORTH IN SECTION SIX THOUSAND THIRTY-TWO OF THE UNITED STATES DEFICIT REDUCTION ACT OF TWO THOUSAND FIVE, PUBLIC LAW 109-171.

S 196. DISCLOSURE REQUIREMENTS. 1. COVERED PARTIES SHALL:

A. POST INFORMATION CONFORMING TO THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION, IN A PROMINENT AND ACCESSIBLE PLACE AT ANY WORKPLACE SITE AND OFFICE WHERE PERSONS WHO PERFORM WORK ON THE CONTRACT OR ANY SUBCONTRACT, INCLUDING MANAGEMENT, ARE LIKELY TO SEE SUCH POSTING. THIS REQUIREMENT SHALL BE SATISFIED BY THE DISPLAYING OF SUCH INFORMATION ALONG WITH OTHER NOTICES THAT INFORM PERSONS OF RIGHTS UNDER FEDERAL OR STATE LAWS OR RULES, HUMAN RESOURCES POLICIES, OR COLLECTIVE BARGAINING AGREEMENTS. SUCH POSTED STATEMENTS SHALL BE WRITTEN IN PLAIN ENGLISH AND ENTITLED IN FONT NO SMALLER THAN TWO INCHES IN HEIGHT AND TWO INCHES IN WIDTH WITH THE PHRASE "NY WHISTLEBLOWER PROTECTIONS AND REWARDS", AND IF POSTED OUTDOORS, CONSTRUCTED OF MATERIALS CAPABLE OF WITHSTANDING ADVERSE WEATHER CONDITIONS;

B. POST INFORMATION CONFORMING TO THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION ON THE HOME PAGE OF AN INTERNET AND INTRANET WEBSITE, IF ANY, OF THAT PERSON OR BUSINESS ORGANIZATION; PROVIDED THAT THIS REQUIREMENT SHALL BE SATISFIED BY PROVIDING ON THE HOME PAGE OF SUCH WEBSITE A CONSPICUOUS HYPERLINK TO THE WEBSITE MAINTAINED PURSUANT TO SUBDIVISION THREE OF THIS SECTION, WHICH HYPERLINK SHALL BE LABELED "NY WHISTLEBLOWER PROTECTIONS AND REWARDS";

C. DISTRIBUTE INFORMATION SPECIFIED IN SUBDIVISION TWO OF THIS SECTION TO THOSE PERSONS, INCLUDING EMPLOYEES AND MANAGERS, WHO PERFORM WORK ON THE CONTRACT; PROVIDED THAT THIS REQUIREMENT SHALL BE SATISFIED BY DISTRIBUTING SUCH INFORMATION IN AN EMPLOYEE HANDBOOK AND THROUGH A SPECIFIC ELECTRONIC COMMUNICATION CONTAINING THE INFORMATION TO A KNOWN ELECTRONIC MAIL ADDRESS, IF ANY, PROVIDED TO THE PERSON BY THE COVERED PARTY; AND

D. PROVIDE EVIDENCE OF COMPLIANCE WITH THIS ARTICLE TO THE STATE OR LOCAL GOVERNMENT AGENCY PAYING THE MONEY OR PROPERTY TO THE COVERED PARTY, OR TO WHICH THE COVERED PARTY HAS AN OBLIGATION TO PAY OR TRANSMIT MONEY OR PROPERTY.

2. THE DISCLOSURES REQUIRED BY SUBDIVISION ONE OF THIS SECTION SHALL:

A. PROVIDE THE TELEPHONE NUMBERS OF (I) THE PUBLIC INTEGRITY BUREAU OR FRAUD HOTLINE OF THE ATTORNEY GENERAL OF THE STATE; (II) THE INSPECTOR GENERAL, IF ANY, OF THE STATE OR LOCAL GOVERNMENT AGENCY OR AUTHORITY PAYING MONEY RECEIVED BY THE COVERED PARTY, OR TO WHICH THE COVERED PARTY OWES AN OBLIGATION; AND (III) THE DEPARTMENT OF INVESTIGATION OF ANY CITY WITH A POPULATION OF ONE MILLION OR MORE IF THE SUBJECT FUNDS OR PROPERTY ARE PAID, TO BE PAID OR RECEIVED OR TO BE RECEIVED BY SUCH CITY;

B. DESCRIBE IN DETAIL CONDUCT PROHIBITED BY SECTION ONE HUNDRED EIGHTY-NINE OF THIS CHAPTER, AND THE ROLE OF THAT ACT IN PREVENTING AND DETECTING FRAUD AND ABUSE IN WORK PAID FOR BY THE STATE OR A LOCAL GOVERNMENT;

C. NOTIFY PROSPECTIVE QUI TAM PLAINTIFFS ON HOW TO FILE A QUI TAM ACTION, INCLUDING THE NECESSITY TO CONTACT PRIVATE COUNSEL SKILLED IN FILING SUCH ACTIONS AND OF THE POTENTIAL FOR CASH AWARDS OF UP TO THE MAXIMUM PERCENTAGE OF AWARDS ALLOWED UNDER SUBDIVISION SIX OF SECTION ONE HUNDRED NINETY OF THIS CHAPTER; AND

D. DESCRIBE THE PROHIBITIONS AGAINST EMPLOYER RETALIATION SPECIFIED IN SECTION ONE HUNDRED NINETY-ONE OF THIS CHAPTER AGAINST PERSONS WHO FILE OR ASSIST ACTIONS UNDER ARTICLE THIRTEEN OF THIS CHAPTER OR WHO REPORT ILLEGAL CONDUCT THAT THREATENS THE HEALTH OR SAFETY OF THE PUBLIC PURSUANT TO SECTION SEVEN HUNDRED FORTY OF THE LABOR LAW.

3. NO LATER THAN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS ARTICLE, THE ATTORNEY GENERAL SHALL ESTABLISH AND CONTINUOUSLY MAINTAIN ON ITS PUBLIC WEBSITE A PAGE THAT SHALL PROVIDE THE INFORMATION SPECIFIED IN SUBDIVISION TWO OF THIS SECTION, AND THAT SHALL ALSO PROVIDE SAMPLE STATEMENTS, DISPLAYS AND OTHER MATERIALS THAT COVERED PARTIES SHALL USE TO SATISFY THE DISCLOSURE REQUIREMENTS OF THIS SECTION.

S 197. MANDATORY CONTRACT CLAUSES AND PENALTIES. 1. ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, NEITHER THE STATE NOR A LOCAL GOVERNMENT SHALL ENTER INTO ANY CONTRACT WITH A COVERED PARTY THAT DOES NOT REQUIRE COMPLIANCE WITH SECTION ONE HUNDRED NINETY-SIX OF THIS ARTICLE AND ANNUAL CERTIFICATION OF SUCH COMPLIANCE.

2. ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, A COVERED PARTY SHALL NOT ENTER INTO ANY SUBCONTRACT WITH ANY OTHER PARTY IN ORDER TO ADVANCE A STATE OR LOCAL GOVERNMENT PROGRAM THAT DOES NOT REQUIRE THE SUBCONTRACTOR TO COMPLY WITH SECTION ONE HUNDRED NINETY-SIX OF THIS ARTICLE; PROVIDED THAT SUCH SUBCONTRACTOR, IF NOT A COVERED PARTY, DOES NOT HAVE TO COMPLY WITH PARAGRAPH D OF SUBDIVISION TWO OF SUCH SECTION.

3. IN ANY SUCH CONTRACT THAT REQUIRES A PARTY TO COMPLY WITH SECTION ONE HUNDRED NINETY-SIX OF THIS ARTICLE OR DISCLOSE THE INFORMATION SPECIFIED IN SUBDIVISION TWO OF SUCH SECTION, SUCH COMPLIANCE SHALL BE A MATERIAL CONDITION OF PAYMENT FOR THE PROVISION OF GOODS OR SERVICES BY THE STATE OR A LOCAL GOVERNMENT.

4. IF THE STATE OR A LOCAL GOVERNMENT FINDS THAT ANY PARTY SUBJECT TO THE NOTIFICATION REQUIREMENTS OF SECTION ONE HUNDRED NINETY-SIX OF THIS ARTICLE HAS FAILED TO COMPLY WITH SUCH REQUIREMENTS, THE STATE OR LOCAL GOVERNMENT SHALL NOTIFY THE COVERED PARTY OF THE ALLEGED NON-COMPLIANCE BY UNITED STATES MAIL RETURN RECEIPT REQUESTED. THE PARTY SHALL WITHIN THIRTY DAYS OF RECEIVING OF SUCH NOTIFICATION COMPLY WITH SECTION ONE HUNDRED NINETY-SIX OF THIS ARTICLE AND PROVIDE THE STATE AND LOCAL GOVERNMENT WITH EVIDENCE OF SUCH COMPLIANCE, OR BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED THE LESSER OF TEN PERCENT OF THE VALUE OF THE CONTRACT OR FIVE THOUSAND DOLLARS, TO BE ASSESSED BY APPROPRIATE ADMIN-

ISTRATIVE ACTION OR BY SUMMARY PROCEEDING IN ANY COURT OF COMPETENT JURISDICTION.

S 3. Section 1269-g of the public authorities law is REPEALED.

S 4. This act shall take effect on the one hundred eightieth day after it shall have become a law.