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

10661

I N A S S E M B L Y

June 13, 2012

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Brennan) -- read once and referred to the Committee on Election Law

AN ACT to amend the election law, in relation to enacting the "2012 corporate political expenditure disclosure act"

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 "2012 corporate political expenditure disclosure act".

S 2. The election law is amended by adding a new section 14-132 to read as follows:

S 14-132. CONTRIBUTIONS AND INDEPENDENT EXPENDITURES BY CORPORATIONS. 1. APPLICATION. THIS SECTION APPLIES TO EVERY DOMESTIC CORPORATION AND TO EVERY FOREIGN CORPORATION WHICH IS AUTHORIZED OR DOES BUSINESS IN THIS STATE, INCLUDING BUT NOT LIMITED TO, CORPORATIONS FORMED UNDER THE BANKING LAW, BUSINESS CORPORATION LAW, COOPERATIVE CORPORATIONS LAW, INSURANCE LAW, LIMITED LIABILITY COMPANY LAW, RAILROAD LAW AND TRANSPORTATION CORPORATIONS LAW.

2. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE TERMS:

(A) "CONTRIBUTION" SHALL MEAN ANY PAYMENT, GIFT, SUBSCRIPTION, OUTSTANDING LOAN, ADVANCE, OR DEPOSIT OF MONEY OR ANYTHING OF VALUE MADE IN CONNECTION WITH THE NOMINATION FOR ELECTION, OR ELECTION, OF ANY CANDIDATE, OR MADE TO PROMOTE THE SUCCESS OR DEFEAT OF A POLITICAL PARTY OR PRINCIPLE, OR OF ANY BALLOT PROPOSAL.

(B) "INDEPENDENT EXPENDITURE" MEANS ANY PAYMENT OR EXPENDITURE MADE IN CONNECTION WITH THE NOMINATION FOR ELECTION, OR ELECTION, OF ANY CANDIDATE, OR MADE TO PROMOTE THE SUCCESS OR DEFEAT OF A POLITICAL PARTY OR PRINCIPLE, OR OF ANY BALLOT PROPOSAL THAT IS NOT MADE WITH THE AUTHORIZATION, CONSENT, REQUEST, SUGGESTION OR COOPERATION OF A CANDIDATE, THE CANDIDATE'S POLITICAL COMMITTEE OR ITS AGENTS, OR OF A POLITICAL COMMITTEE SUPPORTING OR OPPOSING A MEASURE. SUCH TERM SHALL INCLUDE ANY PAYMENT OR EXPENDITURE MADE:

(I) FOR AN ELECTIONEERING COMMUNICATION OR ANY COMMUNICATION TO THE GENERAL PUBLIC INTENDED TO ENCOURAGE THE PUBLIC TO CONTACT A GOVERNMENT OFFICIAL, CANDIDATE FOR PUBLIC OR PARTY OFFICE OR POLITICAL PARTY

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

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REGARDING PENDING LEGISLATION, PUBLIC POLICY OR A GOVERNMENT RULE OR REGULATION;

(II) TO SUPPORT OR OPPOSE THE ADVANCEMENT OF ANY POLITICAL QUESTION WITHOUT CONNECTION TO ANY VOTE; AND

(III) TO INFLUENCE LEGISLATION THROUGH AN ATTEMPT TO CHANGE THE OPINION OF THE GENERAL PUBLIC.

INDEPENDENT EXPENDITURE SHALL NOT INCLUDE: (A) A COMMUNICATION APPEARING IN A WRITTEN NEWS STORY, COMMENTARY OR EDITORIAL, OR DISTRIBUTED THROUGH THE FACILITIES OF ANY BROADCASTING STATION, CABLE OR SATELLITE UNLESS SUCH PUBLICATION OR FACILITIES ARE OWNED OR CONTROLLED BY ANY POLITICAL PARTY, POLITICAL COMMITTEE OR CANDIDATE; OR (B) A COMMUNICATION THAT CONSTITUTES A CANDIDATE DEBATE OR FORUM.

3. SHAREHOLDER APPROVAL. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, NO CORPORATION SHALL ENGAGE IN THE ACTIVITIES DESCRIBED IN THIS PARAGRAPH UNLESS IT DISCLOSES TO EACH SHAREHOLDER OR MEMBER THE TOTAL AMOUNT TO BE SPENT ON, AND THE NATURE OF, EACH SUCH ACTIVITY; AND A MAJORITY VOTE OF ITS SHAREHOLDERS OR MEMBERS AFFIRMATIVELY CONSENT TO SUCH ACTIVITY AT THE ANNUAL MEETING. EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION, ANY SUCH CONSENT SHALL APPLY ONLY TO THOSE ACTIVITIES THAT WILL OCCUR OR TO BE UNDERTAKEN IN THE ONE YEAR PERIOD FOLLOWING THE DATE OF THE ANNUAL MEETING IN WHICH THE CONSENT WAS OBTAINED. FOR THE PURPOSES OF THIS SECTION, A CORPORATION MAKES A CONTRIBUTION, EXPENDITURE OR PAYMENT IF THE CONTRIBUTION, EXPENDITURE OR PAYMENT IS FUNDED THROUGH ITS GENERAL CORPORATE TREASURY, A SEPARATE SEGREGATED FUND OR ANY OTHER ENTITY OR ACCOUNT ESTABLISHED AND CONTROLLED BY THE CORPORATION.

(I) MAKES ANY CONTRIBUTIONS;

(II) MAKES ANY INDEPENDENT EXPENDITURES;

(III) MAKES ANY PAYMENTS THAT EXCEED AN ANNUAL TOTAL OF FIVE HUNDRED DOLLARS TO ANY CORPORATION, ORGANIZATION OR ENTITY THAT IS FORMED OR MAINTAINED FOR POLITICAL PURPOSES, OR THAT SPENDS OR USES TWENTY-FIVE PERCENT OR MORE OF ITS REVENUE FOR POLITICAL PURPOSES, INCLUDING MAKING CONTRIBUTIONS AND INDEPENDENT EXPENDITURES;

(IV) ESTABLISHES OR FORMS A POLITICAL COMMITTEE, AS DEFINED IN SUBDIVISION ONE OF SECTION 14-100 OF THIS ARTICLE. FOR THE PURPOSES OF THIS SUBPARAGRAPH AND SUBPARAGRAPH (V) OF THIS PARAGRAPH, THE TERM "ESTABLISHES OR FORMS" SHALL MEAN ANY POLITICAL COMMITTEE FOR WHICH THE CORPORATION PAYS, OR PROVIDES IN-KIND SERVICES THE VALUE OF WHICH EQUAL AT LEAST TWENTY-FIVE PERCENT OF THE COSTS AND EXPENSES OF ITS ESTABLISHMENT OR FORMATION; OR PAYS OR CONTRIBUTES AT LEAST TWENTY-FIVE PERCENT OF ITS ANNUAL REVENUE OR PROVIDES IN-KIND SERVICES THE VALUE OF WHICH EXCEED TEN THOUSAND DOLLARS, AFTER ITS ESTABLISHMENT OR FORMATION; AND

(V) CONTINUES AND MAINTAINS THE EXISTENCE AND OPERATION OF A POLITICAL COMMITTEE THAT WAS ESTABLISHED OR FORMED BY THE CORPORATION PRIOR TO THE EFFECTIVE DATE OF THIS PARAGRAPH.

(B) A CORPORATION MAY SEEK SPECIAL AUTHORITY OF ITS SHAREHOLDERS OR MEMBERS, PURSUANT TO A SPECIAL MEETING, TO INCREASE FUNDING ABOVE THE AMOUNT THAT WAS CONSENTED TO BY THE SHAREHOLDERS OR MEMBERS FOR ONE OR MORE OF THE ACTIVITIES DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION. ANY SUCH INCREASE IN FUNDING SHALL REQUIRE THE SEPARATE APPROVAL OF A MAJORITY OF ITS SHAREHOLDERS OR MEMBERS.

(C) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ALLOW OR AUTHORIZE A CORPORATION TO MAKE CONTRIBUTIONS, INDEPENDENT EXPENDITURES OR OTHER PAYMENTS IN AN AMOUNT THAT EXCEEDS THE MONETARY LIMITS ESTABLISHED IN LAW.

4. REPORTING REQUIREMENTS. (A) ANY CORPORATION, EITHER BY ITSELF OR THROUGH ITS SUBSIDIARIES, THAT ENGAGES IN ONE OR MORE OF THE ACTIVITIES DESCRIBED IN PARAGRAPH (A) OF SUBDIVISION THREE OF THIS SECTION SHALL DISCLOSE TO ITS SHAREHOLDERS OR MEMBERS AND FILE WITH THE SECRETARY OF STATE AN ACCOUNTING OF THE CONTRIBUTIONS, INDEPENDENT EXPENDITURES AND PAYMENTS MADE IN THE PRIOR CALENDAR YEAR, INCLUDING:

(I) THE DATE AND THE AMOUNT OF EACH CONTRIBUTION, INDEPENDENT EXPENDITURE OR PAYMENT MADE BY THE CORPORATION OR ITS SUBSIDIARY;

(II) THE IDENTITY OF THE RECIPIENT OF EACH CONTRIBUTION, INDEPENDENT EXPENDITURE OR PAYMENT; AND WITH RESPECT TO AN INDEPENDENT EXPENDITURE, THE IDENTITY OF THE CANDIDATE, REFERENDUM, POLITICAL PARTY, PENDING LEGISLATION, PUBLIC POLICY OR A GOVERNMENT RULE OR REGULATION SUPPORTED OR OPPOSED;

(III) THE IDENTITY OF THE RECIPIENT OF ANY PAYMENTS MADE PURSUANT TO SUBPARAGRAPH (III) OF PARAGRAPH (A) OF SUBDIVISION THREE OF THIS SECTION;

(IV) IF THE CORPORATION FORMED OR MAINTAINS A POLITICAL COMMITTEE, THE DATE THE POLITICAL COMMITTEE WAS ESTABLISHED OR FORMED AND ITS PURPOSE;

(V) THE TOTAL AMOUNT OF FUNDS THAT THE CORPORATION CONTRIBUTED OR PAID OR PLANS TO PAY TO THE POLITICAL COMMITTEE FORMED OR MAINTAINED BY THE CORPORATION; AND

(VI) THE IDENTITY OF ANY RECIPIENTS AND THE AMOUNTS OF ANY PAYMENTS OR CONTRIBUTIONS MADE BY THE POLITICAL COMMITTEE FORMED OR MAINTAINED BY THE CORPORATION.

(B) ANY SUCH CORPORATION SHALL BE REQUIRED TO DISCLOSE TO ITS SHAREHOLDERS OR MEMBERS AND FILE WITH THE SECRETARY OF STATE SUCH ACCOUNTING ANNUALLY, QUARTERLY AND TEN DAYS PRIOR TO ANY ELECTION DEFINED IN SUBDIVISION ELEVEN OF SECTION 14-100 OF THIS ARTICLE. THE SECRETARY OF STATE SHALL ESTABLISH THE DATE FOR THE FILING OF THE ANNUAL AND QUARTERLY REPORTS. THE CORPORATION SHALL POST A COPY OF ANY REPORT OR OTHER INFORMATION FILED PURSUANT TO THIS PARAGRAPH ON ITS CORPORATE WEBSITE WITHIN TWENTY-FOUR HOURS OF SUCH FILING.

(C) THE SECRETARY OF STATE SHALL POST A CORPORATION'S DISCLOSURES ON THE WEBSITE MAINTAINED BY THE SECRETARY OF STATE.

5. PENALTIES. (A) ANY CORPORATION THAT KNOWINGLY OR INTENTIONALLY VIOLATES THIS SECTION SHALL BE SUBJECT TO A FINE OF NOT MORE THAN ONE HUNDRED THOUSAND DOLLARS.

(B) ANY DIRECTOR, OFFICER OR SENIOR MANAGER OF THE CORPORATION WHO AUTHORIZES OR MAKES ANY CONTRIBUTIONS, INDEPENDENT EXPENDITURES OR PAYMENTS IN VIOLATION OF THIS SECTION SHALL BE SUBJECT TO A FINE EQUAL TO THREE TIMES THE AMOUNT OF THE CONTRIBUTION, EXPENDITURE OR PAYMENT. NO CORPORATION MAY REIMBURSE A DIRECTOR, OFFICER OR MANAGER FOR ANY FINES IMPOSED OR INCURRED BY SUCH INDIVIDUAL PURSUANT TO THIS PARAGRAPH.

(C) ANY CORPORATION THAT FAILS TO FILE A REPORT REQUIRED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION SHALL BE SUBJECT TO A FINE OF TEN THOUSAND DOLLARS PER DAY.

(D) THE ATTORNEY GENERAL MAY COMMENCE AN ACTION OR SPECIAL PROCEEDING TO ENFORCE THE PROVISIONS OF THIS SECTION.

S 3. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.

S 4. This act shall take effect immediately.