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

2379

2011-2012 Regular Sessions

I N A S S E M B L Y

January 18, 2011

Introduced by M. of A. DESTITO -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state finance law, in relation to establishing a procedure for contract disqualification

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 "New York state contract disqualification act".

S 2. Legislative findings and declarations. The legislature finds and declares that between the years 1999-2002 public confidence in publicly traded companies suffered greatly as a result of criminally fraudulent accounting practices and similarly unlawful governance procedures which has led to several high profile bankruptcies of companies in the United States.

The legislature further finds and declares that the economic consequences of these pernicious acts have been widespread and devastating. During this time period, the value of assets and funds in the New York state and local employees' retirement system alone precipitously declined from one hundred twenty-eight billion dollars to ninety-seven billion dollars. Thousands of investors nationwide have withdrawn the full amount of the remainder from their individual retirement accounts and have failed to reinvest these proceeds in securities. In addition, these practices have led to a steep decline in the value of public companies, limited their liquidity and jeopardized their financing.

The legislature further finds and declares that the state has a keen pecuniary and proprietary interest in ensuring that the companies with which it does business are and remain sound financial entities capable of performing the contracts and delivering the services they have been contracted to provide. That in order to protect the public fiscally and ensure the provision of vital public services, the state must ensure that potential vendors have not and will not engage in criminally frau-

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

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dulent accounting practices and similarly unlawful corporate governance procedures.

The legislature further finds that the enactment of this act is essential to protect the welfare of the state, its local governments and the residents thereof.

S 3. The state finance law is amended by adding a new section 139-bb to read as follows:

S 139-BB. PROHIBITED BIDDERS AND CONTRACTORS. 1. UNLESS OTHERWISE PROVIDED, NO FIRM, PARTNERSHIP OR CORPORATION SHALL ENTER INTO A CONTRACT WITH THE STATE, ANY POLITICAL SUBDIVISION THEREOF, PUBLIC CORPORATION, AUTHORITY, DEPARTMENT OR AGENCY, IF THE FIRM, PARTNERSHIP, OR CORPORATION OR ANY OFFICER, DIRECTOR, PARTNER, OR OTHER MANAGERIAL AGENT OR FIRM, PARTNERSHIP OR CORPORATION HAS BEEN SUBJECTED TO A CONTRACT DISQUALIFICATION, AS DEFINED IN SUBDIVISION TWO OF THIS SECTION.

2. FOR PURPOSES OF THIS SECTION, A "CONTRACT DISQUALIFICATION" SHALL MEAN ANY OF THE DISPOSITIONS LISTED BELOW:

(A) FELONY CONVICTION OF THE FIRM, PARTNERSHIP OR CORPORATION OR ITS MANAGERIAL OFFICER OR OFFICERS FOR THE CRIMINAL VIOLATION OF THE RELEVANT SECURITIES LAWS, AS DEFINED IN SUBDIVISION THREE OF THIS SECTION; OR

(B) IMPOSITION OF A CIVIL PENALTY, WHETHER SINGULARLY OR IN THE AGGREGATE, OF NOT LESS THAN FIVE HUNDRED THOUSAND DOLLARS AGAINST THE FIRM, PARTNERSHIP OR CORPORATION OR ITS MANAGERIAL OFFICER OR OFFICERS FOR CIVIL VIOLATION OF THE RELEVANT SECURITIES LAWS, AS DEFINED IN SUBDIVISION THREE OF THIS SECTION; OR

(C) ANY FINAL AWARD, BY EITHER JUDGMENT OR SETTLEMENT OF MONETARY DAMAGES EQUAL TO OR EXCEEDING FIVE MILLION DOLLARS, STEMMING FROM ALLEGED VIOLATIONS OF THE RELEVANT SECURITIES LAWS, AS DEFINED IN SUBDIVISION THREE OF THIS SECTION; OR

(D) A FILING FOR BANKRUPTCY UNDER THE FEDERAL BANKRUPTCY STATUTES WHENEVER THE UNDERLYING CAUSE FOR THE CONDITION OF BANKRUPTCY HAS RESULTED IN WHOLE OR IN PART FROM THE COMMISSION OF FRAUD IN ACCOUNTING PRACTICES OR CORPORATE GOVERNANCE.

3. FOR PURPOSES OF THIS SECTION, "RELEVANT SECURITIES LAWS" SHALL MEAN ANY OF THE FOLLOWING:

(A) THE SARBANES-OXLEY ACT OF 2002 ENACTED BY PUBLIC LAW 107-204, 116 STAT, 745-810, AS AMENDED, AND ALL RULES AND REGULATIONS AS ARE PROMULGATED THEREUNDER; OR

(B) THE SECURITIES EXCHANGE ACT OF 1934 (15 U.S.C. 78C), THE SECURITY ACT OF 1933 (15 U.S.C. 77A ET SEQ.), AND ANY RULES OR REGULATIONS PROMULGATED UNDER EITHER OF SUCH ACTS; OR

(C) ANY OTHER FEDERAL SECURITIES LAWS (INCLUSIVE OF THE PROVISIONS OF LAW REFERRED TO IN SECTION 3(A)(47) OF THE SECURITIES EXCHANGE ACT OF 1934 (15 U.S.C. 78C(A)(47)), INCLUSIVE OF ANY RULES OR REGULATIONS PROMULGATED THEREUNDER; OR

(D) SECTIONS THREE HUNDRED FIFTY-TWO AND THREE HUNDRED FIFTY-TWO-C OF THE GENERAL BUSINESS LAW OF THE STATE OF NEW YORK AND ANY OTHER PROVISION OF ARTICLE TWENTY-THREE-A OF SUCH LAW NECESSARY TO IMPLEMENT ENFORCEMENT OF SUCH SECTIONS.

4. FOR THE PURPOSES OF THIS SECTION, A CONTRACT DISQUALIFICATION SHALL LAST FOR A PERIOD OF FIVE YEARS.

5. EVERY BID SUBMITTED TO AND CONTRACT EXECUTED BY THE STATE, POLITICAL SUBDIVISION THEREOF, PUBLIC CORPORATION, AUTHORITY OR DEPARTMENT OR AGENCY THEREOF SHALL CONTAIN A CERTIFICATION BY THE BIDDER OR CONTRACTOR THAT THE CONTRACTOR IS NOT BARRED FROM BEING AWARDED A

CONTRACT PURSUANT TO THIS SECTION, AND FURTHER THAT THE CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTING ENTITY MAY DECLARE THE CONTRACT VOID IF THE CERTIFICATION COMPLETED PURSUANT TO THIS SUBDIVISION IS FALSE.

6. ANY STATE AGENCY, POLITICAL SUBDIVISION THEREOF, PUBLIC CORPORATION, AUTHORITY OR DEPARTMENT RECEIVING A BID FROM ANY ENTITY WHICH HAS BEEN SUBJECT TO ANY DISPOSITION FOR A CONTRACT DISQUALIFICATION PURSUANT TO SUBDIVISION TWO OF THIS SECTION, SHALL FORWARD SUCH INFORMATION TO THE STATE COMPTROLLER WITHIN THIRTY DAYS. UPON RECEIPT OF SUCH INFORMATION, THE STATE COMPTROLLER SHALL HOLD A HEARING, AT WHICH THE PARTY SHALL BE ENTITLED TO APPEAR, PRESENT EVIDENCE AND BE HEARD, TO DETERMINE IF SUCH PARTY SHALL BE SUBJECT TO A CONTRACT DISQUALIFICATION. NOTICE TO THE PARTY AND CONDUCT OF THE HEARING SHALL BE IN ACCORDANCE WITH THE PROVISIONS OF THE STATE ADMINISTRATIVE PROCEDURE ACT, SECTION SEVENTY-THREE OF THE CIVIL RIGHTS LAW, AND THE CIVIL PRACTICE LAW AND RULES.

7. ANY DETERMINATION MADE BY THE STATE COMPTROLLER PURSUANT TO THIS SECTION SHALL BE SUBJECT TO JUDICIAL REVIEW IN A PROCEEDING PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

S 4. This act shall take effect immediately and shall apply to any contracts entered into on or after such effective date.