

4570

2011-2012 Regular Sessions

I N   S E N A T E

April 12, 2011

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Introduced by Sen. BALL -- (at request of the Division of Homeland Security and Emergency Services) -- 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 background checks in connection with certain contracts; and to amend the executive law, in relation to background checks of current and transferred employees of the division of homeland security and emergency services

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

1     Section 1. Subdivision 10 of section 163 of the state finance law is  
2     amended by adding a new paragraph g to read as follows:  
3     G. IN CONTRACTS FOR SERVICES RELATED TO CRITICAL INFRASTRUCTURE, A  
4     STATE AGENCY, DEPARTMENT, BOARD, BUREAU, DIVISION, COMMISSION, COMMIT-  
5     TEE, PUBLIC AUTHORITY, PUBLIC CORPORATION, COUNCIL, OFFICE OR OTHER  
6     GOVERNMENTAL AGENCY MAY INCLUDE IN CONTRACT DOCUMENTS, A REQUIREMENT  
7     THAT PERSONS EMPLOYED BY THE CONTRACTOR TO PERFORM WORK PURSUANT TO THE  
8     CONTRACT SHALL BE REQUIRED TO UNDERGO A STATE AND NATIONAL CRIMINAL  
9     HISTORY RECORD CHECK. WHEN REQUIRED, THE FINGERPRINTS OF SUCH AN EMPLOY-  
10    EE SHALL BE SUBMITTED TO THE DIVISION OF CRIMINAL JUSTICE SERVICES AND  
11    THE DIVISION OF CRIMINAL JUSTICE SERVICES IS AUTHORIZED TO CHARGE A FEE  
12    IN CONNECTION WITH SUCH CRIMINAL HISTORY RECORD CHECK AND SUBMIT SUCH  
13    FINGERPRINTS TO THE FEDERAL BUREAU OF INVESTIGATION, IN ACCORDANCE WITH  
14    APPLICABLE RULES OR INFORMATION, IF ANY, CONCERNING SUCH EMPLOYEE, AND  
15    FOR A NATIONAL CRIMINAL HISTORY RECORD CHECK. THE CONTRACTOR SHALL BE  
16    RESPONSIBLE FOR INFORMING ITS EMPLOYEES THAT SUCH CRIMINAL HISTORY  
17    RECORD CHECKS SHALL BE CONDUCTED AND FOR OBTAINING THE FINGERPRINTS FOR  
18    TRANSMITTAL TO THE DIVISION OF CRIMINAL JUSTICE SERVICES IN THE FORM AND  
19    MANNER PRESCRIBED BY THE DIVISION. IN DETERMINING WHETHER TO INCLUDE  
20    SUCH REQUIREMENT IN CONTRACT DOCUMENTS, THE COMMISSIONER OR STATE AGEN-  
21    CY, DEPARTMENT, BOARD, BUREAU, DIVISION, COMMISSION, COMMITTEE, PUBLIC  
22    AUTHORITY, PUBLIC CORPORATION, COUNCIL, OFFICE OR OTHER GOVERNMENTAL

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

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1 AGENCY SHALL CONSIDER, BUT NOT BE LIMITED TO CONSIDERING, WHETHER THE  
2 CONTRACTOR'S EMPLOYEES WILL ENTER, REMAIN OR OTHERWISE HAVE ACCESS TO  
3 CRITICAL INFRASTRUCTURE AS THAT TERM IS DEFINED IN SUBDIVISION FIVE OF  
4 SECTION EIGHTY-SIX OF THE PUBLIC OFFICERS LAW IN THE COURSE OF PERFORM-  
5 ING THE CONTRACT, OR HAVE ACCESS TO SENSITIVE SECURITY INFORMATION, AND  
6 WHETHER THE WORK IS OF A TYPE THAT, IF PERFORMED BY EMPLOYEES OF THE  
7 STATE, APPLICANTS FOR EMPLOYMENT WOULD BE REQUIRED BY THE STATE TO  
8 SUBMIT TO A CRIMINAL HISTORY RECORD CHECK PURSUANT TO SECTION FIFTY OF  
9 THE CIVIL SERVICE LAW OR ANY OTHER APPLICABLE LAW. A DETERMINATION ON  
10 WHAT CONSTITUTES CRITICAL INFRASTRUCTURE IN THE STATE SHALL BE MADE BY  
11 THE CONTRACTING STATE ENTITY IN CONSULTATION WITH THE OFFICE OF COUNTER  
12 TERRORISM. DETERMINATIONS ON THE SUITABILITY OF WHETHER A CONTRACT  
13 EMPLOYEE SHALL BE PERMITTED TO ENTER, REMAIN OR OTHERWISE HAVE ACCESS TO  
14 CRITICAL INFRASTRUCTURE OR SENSITIVE SECURITY INFORMATION IN THE COURSE  
15 OF PERFORMING THE CONTRACT SHALL BE MADE BY THE CONTRACTING STATE AGEN-  
16 CY, DEPARTMENT, BOARD, BUREAU, DIVISION, COMMISSION, COMMITTEE, PUBLIC  
17 AUTHORITY, PUBLIC CORPORATION, COUNCIL, OFFICE OR THE GOVERNMENTAL AGEN-  
18 CY IN ACCORDANCE WITH ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW.

19 S 2. Subdivision 2 of section 709 of the executive law is amended by  
20 adding a new paragraph (v) to read as follows:

21 (V) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, INCLUDING SUBDIVISION  
22 FOUR OF SECTION FIFTY OF THE CIVIL SERVICE LAW, REQUIRE CURRENT AND  
23 TRANSFERRED EMPLOYEES TO UNDERGO A STATE AND NATIONAL CRIMINAL HISTORY  
24 RECORD CHECK FOR PURPOSES OF CONDUCTING BACKGROUND CHECKS OF SUCH INDIV-  
25 IDUALS. THE FINGERPRINTS OF SUCH INDIVIDUALS SHALL BE SUBMITTED TO THE  
26 DIVISION OF CRIMINAL JUSTICE SERVICES AND THE DIVISION OF CRIMINAL  
27 JUSTICE SERVICES IS AUTHORIZED TO CHARGE A FEE IN CONNECTION WITH SUCH  
28 CRIMINAL HISTORY RECORD CHECKS AND SUBMIT SUCH FINGERPRINTS TO THE  
29 FEDERAL BUREAU OF INVESTIGATION, IN ACCORDANCE WITH APPLICABLE RULES OR  
30 REGULATIONS PROMULGATED BY SUCH ENTITIES, IN ORDER TO OBTAIN CRIMINAL  
31 HISTORY RECORD INFORMATION CONCERNING SUCH INDIVIDUALS. THE DIVISION  
32 SHALL CONDUCT BACKGROUND INVESTIGATIONS OF ALL SUCH INDIVIDUALS. DETER-  
33 MINATIONS ON THE EFFECT OF ANY CRIMINAL CONVICTIONS SHALL BE MADE IN  
34 ACCORDANCE WITH ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW.

35 S 3. The director of the office of counter terrorism in consultation  
36 with the commissioner of the division of criminal justice services shall  
37 promulgate rules and regulations necessary to implement paragraph g of  
38 subdivision 10 of section 163 of the state finance law.

39 S 4. This act shall take effect immediately; provided, however, that  
40 the amendments to subdivision 10 of section 163 of the state finance law  
41 made by section one of this act shall not affect the repeal of such  
42 section and shall be deemed repealed therewith.