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

641

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. GALEF, PAULIN, THIELE, KAVANAGH, MILLMAN, ORTIZ, KELLNER, ROSENTHAL, JAFFEE, CORWIN, RAIA, GIGLIO, CASTRO, BROOK-KRASNY, LUPARDO, JORDAN, BUTLER -- Multi-Sponsored by -- M. of A. BARCLAY, CROUCH, DUPREY, FINCH, KOLB, LAVINE, MAGEE, McDONOUGH, McKEVITT, MONTESANO, RABBITT, SALADINO, SCHIMEL, TEDISCO -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the legislative law, in relation to clarifying the appropriation and qualification of member items and authorizes the legislative ethics commission to review violations of the qualification of member items; and to amend the state finance law, in relation to requiring that all member items be fully itemized

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

Section 1. The legislative law is amended by adding a new section 54-c to read as follows:

S 54-C. MEMBER ITEMS. 1. AS USED IN THIS SECTION, THE TERM "MEMBER ITEM" SHALL MEAN A BUDGETARY ALLOCATION AS FUNDED BY THE LEGISLATIVE COMMUNITY PROJECTS FUND AS DEFINED IN SECTION NINETY-NINE-U OF THE STATE FINANCE LAW, AND THE EXECUTIVE COMMUNITY PROJECTS FUND AS DEFINED IN SECTION NINETY-NINE-V OF THE STATE FINANCE LAW AT THE DISCRETION AND REQUEST OF THE GOVERNOR OR A MEMBER OF THE LEGISLATURE FOR A CERTIFIED TAX-EXEMPT NON-PROFIT ORGANIZATION UNDER SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE IN NEW YORK STATE, A STATE AGENCY, A MUNICIPALITY OR THEIR AFFILIATED DEPARTMENT, UNIVERSITY, COLLEGE, OR SCHOOL DISTRICT.

2. MEMBER ITEMS SHALL NOT BE APPROPRIATED WHEN A CONFLICT OF INTEREST EXISTS BETWEEN THE LEGISLATOR OR GOVERNOR DESIGNATING THE MEMBER ITEM AND THE POTENTIAL RECIPIENT. A MEMBER ITEM CANNOT FUND ORGANIZATIONS THAT EMPLOY OR OTHERWISE COMPENSATE THE LEGISLATOR OR GOVERNOR, A MEMBER OF THE LEGISLATOR'S OR GOVERNOR'S FAMILY, ANY PERSON SHARING THE HOME OF THE LEGISLATOR OR GOVERNOR OR A MEMBER OF THE LEGISLATOR'S OR GOVERNOR'S

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

LBD00533-01-3

STAFF FOR SERVICES OR LABOR RENDERED. FURTHERMORE, LEGISLATORS AND THE GOVERNOR SHALL NOT DESIGNATE MEMBER ITEMS IF THE LEGISLATOR OR GOVERNOR, A MEMBER OF THE LEGISLATOR'S OR GOVERNOR'S FAMILY, ANY PERSON SHARING THE HOME OF THE LEGISLATOR OR GOVERNOR OR A MEMBER OF THE LEGISLATOR'S OR GOVERNOR'S STAFF IS INVOLVED WITH THE OPERATIONS OF THE ORGANIZATION IN A DECISION-MAKING CAPACITY INCLUDING BUT NOT LIMITED TO WORKING ON AN UNPAID, VOLUNTEER BASIS OR A MEMBER OF THE DIRECTING BOARD OF AN ORGANIZATION.

3. PRIOR TO THE APPROPRIATION OF MEMBER ITEMS, THE LEGISLATURE SHALL:

(A) PROVIDE THAT EACH MEMBER OF THE SENATE AND EACH MEMBER OF THE ASSEMBLY RECEIVE AN EQUAL SHARE OF THE DOLLAR AMOUNT OF MEMBER ITEMS ALLOCATED TO THE RESPECTIVE LEGISLATIVE BODY;

(B) REQUIRE THE LEGISLATOR OR GOVERNOR REQUESTING SUCH MEMBER ITEM TO SUBMIT A SIGNED CONFLICT OF INTEREST FORM ALONG WITH THE MEMBER ITEM REQUEST FORM TO ENSURE THAT NO CONFLICT OF INTEREST EXISTS. THE LEGISLATOR OR GOVERNOR SHALL DISCLOSE ON THE CONFLICT OF INTEREST FORM ALL POLITICAL DONATIONS HE OR SHE IS RECEIVING OR HAS RECEIVED IN THE PAST FROM THE INTENDED RECIPIENT OF THE MEMBER ITEM FUNDING. SUCH A CONFLICT OF INTEREST FORM SHALL BE SIGNED BY THE LEGISLATOR OR GOVERNOR UNDER PENALTY OF PERJURY, STATING THAT THE MEMBER ITEM IS NOT BEING DIRECTED IN A MANNER DESCRIBED IN SUBDIVISION TWO OF THIS SECTION;

(C) PROVIDE THAT ANY STATE AGENCY THAT PROVIDES FUNDING FOR MEMBER ITEMS EVALUATE THE SPENDING OF SUCH MEMBER ITEM FUNDS BY THE LOCAL PROJECT, ORGANIZATION OR OTHER ENTITY RECEIVING SUCH FUNDS. THE STATE AGENCY SHALL TRACK THE FUNDS TO ENSURE THAT THEY ARE BEING SPENT IN A MANNER CONSISTENT WITH THE MEMBER ITEM APPLICATION;

(D) ENSURE THAT THE FOLLOWING CRITERIA ARE SATISFIED:

(1) GRANTS ARE TO BE DESIGNATED FOR PUBLIC PURPOSES. THE PROGRAM FUNDED MUST BE OPEN AND AVAILABLE TO ALL INDIVIDUALS ON A NONSECTARIAN BASIS;

(2) GRANTS ARE PROVIDED IN SUPPORT OF SERVICES AND ACTIVITIES THAT HAVE STATEWIDE BENEFIT OR BENEFIT LOCAL COMMUNITIES;

(3) GRANTS ARE ONLY DESIGNATED FOR NOT-FOR-PROFIT ORGANIZATIONS, MUNICIPALITIES OR THEIR AFFILIATED DEPARTMENTS/AGENCIES, UNIVERSITIES, COLLEGES, OR SCHOOL DISTRICTS;

(4) GRANTS ARE AVAILABLE SOLELY FOR ACTIVITIES AND PROGRAMS CONDUCTED WITHIN THE STATE OF NEW YORK;

(5) GRANTS ARE NOT TO BE REDISTRIBUTED UNLESS THE GRANT RECIPIENT IS IDENTIFIED AND THE GRANT TO THE END RECIPIENT COMPLIES WITH THE CRITERIA;

(6) GRANTS ARE TO BE USED ONLY FOR THE PURPOSE STATED IN THE FUNDING REQUEST;

(7) GRANTS ARE NOT TO BE USED TO FUND LOAN PROGRAMS;

(8) GRANTS ARE NOT TO BE USED FOR THE FOLLOWING PURPOSES: (A) TO FUND AN ENTITY IN BANKRUPTCY, RECEIVERSHIP, OR FORECLOSURE OR TO FUND LEGAL OR ADMINISTRATIVE EXPENSES RELATED TO BANKRUPTCY, RECEIVERSHIP OR FORECLOSURE PROCEEDINGS; (B) TO PAY FOR ANY ARREARS IN WORKERS' COMPENSATION, UNEMPLOYMENT INSURANCE OR OTHER EMPLOYEE BENEFITS; OR (C) TO PAY FOR ANY ARREARS OR CURRENT OBLIGATIONS FOR FEDERAL, STATE, OR MUNICIPAL TAXES; FOR LOBBYING ACTIVITIES AS DEFINED UNDER SECTION ONE-C OF THIS CHAPTER AND COMPARABLE SECTIONS OF FEDERAL OR MUNICIPAL LAW;

(9) GRANTS ARE NOT TO BE THE ONLY SIGNIFICANT SOURCE OF FUNDING FOR THE ORGANIZATION;

(10) GRANT APPLICATIONS SHALL INCLUDE A BRIEF DESCRIPTION OF THE PROJECT TO BE FUNDED; AND

(11) GRANTS SHALL NOT BE USED BY RECIPIENTS TO PAY WAGES OR OTHER EMPLOYEE BENEFITS.

(E) AT LEAST TWENTY-FOUR HOURS PRIOR TO APPROVAL BY THE LEGISLATURE OF THE STATE BUDGET, THE LEGISLATURE MUST MAKE PUBLIC WITH RESPECT TO EACH MEMBER ITEM, THE MEMBER OF THE SENATE, THE MEMBER OF THE ASSEMBLY OR THE GOVERNOR SPONSORING THE MEMBER ITEM, THE DOLLAR AMOUNT OF THE MEMBER ITEM TO BE APPROPRIATED, AND THE NAME OF THE LOCAL PROJECT, ORGANIZATION OR OTHER ENTITY RECEIVING SUCH MEMBER ITEM. SUCH PUBLICATION SHALL, AT A MINIMUM, BE MADE ON THE WEBSITE OF EACH HOUSE OF THE LEGISLATURE IN A MANNER THAT IS EASILY ACCESSIBLE.

4. ALL MEMBER ITEM ALLOCATION RECIPIENTS SHALL PROVIDE CERTIFICATION OF PROPER USE OF FUNDS RECEIVED. FOR ALLOCATIONS TOTALING LESS THAN FIFTY THOUSAND DOLLARS, A DULY AUTHORIZED REPRESENTATIVE OF THE MEMBER ITEM RECIPIENT ORGANIZATION SHALL ATTEST UNDER PENALTY OF PERJURY THAT THE RECIPIENT ORGANIZATION ACTUALLY SPENT THE MEMBER ITEM GRANT MONEY IN THE MANNER AND FOR THE PURPOSES DESIGNATED IN ITS APPLICATION FOR A MEMBER ITEM ALLOCATION. FOR ALLOCATIONS TOTALING MORE THAN FIFTY THOUSAND DOLLARS, A DULY AUTHORIZED REPRESENTATIVE OF THE MEMBER ITEM RECIPIENT ORGANIZATION SHALL ATTEST UNDER PENALTY OF PERJURY THAT THE RECIPIENT ORGANIZATION ACTUALLY SPENT THE MEMBER ITEM GRANT MONEY IN THE MANNER AND FOR THE PURPOSES DESIGNATED IN ITS APPLICATION FOR A MEMBER ITEM ALLOCATION AND SHALL FILE A FINAL REPORT, UNDER PENALTY OF PERJURY, DETAILING THE EXPENDITURES. SUCH REPORT SHALL BE SUBMITTED BY MAY THIRTY-FIRST OF THE CALENDAR YEAR FOLLOWING THE CALENDAR YEAR IN WHICH THE MEMBER ITEM WAS ALLOCATED AND SHALL FOLLOW THE REQUIREMENTS ESTABLISHED BY THE ATTORNEY GENERAL. NO FUTURE MEMBER ITEM GRANTS SHALL BE APPROVED FOR AN ORGANIZATION WHICH HAS PREVIOUSLY RECEIVED A MEMBER ITEM ALLOCATION UNTIL SUCH DOCUMENTS HAVE BEEN SIGNED AND RECEIVED BY THE OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL.

5. PRIOR TO SUBMITTING AN APPLICATION FOR A MEMBER ITEM ALLOCATION, EACH ORGANIZATION SEEKING A MEMBER ITEM ALLOCATION MUST MEET PRE-CERTIFICATION STANDARDS AS ESTABLISHED BY THE OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL. AT A MINIMUM, THOSE STANDARDS SHALL REQUIRE THAT THE ORGANIZATION SEEKING PRE-CERTIFICATION IS A CERTIFIED TAX-EXEMPT NON-PROFIT ORGANIZATION UNDER SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE IN NEW YORK STATE, A STATE AGENCY, A MUNICIPALITY OR THEIR AFFILIATED DEPARTMENT, UNIVERSITY, COLLEGE, OR SCHOOL DISTRICT CAPABLE OF ACCEPTING POTENTIAL FUNDING AND THAT SUCH ENTITY IS NOT IN BANKRUPTCY OR ARREARS ON ANY OBLIGATIONS. IF AN ORGANIZATION HAS RECEIVED MEMBER ITEM FUNDING IN THE PAST, THE ORGANIZATION SHALL ALSO COMPLY WITH THE REQUIREMENTS OF SUBDIVISION FOUR OF THIS SECTION. NO APPLICATION FROM ANY ORGANIZATION SHALL BE CONSIDERED BY A LEGISLATOR UNTIL THE OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL HAS CERTIFIED SUCH ORGANIZATION BASED UPON THE CRITERIA SET FORTH IN THIS SUBDIVISION AND UPON ANY ADDITIONAL REGULATORY STANDARDS ESTABLISHED BY THE ATTORNEY GENERAL.

6. ANY STATE AGENCY THAT PROVIDES FUNDING FOR MEMBER ITEMS SHALL REVIEW MEMBER ITEM SPENDING ON AN ANNUAL BASIS AND PERIODICALLY REVIEW GRANT RECIPIENTS' USE OF GRANT MONEY.

7. ANY MEMBER ITEM APPROPRIATED BY THE LEGISLATURE SHALL BE SET FORTH SEPARATELY AND APART FROM EVERY OTHER MEMBER ITEM IN THE STATE BUDGET IN ORDER TO CLEARLY IDENTIFY EACH LEGISLATOR'S OR GOVERNOR'S REQUEST.

8. ANY VIOLATION OF THE PROVISIONS OF THIS SECTION SHALL BE REFERRED TO THE LEGISLATIVE ETHICS COMMISSION OR ITS SUCCESSOR ENTITY. COMPLAINTS REGARDING THE FAILURE OF AN ALLOCATION OR USE OF A MEMBER ITEM TO COMPLY WITH THE PROVISIONS OF THIS CHAPTER SHALL BE SUBMITTED TO (A) THE LEGISLATIVE ETHICS COMMISSION WITH REGARD TO A MEMBER ITEM ALLO-

CATION MADE AT THE DISCRETION OF A LEGISLATOR, OR (B) THE COMMISSION ON PUBLIC INTEGRITY WITH REGARD TO A MEMBER ITEM ALLOCATION MADE AT THE DISCRETION OF THE GOVERNOR. EACH COMPLAINT SHALL BE INVESTIGATED IN ACCORDANCE WITH THE RULES AND PROCEDURES OF THE COMMISSION RECEIVING THE COMPLAINT.

S 2. Subdivisions 4 and 5 of section 24 of the state finance law, as added by chapter 1 of the laws of 2007, are amended to read as follows:

4. Any appropriation added to such budget bills, pursuant to section four of article seven of the constitution, shall only contain itemized appropriations which shall not be in the form of lump sum appropriations[,] AND SHALL DESIGNATE FOR EACH APPROPRIATION A GRANTEE OF SUCH APPROPRIATION, and [provided further that] for all non-federal state operations appropriations, such bill or bills shall only contain itemized appropriations and shall be made, where practicable, by agency, and within each agency by program and within each program at the following level of detail and in the following order:

(a) by fund type, which at a minimum shall include general fund, special revenue-other funds, capital projects funds and debt service funds;

(b) for personal service appropriations, separate appropriations shall be made for regular personal service, temporary personal service, and holiday and overtime pay;

(c) for nonpersonal service appropriations, separate appropriations shall be made for supplies and materials, travel, contractual services, equipment and fringe benefits, as appropriate.

5. [Any appropriation added pursuant to section four of article seven of the constitution without designating a grantee shall be allocated only pursuant to a plan setting forth an itemized list of grantees with the amount to be received by each, or the methodology for allocating such appropriation. Such plan shall be subject to the approval of the chair of the senate finance committee, the chair of the assembly ways and means committee, and the director of the budget, and thereafter shall be included in a concurrent resolution calling for the expenditure of such monies, which resolution must be approved by a majority vote of all members elected to each house upon a roll call vote.] THE PROVISIONS OF THIS SECTION SHALL NOT PRECLUDE MEMBERS OF THE LEGISLATURE FROM COLLABORATING WITH EACH OTHER IN THE SELECTION OF MEMBER ITEMS AND PACKAGING THEIR INDIVIDUAL MEMBER ITEM ALLOCATIONS TOGETHER WITH OTHER MEMBER'S ALLOCATIONS FOR SPECIFIED REGIONAL OR JOINT PROJECTS.

S 3. Section 99-d of the state finance law, as added by chapter 474 of the laws of 1996, is renumbered section 99-u and the section heading and subdivision 1, subdivision 1 as amended by section 2 of part BB of chapter 686 of the laws of 2003, are amended to read as follows:

[Community] LEGISLATIVE COMMUNITY projects fund. 1. There is hereby established in the joint custody of the comptroller and the commissioner of taxation and finance a special fund to be known as the LEGISLATIVE community projects fund. This fund may have separate accounts designated pursuant to a specific appropriation to such account or pursuant to a written suballocation plan approved in a memorandum of understanding executed by the director of the budget, the secretary of the senate finance committee and the secretary of the assembly ways and means committee. Such suballocation shall be submitted to the comptroller.

S 4. The state finance law is amended by adding a new section 99-v to read as follows:

S 99-V. EXECUTIVE COMMUNITY PROJECTS FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE COMPTROLLER AND THE COMMISSIONER OF

TAXATION AND FINANCE A SPECIAL FUND TO BE KNOWN AS THE EXECUTIVE COMMUNITY PROJECTS FUND. THIS FUND MAY HAVE SEPARATE ACCOUNTS DESIGNATED PURSUANT TO A SPECIFIC APPROPRIATION TO SUCH ACCOUNT OR PURSUANT TO A WRITTEN SUBALLOCATION PLAN APPROVED IN A MEMORANDUM OF UNDERSTANDING EXECUTED BY THE DIRECTOR OF THE BUDGET, THE SECRETARY OF THE SENATE FINANCE COMMITTEE AND THE SECRETARY OF THE ASSEMBLY WAYS AND MEANS COMMITTEE. SUCH SUBALLOCATION SHALL BE SUBMITTED TO THE COMPTROLLER.

2. SUCH FUND SHALL CONSIST OF MONIES TRANSFERRED TO SUCH FUND FROM THE GENERAL FUND/STATE PURPOSES ACCOUNT, OR ANY OTHER MONIES REQUIRED TO BE TRANSFERRED OR DEPOSITED. MONIES MAY NOT BE TRANSFERRED OR LOANED BETWEEN THE ACCOUNTS OF THIS FUND, UNLESS SPECIFICALLY OTHERWISE PROVIDED BY LETTER SIGNED BY THE DIRECTOR OF THE BUDGET, BUT ONLY UPON THE JOINT REQUEST OF THE SECRETARY OF THE SENATE FINANCE COMMITTEE AND THE SECRETARY OF THE ASSEMBLY WAYS AND MEANS COMMITTEE.

3. (A) AS REQUIRED TO MAKE TIMELY PAYMENTS FROM SUCH ACCOUNTS UPON PRESENTMENT OF PROPER VOUCHERS THEREFOR, THE STATE COMPTROLLER SHALL MAKE TRANSFERS TO ANY ACCOUNT IN THIS FUND UP TO THE AMOUNTS ANNUALLY SPECIFIED FOR TRANSFER TO SUCH ACCOUNT AND IN COMPLIANCE WITH SUBDIVISION TWO OF THIS SECTION, BUT ONLY FROM SUCH FUND OR FUNDS AUTHORIZED TO PROVIDE SUCH TRANSFERS.

(B) BY THE CLOSE OF EACH FISCAL YEAR, ALL REMAINING AMOUNTS NOT YET TRANSFERRED SHALL BE TRANSFERRED TO THE DESIGNATED ACCOUNTS FOR WHICH SUCH TRANSFERS WERE AUTHORIZED, UP TO THE TOTAL AMOUNTS SPECIFIED FOR TRANSFER TO EACH ACCOUNT IN EACH FISCAL YEAR AND IN COMPLIANCE WITH SUBDIVISION TWO OF THIS SECTION.

4. NOTWITHSTANDING SECTION FORTY OF THIS CHAPTER OR ANY OTHER PROVISION OF LAW, APPROPRIATIONS OF THIS FUND SHALL BE AVAILABLE FOR LIABILITIES INCURRED DURING AND AFTER THE CLOSE OF THE FISCAL YEAR FOR WHICH SUCH APPROPRIATIONS ARE ENACTED, PROVIDED HOWEVER THAT SUCH APPROPRIATIONS SHALL LAPSE ON THE FIFTEENTH DAY OF SEPTEMBER FOLLOWING THE CLOSE OF THE FISCAL YEAR, AND NO MONIES SHALL THEREAFTER BE PAID OUT OF THE STATE TREASURY OR ANY OF ITS FUNDS OR THE FUNDS UNDER ITS MANAGEMENT PURSUANT TO SUCH APPROPRIATIONS.

5. THE DIRECTOR OF THE BUDGET SHALL ISSUE A CERTIFICATE OF APPROVAL FOR ANY APPROPRIATION IN ANY ACCOUNT OF THIS FUND NO LATER THAN THE LATER OF SIXTY DAYS AFTER THE ENACTMENT OF SUCH APPROPRIATION OR FIVE DAYS AFTER THE EXECUTION OF A WRITTEN SUBALLOCATION PLAN PURSUANT TO THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION. SUCH APPROVAL SHALL SATISFY ANY OTHER REQUIREMENT FOR A CERTIFICATE OF APPROVAL.

6. (A) THE STATE SHALL NOT BE LIABLE FOR PAYMENTS PURSUANT TO ANY CONTRACT, GRANT OR AGREEMENT MADE PURSUANT TO AN APPROPRIATION IN ANY ACCOUNT OF THIS FUND IF INSUFFICIENT MONIES ARE AVAILABLE FOR TRANSFER TO SUCH ACCOUNT OF THIS FUND, AFTER REQUIRED TRANSFERS PURSUANT TO SUBDIVISION THREE OF THIS SECTION. EXCEPT WITH RESPECT TO GRANTS, OR AGREEMENTS EXECUTED BY ANY STATE OFFICER, EMPLOYEE, DEPARTMENT, INSTITUTION, COMMISSION, BOARD, OR OTHER AGENCY OF THE STATE PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, ANY CONTRACT, GRANT OR AGREEMENT MADE PURSUANT TO AN APPROPRIATION IN THIS FUND SHALL INCORPORATE THIS PROVISION AS A TERM OF SUCH CONTRACT, GRANT OR AGREEMENT.

(B) THE EXHAUSTION OF FUNDS AVAILABLE FOR SUCH TRANSFERS SHALL NOT PRECLUDE THE APPROVAL OF CONTRACTS HEREUNDER PURSUANT TO SECTION ONE HUNDRED TWELVE OF THIS CHAPTER. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, INTEREST SHALL NOT BE DUE TO ANY RECIPIENT FOR ANY LATE PAYMENTS MADE FROM THIS FUND WHICH RESULT FROM INSUFFICIENT MONIES BEING AVAILABLE IN AN ACCOUNT OF THIS FUND.

7. MONIES SHALL BE PAID OUT OF SUCH ACCOUNTS ON THE AUDIT AND WARRANT OF THE STATE COMPTROLLER ON VOUCHERS CERTIFIED OR APPROVED BY THE HEAD OF THE APPROPRIATE AGENCY.

S 5. This act does not preclude either house of the legislature or the governor from adopting more stringent standards through its own guidelines or through the application process.

S 6. Member item grants shall continue to be subject to review by the respective assembly and senate fiscal and counsel staffs, division of the budget, the administering state agency, the office of the state comptroller, and the office of the attorney general. Nothing in this act shall limit the authority of the state comptroller and the attorney general to review member item grant recipients or member item grants.

S 7. This act shall take effect immediately.