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

S. 5962 A. 8199

2013-2014 Regular Sessions

S E N A T E - A S S E M B L Y

October 21, 2013

IN SENATE -- Introduced by Sens. LANZA, VALESKY, MARCELLINO -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

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

AN ACT to amend the state finance law, in relation to pay-to-play disclosure reform

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

Section 1. The state finance law is amended by adding a new section 139-l to read as follows:

S 139-L. REPORTING OF CONTRIBUTIONS BY BUSINESS ENTITIES. 1. FOR THE PURPOSES OF THIS SECTION, A "BUSINESS ENTITY" SHALL MEAN ANY NATURAL OR LEGAL PERSON, BUSINESS CORPORATION, PROFESSIONAL SERVICES CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, LIMITED PARTNERSHIP, BUSINESS TRUST, ASSOCIATION, LABOR ORGANIZATION, RELIGIOUS CORPORATION, EDUCATION CORPORATION, OR NOT-FOR-PROFIT CORPORATION ORGANIZED UNDER THE LAWS OF THIS STATE OR ANY OTHER STATE OR FOREIGN JURISDICTION, INCLUDING:

A. ALL INDIVIDUALS WHO OWN OR CONTROL MORE THAN TEN PERCENT OF THE PROFITS OR ASSETS OF A BUSINESS ENTITY OR TEN PERCENT OF THE STOCK IN THE CASE OF A BUSINESS ENTITY THAT IS A CORPORATION FOR PROFIT, AS APPROPRIATE;

B. KEY EMPLOYEES OF THE BUSINESS ENTITY, WHICH SHALL MEAN OFFICERS, MEMBERS OF THE BOARD OF DIRECTORS AND TRUSTEES, AND THEIR SPOUSES;

C. ANY SUBSIDIARIES DIRECTLY OR INDIRECTLY CONTROLLED BY THE BUSINESS ENTITY;

D. ANY POLITICAL ORGANIZATION ORGANIZED UNDER SECTION 527 OF THE INTERNAL REVENUE CODE THAT IS DIRECTLY OR INDIRECTLY CONTROLLED BY THE BUSINESS ENTITY, OTHER THAN A CANDIDATE COMMITTEE, ELECTION FUND, OR POLITICAL PARTY COMMITTEE; AND

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

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E. IF A BUSINESS ENTITY IS A NATURAL PERSON, THAT PERSON'S SPOUSE AND/OR CHILD, RESIDING WITH THE BUSINESS ENTITY.

2. PRIOR TO THE SUBMISSION TO THE DEPARTMENT OF LAW AND THE DEPARTMENT OF AUDIT AND CONTROL FOR APPROVAL OF A PROCUREMENT CONTRACT FOR THE SALE OF GOODS, SERVICES, OR CONSTRUCTION TO A STATE AGENCY, AS DEFINED IN SECTION ONE HUNDRED SIXTY OF THIS CHAPTER, OR ANY PUBLIC AUTHORITY WHEN ITS PROCUREMENT CONTRACTS ARE SUBMITTED TO THE DEPARTMENT OF AUDIT AND CONTROL FOR APPROVAL, OR TO EITHER HOUSE OF THE STATE LEGISLATURE OR, FOR PROCUREMENTS THAT DO NOT REQUIRE THE APPROVAL OF THE DEPARTMENT OF LAW OR THE DEPARTMENT OF AUDIT AND CONTROL, PRIOR TO THE EXECUTION OF THE PROCUREMENT CONTRACT, INCLUDING BUT NOT LIMITED TO CONTRACTS FOR THE ACQUISITION, SALE, OR LEASE OF ANY REAL PROPERTY FROM OR TO ANY BUSINESS ENTITY OR PRIOR TO THE AWARD OF A GRANT TO ANY BUSINESS ENTITY, THE BUSINESS ENTITY SHALL REPORT ON A FORM TO BE CREATED BY THE OFFICE OF AUDIT AND CONTROL ALL CONTRIBUTIONS THE BUSINESS ENTITY MADE DURING THE PRECEDING EIGHTEEN MONTHS TO A CANDIDATE COMMITTEE OR ELECTION FUND OF ANY CANDIDATE OR HOLDER OF THE OFFICE OF GOVERNOR, LIEUTENANT GOVERNOR, STATE COMPTROLLER, OR ATTORNEY GENERAL IF THE PROCUREMENT IS TO BE MADE BY A STATE AGENCY OR CONTRIBUTIONS TO CANDIDATES FOR ELECTION TO THE HOUSE OF THE STATE LEGISLATURE SEEKING THE PROCUREMENT IF THE PROCUREMENT IS TO BE MADE BY A HOUSE OF THE LEGISLATURE. THE BUSINESS ENTITY SHALL HAVE A CONTINUING DUTY TO REPORT ANY CONTRIBUTION IT MAKES DURING THE TERM OF THE CONTRACT UNTIL ITS COMPLETION OR FOR A PERIOD OF EIGHTEEN MONTHS AFTER THE AWARD, WHICHEVER IS GREATER.

3. IT SHALL BE A BREACH OF THE TERMS OF THE GOVERNMENT CONTRACT FOR A BUSINESS ENTITY TO KNOWINGLY CONCEAL OR MISREPRESENT A CONTRIBUTION GIVEN OR RECEIVED OR TO MAKE OR SOLICIT CONTRIBUTIONS THROUGH INTERMEDIARIES FOR THE PURPOSE OF CONCEALING OR MISREPRESENTING THE SOURCE OF THE CONTRIBUTION.

4. IF A BUSINESS ENTITY IS FOUND, AFTER NOTIFICATION OF AN ALLEGATION OF A VIOLATION OF THE PROVISIONS OF THIS SECTION, AN OPPORTUNITY TO BE HEARD, AND REVIEW AND INVESTIGATION BY THE ETHICS OFFICER OF THE GOVERNMENTAL ENTITY CONDUCTING THE PROCUREMENT OR OTHER DESIGNATED OFFICIAL OF THE PROCURING GOVERNMENTAL ENTITY RESPONSIBLE FOR REVIEWING AND INVESTIGATING SUCH MATTERS, TO HAVE KNOWINGLY AND WILLFULLY VIOLATED THE REQUIREMENTS OF THIS SECTION, IT SHALL RESULT IN A DETERMINATION OF NON-RESPONSIBILITY FOR SUCH BUSINESS ENTITY, AND SUCH BUSINESS ENTITY AND ITS SUBSIDIARIES, AND ANY RELATED OR SUCCESSOR ENTITY WITH SUBSTANTIALLY SIMILAR FUNCTION, MANAGEMENT, BOARD OF DIRECTORS, OFFICERS, AND SHAREHOLDERS SHALL NOT BE AWARDED THE PROCUREMENT CONTRACT, UNLESS THE GOVERNMENTAL ENTITY FINDS THAT THE AWARD OF THE PROCUREMENT CONTRACT TO THE BUSINESS ENTITY IS NECESSARY TO PROTECT PUBLIC PROPERTY OR PUBLIC HEALTH OR SAFETY, AND THAT THE BUSINESS ENTITY IS THE ONLY SOURCE CAPABLE OF SUPPLYING THE REQUIRED ARTICLE OF PROCUREMENT WITHIN THE NECESSARY TIMEFRAME, PROVIDED THAT THE GOVERNMENTAL ENTITY SHALL INCLUDE IN THE PROCUREMENT RECORD A STATEMENT DESCRIBING THE BASIS FOR SUCH FINDING. ANY SUBSEQUENT DETERMINATION OF NON-RESPONSIBILITY DUE TO VIOLATION OF THIS SECTION WITHIN FOUR YEARS OF A DETERMINATION OF NON-RESPONSIBILITY DUE TO A VIOLATION OF THIS SECTION SHALL RESULT IN THE BUSINESS ENTITY BEING RENDERED INELIGIBLE TO SUBMIT A PROPOSAL ON OR BE AWARDED ANY PROCUREMENT CONTRACT FOR A PERIOD OF FOUR YEARS FROM THE DATE OF THE SECOND FINAL DETERMINATION. EVERY GOVERNMENTAL ENTITY SHALL ENSURE THAT ITS SOLICITATIONS OF PROPOSALS FOR PROCUREMENT CONTRACTS REQUIRE POTENTIAL VENDORS TO DISCLOSE FINDINGS OF NON-RESPONSIBILITY DUE TO VIOLATIONS OF THE PROVISIONS OF THIS SECTION WITHIN THE PREVIOUS FOUR YEARS MADE BY ANY GOVERNMENTAL ENTITY. THE FAILURE OF BUSINESS ENTITIES

TO TIMELY DISCLOSE ACCURATE AND COMPLETE INFORMATION OR OTHERWISE COOPERATE WITH THE GOVERNMENTAL ENTITY IN ADMINISTERING THIS PROVISION SHALL BE CONSIDERED BY THE GOVERNMENTAL ENTITY IN ITS DETERMINATION OF RESPONSIBILITY. UPON A DETERMINATION OF NON-RESPONSIBILITY OR DEBARMENT DUE TO A VIOLATION OF THIS SECTION, THE GOVERNMENTAL ENTITY SHALL NOTIFY THE OFFICE OF GENERAL SERVICES, WHICH SHALL KEEP A LIST OF ALL BUSINESS ENTITIES THAT HAVE BEEN DETERMINED TO BE NONRESPONSIBLE BIDDERS OR DEBARRED DUE TO VIOLATION OF THIS SECTION, AND THE OFFICE OF AUDIT AND CONTROL. THE OFFICE OF GENERAL SERVICES SHALL MAKE SUCH LIST PUBLICLY AVAILABLE AND SHALL PUBLISH SUCH LIST ON ITS WEBSITE.

5. EVERY CONTRACT AND BID APPLICATION AND SPECIFICATIONS PROMULGATED IN CONNECTION THEREWITH COVERED BY THIS ARTICLE SHALL CONTAIN A PROVISION DESCRIBING THE REQUIREMENTS OF THIS SECTION AND A STATEMENT THAT COMPLIANCE WITH THIS SECTION SHALL BE A MATERIAL TERM AND CONDITION OF SAID CONTRACT OR BID APPLICATION AND BINDING UPON THE PARTIES THERETO UPON THE ENTRY OF ALL APPLICABLE CONTRACTS.

6. THE OFFICE OF THE NEW YORK STATE COMPTROLLER SHALL MAINTAIN A DETAILED LISTING OF ALL CONTRIBUTIONS, ON ITS WEBSITE, MADE BY INTERESTED BUSINESS ENTITIES IN THE PROCUREMENT RECORDS OF CONTRACTS INVOLVING SUCH BUSINESS ENTITIES.

S 2. This act shall take effect on the ninetieth day after it shall have become a law.