

6692

2015-2016 Regular Sessions

I N A S S E M B L Y

March 30, 2015

Introduced by M. of A. ENGLEBRIGHT, MONTESANO, NOJAY -- 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:

1 Section 1. The state finance law is amended by adding a new section
2 139-l to read as follows:

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

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

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

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

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

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

24 2. PRIOR TO THE SUBMISSION TO THE DEPARTMENT OF LAW AND THE DEPARTMENT
25 OF AUDIT AND CONTROL FOR APPROVAL OF A PROCUREMENT CONTRACT FOR THE SALE

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

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

21 3. IT SHALL BE A BREACH OF THE TERMS OF THE GOVERNMENT CONTRACT FOR A
22 BUSINESS ENTITY TO KNOWINGLY CONCEAL OR MISREPRESENT A CONTRIBUTION
23 GIVEN OR RECEIVED OR TO MAKE OR SOLICIT CONTRIBUTIONS THROUGH INTERME-
24 DIARIES FOR THE PURPOSE OF CONCEALING OR MISREPRESENTING THE SOURCE OF
25 THE CONTRIBUTION.

26 4. IF A BUSINESS ENTITY IS FOUND, AFTER NOTIFICATION OF AN ALLEGATION
27 OF A VIOLATION OF THE PROVISIONS OF THIS SECTION, AN OPPORTUNITY TO BE
28 HEARD, AND REVIEW AND INVESTIGATION BY THE ETHICS OFFICER OF THE GOVERN-
29 MENTAL ENTITY CONDUCTING THE PROCUREMENT OR OTHER DESIGNATED OFFICIAL OF
30 THE PROCURING GOVERNMENTAL ENTITY RESPONSIBLE FOR REVIEWING AND INVESTI-
31 GATING SUCH MATTERS, TO HAVE KNOWINGLY AND WILLFULLY VIOLATED THE
32 REQUIREMENTS OF THIS SECTION, IT SHALL RESULT IN A DETERMINATION OF
33 NON-RESPONSIBILITY FOR SUCH BUSINESS ENTITY, AND SUCH BUSINESS ENTITY
34 AND ITS SUBSIDIARIES, AND ANY RELATED OR SUCCESSOR ENTITY WITH SUBSTAN-
35 Tially SIMILAR FUNCTION, MANAGEMENT, BOARD OF DIRECTORS, OFFICERS AND
36 SHAREHOLDERS SHALL NOT BE AWARDED THE PROCUREMENT CONTRACT, UNLESS THE
37 GOVERNMENTAL ENTITY FINDS THAT THE AWARD OF THE PROCUREMENT CONTRACT TO
38 THE BUSINESS ENTITY IS NECESSARY TO PROTECT PUBLIC PROPERTY OR PUBLIC
39 HEALTH OR SAFETY, AND THAT THE BUSINESS ENTITY IS THE ONLY SOURCE CAPA-
40 BLE OF SUPPLYING THE REQUIRED ARTICLE OF PROCUREMENT WITHIN THE NECES-
41 SARY TIMEFRAME, PROVIDED THAT THE GOVERNMENTAL ENTITY SHALL INCLUDE IN
42 THE PROCUREMENT RECORD A STATEMENT DESCRIBING THE BASIS FOR SUCH FIND-
43 ING. ANY SUBSEQUENT DETERMINATION OF NON-RESPONSIBILITY DUE TO VIOLATION
44 OF THIS SECTION WITHIN FOUR YEARS OF A DETERMINATION OF NON-RESPONSIBIL-
45 ITY DUE TO A VIOLATION OF THIS SECTION SHALL RESULT IN THE BUSINESS
46 ENTITY BEING RENDERED INELIGIBLE TO SUBMIT A PROPOSAL ON OR BE AWARDED
47 ANY PROCUREMENT CONTRACT FOR A PERIOD OF FOUR YEARS FROM THE DATE OF THE
48 SECOND FINAL DETERMINATION. EVERY GOVERNMENTAL ENTITY SHALL ENSURE THAT
49 ITS SOLICITATIONS OF PROPOSALS FOR PROCUREMENT CONTRACTS REQUIRE POTEN-
50 TIAL VENDORS TO DISCLOSE FINDINGS OF NON-RESPONSIBILITY DUE TO
51 VIOLATIONS OF THE PROVISIONS OF THIS SECTION WITHIN THE PREVIOUS FOUR
52 YEARS MADE BY ANY GOVERNMENTAL ENTITY. THE FAILURE OF BUSINESS ENTITIES
53 TO TIMELY DISCLOSE ACCURATE AND COMPLETE INFORMATION OR OTHERWISE COOP-
54 ERATE WITH THE GOVERNMENTAL ENTITY IN ADMINISTERING THIS PROVISION SHALL
55 BE CONSIDERED BY THE GOVERNMENTAL ENTITY IN ITS DETERMINATION OF RESPON-
56 SIBILITY. UPON A DETERMINATION OF NON-RESPONSIBILITY OR DEBARMENT DUE TO

1 A VIOLATION OF THIS SECTION, THE GOVERNMENTAL ENTITY SHALL NOTIFY THE
2 OFFICE OF GENERAL SERVICES, WHICH SHALL KEEP A LIST OF ALL BUSINESS
3 ENTITIES THAT HAVE BEEN DETERMINED TO BE NONRESPONSIBLE BIDDERS OR
4 DEBARRED DUE TO VIOLATION OF THIS SECTION, AND THE OFFICE OF AUDIT AND
5 CONTROL. THE OFFICE OF GENERAL SERVICES SHALL MAKE SUCH LIST PUBLICLY
6 AVAILABLE AND SHALL PUBLISH SUCH LIST ON ITS WEBSITE.

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

13 6. THE DEPARTMENT OF AUDIT AND CONTROL SHALL MAINTAIN A DETAILED LIST-
14 ING OF ALL CONTRIBUTIONS, ON ITS WEBSITE, MADE BY INTERESTED BUSINESS
15 ENTITIES IN THE PROCUREMENT RECORDS OF CONTRACTS INVOLVING SUCH BUSINESS
16 ENTITIES.

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