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I N A S S E M B L Y

February 5, 2016

Introduced by M. of A. GALEF -- read once and referred to the Committee
on Election Law

AN ACT to amend the state finance law, in relation to the reporting of
contributions by business entities

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, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING
5 MEANINGS:
6 A. "BUSINESS ENTITY" MEANS:
7 I. A FOR-PROFIT ENTITY AS FOLLOWS:
8 A. IN THE CASE OF A CORPORATION: THE CORPORATION, ANY OFFICER OF THE
9 CORPORATION, AND ANY PERSON OR BUSINESS ENTITY THAT OWNS OR CONTROLS TEN
10 PERCENT OR MORE OF THE STOCK OF THE CORPORATION;
11 B. IN THE CASE OF A GENERAL PARTNERSHIP: THE PARTNERSHIP AND ANY PART-
12 NER;
13 C. IN THE CASE OF A LIMITED PARTNERSHIP: THE LIMITED PARTNERSHIP AND
14 ANY PARTNER;
15 D. IN THE CASE OF A PROFESSIONAL CORPORATION: THE PROFESSIONAL CORPO-
16 RATION AND ANY SHAREHOLDER OR OFFICER;
17 E. IN THE CASE OF A LIMITED LIABILITY COMPANY: THE LIMITED LIABILITY
18 COMPANY AND ANY MEMBER;
19 F. IN THE CASE OF A LIMITED LIABILITY PARTNERSHIP: THE LIMITED LIABIL-
20 ITY PARTNERSHIP AND ANY PARTNER;
21 G. IN THE CASE OF A SOLE PROPRIETORSHIP: THE PROPRIETOR; AND
22 H. IN THE CASE OF ANY OTHER FORM OF ENTITY ORGANIZED UNDER THE LAWS OF
23 THIS STATE OR ANY OTHER STATE OR FOREIGN JURISDICTION: THE ENTITY AND
24 ANY PRINCIPAL, OFFICER, OR PARTNER THEREOF;
25 II. ANY SUBSIDIARY DIRECTLY OR INDIRECTLY CONTROLLED BY THE BUSINESS
26 ENTITY;
27 III. ANY POLITICAL ORGANIZATION ORGANIZED UNDER SECTION 527 OF THE
28 INTERNAL REVENUE CODE THAT IS DIRECTLY OR INDIRECTLY CONTROLLED BY THE

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

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BUSINESS ENTITY, OTHER THAN A CANDIDATE COMMITTEE, ELECTION FUND, OR POLITICAL PARTY COMMITTEE; AND WITH RESPECT TO AN INDIVIDUAL WHO IS INCLUDED WITHIN THE DEFINITION OF BUSINESS ENTITY, SUCH INDIVIDUAL'S SPOUSE OR DOMESTIC PARTNER, AND ANY CHILD RESIDING WITH THE INDIVIDUAL, PROVIDED, HOWEVER, THAT, THIS SECTION SHALL NOT APPLY TO A CONTRIBUTION MADE BY SUCH SPOUSE, DOMESTIC PARTNER, OR CHILD TO A CANDIDATE FOR WHOM THE CONTRIBUTOR IS ENTITLED TO VOTE OR TO A POLITICAL PARTY COMMITTEE WITHIN WHOSE JURISDICTION THE CONTRIBUTOR RESIDES UNLESS SUCH CONTRIBUTION IS IN VIOLATION OF THIS SECTION.

B. "CONTRIBUTION" MEANS ANY MONETARY CONTRIBUTION, IN-KIND CONTRIBUTION OR GIFT.

C. "IN-KIND CONTRIBUTIONS" SHALL INCLUDE BUT NOT BE LIMITED TO:

I. GOODS OR SERVICES OFFERED FREE OF CHARGE;

II. GOODS AND SERVICES OFFERED AT LESS THAN THE USUAL AND NORMAL CHARGE; AND

III. PAYMENTS BY A THIRD PARTY FOR GOODS AND SERVICES RENDERED TO A CANDIDATE OR POLITICAL COMMITTEE.

2. NO BUSINESS ENTITY OR INDIVIDUAL WHO AGREES TO ANY CONTRACT OR AGREEMENT WITH THE STATE OR ANY DEPARTMENT OR AGENCY THEREOF OR ITS INDEPENDENT AUTHORITIES EITHER FOR THE RENDITION OF SERVICES OR THE FURNISHING OF ANY MATERIAL, SUPPLIES OR EQUIPMENT OR FOR THE ACQUISITION, SALE, OR LEASE OF ANY LAND OR BUILDING, IF THE VALUE OF THE TRANSACTION EXCEEDS FIFTEEN THOUSAND DOLLARS, SHALL MAKE MONETARY OR IN-KIND CONTRIBUTIONS OR A PLEDGE OF CONTRIBUTION IN EXCESS OF ONE THOUSAND DOLLARS TO AN INDIVIDUAL WHO HOLDS THE POSITION OF AN ELECTED STATE PUBLIC OFFICE OR A CANDIDATE FOR SUCH POSITION, INCLUDING THE CANDIDATES COMMITTEE OR ELECTION FUND, IF SUCH CONTRACT MUST BE VOTED ON OR APPROVED BY SUCH INDIVIDUAL; OR A STATE, COUNTY OR MUNICIPAL POLITICAL PARTY COMMITTEE FOR ANY POLITICAL PURPOSE OR USE:

A. WITHIN TWELVE MONTHS IMMEDIATELY PRECEDING THE COMMENCEMENT OF THE BIDDING AND NEGOTIATIONS PROCESS FOR THE CONTRACT OR AGREEMENT;

B. DURING THE LENGTH OF THE TERM OF THE CONTRACT OR AGREEMENT; OR

C. WITHIN THE TWELVE MONTHS IMMEDIATELY FOLLOWING THE LAST DAY OF THE TERM OF THE CONTRACT OR AGREEMENT.

3. THE OFFICE OF THE STATE COMPTROLLER, IN CONSULTATION WITH THE STATE BOARD OF ELECTIONS, SHALL DEVELOP AND IMPLEMENT DISCLOSURE STATEMENTS WHICH SHALL BE REVIEWED BY THE COMPTROLLER DURING THE BIDDING PROCESS AND PRIOR TO THE AWARDING OF ANY CONTRACT OR AGREEMENT TO PROCURE SERVICES OR ANY MATERIAL, SUPPLIES OR EQUIPMENT FROM, OR FOR THE ACQUISITION, SALE, OR LEASE OF ANY LAND OR BUILDING FROM OR TO, ANY BUSINESS ENTITY. THE STATE SHALL REQUIRE, AS PART OF THE PROCUREMENT PROCESS, A BUSINESS ENTITY OR INDIVIDUAL TO REPORT THROUGH SUCH DISCLOSURE STATEMENTS, UNDER PENALTY OF PERJURY, ALL CONTRIBUTIONS MADE DURING THE PRECEDING FOUR YEARS TO ANY ELECTED STATE PUBLIC OFFICE OR A CANDIDATE FOR SUCH POSITION, INCLUDING THE CANDIDATE'S COMMITTEE OR ELECTION FUND OR A STATE, COUNTY OR MUNICIPAL POLITICAL PARTY COMMITTEE FOR ANY POLITICAL PURPOSE OR USE. THE OFFICE OF THE STATE COMPTROLLER SHALL REVIEW SUCH REPORTS PRIOR TO THE AWARDING OF ANY CONTRACT OR AGREEMENT TO DETERMINE WHETHER SUCH BUSINESS ENTITY OR INDIVIDUAL HAS MADE ANY CONTRIBUTIONS EXCEEDING THE LIMITS SET FORTH IN SUBDIVISION TWO OF THIS SECTION. IF, THROUGH SUCH A REVIEW, THE COMPTROLLER DETERMINES THAT ANY SUCH CONTRIBUTION, OR ANY OTHER ACT THAT WOULD CONSTITUTE A BREACH OF CONTRACT PURSUANT TO SUBDIVISION FOUR OF THIS SECTION, OR POSES A CONFLICT OF INTEREST IN THE AWARDING OF ANY CONTRACT OR AGREEMENT, THE STATE COMPTROLLER SHALL DISQUALIFY SUCH BUSINESS ENTITY OR INDIVIDUAL FROM BIDDING ON OR BEING AWARDED SUCH CONTRACT OR AGREEMENT. THE BUSI-

NESS ENTITY OR INDIVIDUAL SHALL HAVE A CONTINUING DUTY TO REPORT TO THE STATE BOARD OF ELECTIONS AND THE OFFICE OF THE COMPTROLLER ANY CONTRIBUTIONS THAT CONSTITUTE A VIOLATION OF THIS ACT THAT ARE MADE DURING THE DURATION OF A CONTRACT.

4. A. A BREACH OF CONTRACT INCLUDES:

I. MAKING OR SOLICITING A CONTRIBUTION IN VIOLATION OF THIS SECTION;

II. KNOWINGLY CONCEALING OR MISREPRESENTING A CONTRIBUTION GIVEN OR RECEIVED;

III. MAKING OR SOLICITING CONTRIBUTIONS THROUGH INTERMEDIARIES FOR THE PURPOSE OF CONCEALING OR MISREPRESENTING THE SOURCE OF THE CONTRIBUTION;

IV. ENGAGING OR EMPLOYING A LOBBYIST OR A CONSULTANT WITH THE INTENT OF UNDERSTANDING THAT THE PERSON WOULD MAKE OR SOLICIT ANY CONTRIBUTION; AND

V. FUND CONTRIBUTIONS MADE BY THIRD PARTIES, INCLUDING CONSULTANTS, ATTORNEYS, FAMILY MEMBERS, AND EMPLOYEES.

B. THE COMPTROLLER SHALL NOTIFY THE BUSINESS ENTITY OR INDIVIDUAL OF SUCH BREACH OF CONTRACT. SUCH BUSINESS ENTITY OR INDIVIDUAL SHALL HAVE SIXTY DAYS TO CURE THE DEFECT BY REQUESTING THAT THE EXCESS CONTRIBUTIONS TO THE CANDIDATE BE RETURNED IMMEDIATELY. PROOF OF RECEIPT OF SUCH RETURN SHALL BE SUBMITTED TO THE COMMISSIONER AT LEAST FIVE BUSINESS DAYS PRIOR TO THE AWARDED OF THE CONTRACT. IN THE EVENT THAT PROOF OF RETURN OF THE EXCESS CONTRIBUTION LIMITS ARE NOT SUBMITTED BY THE BUSINESS ENTITY OR INDIVIDUAL, THE COMPTROLLER SHALL REJECT THE PROPOSAL OR APPLICATION.

C. A BUSINESS ENTITY OR INDIVIDUAL DETERMINED BY THE COMPTROLLER TO HAVE WILLINGLY AND KNOWINGLY MADE A CONTRIBUTION IN DIRECT VIOLATION OF THIS SECTION SHALL BE LIABLE FOR A PENALTY OF UP TO THE VALUE OF ITS CONTRACT WITH THE STATE AND MAY BE BARRED FROM CONTRACTING WITH THE STATE FOR A PERIOD OF FIVE YEARS.

D. A BUSINESS ENTITY THAT FILES A FALSE SWORN CONTRIBUTIONS STATEMENT SHALL HAVE ITS CONTRACT WITH THE STATE DECLARED NULL AND VOID AND SHALL BE DISQUALIFIED FROM BEING AWARDED ANY CONTRACT WITH THE STATE FOR A PERIOD OF FOUR YEARS FROM THE DATE OF THE FILING OF SUCH FALSE STATEMENT. SUCH MATTER SHALL BE REFERRED TO THE LOCAL DISTRICT ATTORNEY FOR PROSECUTION.

E. CONTRIBUTIONS MADE BY A BUSINESS ENTITY OR INDIVIDUAL MADE PRIOR TO THE EFFECTIVE DATE OF THIS SECTION SHALL NOT CONSTITUTE A VIOLATION. THE DISCLOSURE REQUIREMENTS SHALL NOT APPLY TO CONTRACTS AWARDED SUBSEQUENT TO THE EFFECTIVE DATE OF THIS SECTION IF THE REQUEST FOR PROPOSAL PROCESS WAS INITIATED PRIOR TO SUCH EFFECTIVE DATE.

F. THE OFFICE OF GENERAL SERVICES SHALL, ON A BI-ANNUAL BASIS, IN JANUARY AND JULY, COMPILE A LIST OF NAMES, BASED ON SUCH OFFICE'S RECORDS, LISTING ANY BUSINESS ENTITY OR INDIVIDUAL DOING BUSINESS WITH THE STATE, AS OF THOSE MONTHS. SUCH LIST SHALL BE MADE AVAILABLE ON SUCH OFFICE'S WEBSITE.

G. THE CONTRIBUTIONS SET FORTH IN SUBDIVISION TWO OF THIS SECTION SHALL NOT APPLY TO CONTRACTS THAT MUST BE AWARDED TO THE LOWEST BIDDER PURSUANT TO STATE LAW, TO SOLE SOURCE PROVIDERS, OR TO SUCH CONTRACTS AWARDED AS EMERGENCY CONTRACTS WHEN THE PUBLIC EXIGENCY REQUIRES IMMEDIATE EMERGENCY SERVICES AS DETERMINED BY EXECUTIVE ORDER OR BY LAW.

S 2. If any section of this act or any part thereof shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder or any other section or part thereof.

S 3. This act shall take effect on the ninetieth day after it shall have become a law.