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I N   A S S E M B L Y

February 5, 2016

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Introduced by M. of A. GALEF -- read once and referred to the Committee on Election Law -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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;

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

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1 III. ANY POLITICAL ORGANIZATION ORGANIZED UNDER SECTION 527 OF THE  
2 INTERNAL REVENUE CODE THAT IS DIRECTLY OR INDIRECTLY CONTROLLED BY THE  
3 BUSINESS ENTITY, OTHER THAN A CANDIDATE COMMITTEE, ELECTION FUND, OR  
4 POLITICAL PARTY COMMITTEE; AND WITH RESPECT TO AN INDIVIDUAL WHO IS  
5 INCLUDED WITHIN THE DEFINITION OF BUSINESS ENTITY, SUCH INDIVIDUAL'S  
6 SPOUSE OR DOMESTIC PARTNER, AND ANY CHILD RESIDING WITH THE INDIVIDUAL,  
7 PROVIDED, HOWEVER, THAT, THIS SECTION SHALL NOT APPLY TO A CONTRIBUTION  
8 MADE BY SUCH SPOUSE, DOMESTIC PARTNER, OR CHILD TO A CANDIDATE FOR WHOM  
9 THE CONTRIBUTOR IS ENTITLED TO VOTE OR TO A POLITICAL PARTY COMMITTEE  
10 WITHIN WHOSE JURISDICTION THE CONTRIBUTOR RESIDES UNLESS SUCH CONTRIB-  
11 UTION IS IN VIOLATION OF THIS SECTION; OR

12 IV. ANY NOT-FOR-PROFIT CORPORATION ORGANIZED UNDER THE LAWS OF THE  
13 STATE OR ANY OTHER STATE OR FOREIGN JURISDICTION.

14 B. "CONTRIBUTION" MEANS ANY MONETARY CONTRIBUTION, IN-KIND CONTRIB-  
15 UTION OR GIFT.

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

17 I. GOODS OR SERVICES OFFERED FREE OF CHARGE;

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

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

22 2. NO BUSINESS ENTITY OR INDIVIDUAL WHO AGREES TO ANY CONTRACT OR  
23 AGREEMENT WITH THE STATE OR ANY DEPARTMENT OR AGENCY THEREOF OR ITS  
24 INDEPENDENT AUTHORITIES EITHER FOR THE RENDITION OF SERVICES OR THE  
25 FURNISHING OF ANY MATERIAL, SUPPLIES OR EQUIPMENT OR FOR THE ACQUISI-  
26 TION, SALE, OR LEASE OF ANY LAND OR BUILDING, IF THE VALUE OF THE TRANS-  
27 ACTION EXCEEDS FIFTEEN THOUSAND DOLLARS, SHALL MAKE MONETARY OR IN-KIND  
28 CONTRIBUTIONS OR A PLEDGE OF CONTRIBUTION IN EXCESS OF ONE THOUSAND  
29 DOLLARS TO AN INDIVIDUAL WHO HOLDS THE POSITION OF AN ELECTED STATE  
30 PUBLIC OFFICE OR A CANDIDATE FOR SUCH POSITION, INCLUDING THE CANDI-  
31 DATE'S COMMITTEE OR ELECTION FUND, IF SUCH CONTRACT MUST BE VOTED ON,  
32 ENDORSED, PROMOTED, OR APPROVED BY SUCH INDIVIDUAL; OR A STATE, COUNTY  
33 OR MUNICIPAL POLITICAL PARTY COMMITTEE FOR ANY POLITICAL PURPOSE OR USE:

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

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

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

39 3. A. THE STATE SHALL REQUIRE A BUSINESS ENTITY OR INDIVIDUAL, DURING  
40 THE PROCUREMENT PROCESS AND PRIOR TO THE AWARDED OF ANY CONTRACT OR  
41 AGREEMENT TO PROCURE SERVICES OR ANY MATERIAL, SUPPLIES OR EQUIPMENT  
42 FROM, OR FOR THE ACQUISITION, SALE, OR LEASE OF ANY LAND OR BUILDING  
43 FROM OR TO ANY BUSINESS ENTITY, TO REPORT THROUGH A DISCLOSURE STATEMENT  
44 LISTING ALL CONTRIBUTIONS MADE DURING THE PRECEDING TWELVE MONTHS TO ANY  
45 ELECTED STATE PUBLIC OFFICIAL OR A CANDIDATE FOR SUCH POSITION, INCLUD-  
46 ING THE CANDIDATE'S COMMITTEE OR ELECTION FUND OR A STATE, COUNTY OR  
47 MUNICIPAL POLITICAL PARTY COMMITTEE FOR ANY POLITICAL PURPOSE OR USE.  
48 THE BUSINESS ENTITY OR INDIVIDUAL SHALL ALSO PROVIDE A WRITTEN AFFIDAVIT  
49 THAT IT HAS NOT MADE A CONTRIBUTION THAT WOULD BAR THE AWARD OF A  
50 CONTRACT PURSUANT TO THIS SECTION.

51 B. THE STATE GOVERNMENT AGENCY CONDUCTING THE PROCUREMENT CONTRACT  
52 SHALL REVIEW SUCH REPORTS PRIOR TO THE AWARDED OF ANY CONTRACT OR  
53 AGREEMENT TO DETERMINE WHETHER SUCH BUSINESS ENTITY OR INDIVIDUAL HAS  
54 MADE ANY CONTRIBUTIONS EXCEEDING THE LIMITS SET FORTH IN SUBDIVISION TWO  
55 OF THIS SECTION. IF, THROUGH SUCH A REVIEW, IT IS DETERMINED THAT ANY  
56 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 BUSINESS ENTITY OR INDIVIDUAL SHALL BE DISQUALIFIED FROM BIDDING ON OR BEING AWARDED SUCH CONTRACT OR AGREEMENT. THE BUSINESS ENTITY OR INDIVIDUAL SHALL HAVE A CONTINUING DUTY TO REPORT TO THE STATE ENTITY THAT OVERSEES THE PROCUREMENT CONTRACT ANY CONTRIBUTIONS THAT CONSTITUTE A VIOLATION OF THIS SECTION 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 STATE AGENCY CONDUCTING THE PROCUREMENT CONTRACT 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 AWARDING 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 STATE AGENCY SHALL REJECT THE PROPOSAL OR APPLICATION.

C. A BUSINESS ENTITY OR INDIVIDUAL DETERMINED 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

1 shall not affect, impair or invalidate the remainder or any other  
2 section or part thereof.  
3 S 3. This act shall take effect on the ninetieth day after it shall  
4 have become a law.