

# STATE OF NEW YORK

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3984

2017-2018 Regular Sessions

## IN SENATE

January 31, 2017

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Introduced by Sens. DeFRANCISCO, BONACIC -- (at request of the State Comptroller) -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the state finance law and the education law, in relation to enacting the "New York state procurement integrity act"; and to repeal section 6283 of the education law relating to procurements of the fund (Part A); to amend the public authorities law, in relation to requiring public authorities to comply with certain provisions of the state finance law relating to procurements (Part B); to amend the public authorities law, in relation to prohibiting certain third party contracts (Part C); to amend the state finance law, in relation to authorizing state comptroller to oversee certain contracts of the research foundation of the state university of New York (Part D); to amend the state finance law and the public authorities law, in relation to disqualifications of state and state authority contractors, prohibiting conflicts of interest by state officers and employees in state procurements; prohibiting conflicts of interest by state authority board members, officers and employees in authority procurements; requiring certification by state officers and employees of no undue influence; requiring certification by state authority board members, officers and employees of no undue influence; and establishing a state contractor and state authority contractor code of business ethics and conduct (Part E); and to amend the economic development law, in relation to expanding requirements for state authorities to publish procurement opportunities (Part F)

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act enacts into law major components of legislation  
2 which are necessary to implement the New York state procurement integri-  
3 ty act. Each component is wholly contained within a Part identified as  
4 Parts A through F. The effective date for each particular provision

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

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1 contained within such Part is set forth in the last section of such  
2 Part. Any provision in any section contained within a Part, including  
3 the effective date of the Part, which makes a reference to a section "of  
4 this act," when used in connection with that particular component, shall  
5 be deemed to mean and refer to the corresponding section of the Part in  
6 which it is found. Section three of this act sets forth the general  
7 effective date of this act.

8

## PART A

9 Section 1. Paragraph (a) of subdivision 2 of section 112 of the state  
10 finance law, as amended by section 18 of part L of chapter 55 of the  
11 laws of 2012, is amended to read as follows:

12 (a) Before any contract made for or by any state agency, department,  
13 board, officer, commission, or institution, except the office of general  
14 services, shall be executed or become effective, whenever such contract  
15 exceeds fifty thousand dollars in amount and before any contract made  
16 for or by the office of general services shall be executed or become  
17 effective, whenever such contract exceeds eighty-five thousand dollars  
18 in amount, it shall first be approved by the comptroller and filed in  
19 his or her office, [~~with the exception of contracts established as a~~  
20 ~~centralized contract through the office of general services and purchase~~  
21 ~~orders or other procurement transactions issued under such centralized~~  
22 ~~contracts. The] provided, however, that the comptroller shall make a  
23 final written determination with respect to approval of such contract  
24 within ninety days of the submission of such contract to his or her  
25 office unless the comptroller shall notify, in writing, the state agen-  
26 cy, department, board, officer, commission, or institution, prior to the  
27 expiration of the ninety day period, and for good cause, of the need for  
28 an extension of not more than fifteen days, or a reasonable period of  
29 time agreed to by such state agency, department, board, officer, commis-  
30 sion, or institution and provided, further, that such written determi-  
31 nation or extension shall be made part of the procurement record pursu-  
32 ant to paragraph f of subdivision one of section one hundred sixty-three  
33 of this chapter.~~

34 § 2. Subdivisions 5 and 6 of section 355 of the education law, as  
35 amended by section 1 of subpart B of part D of chapter 58 of the laws of  
36 2011, paragraph a of subdivision 5 as amended by section 31 of part L of  
37 chapter 55 of the laws of 2012, are amended to read as follows:

38 5. Notwithstanding the provisions of subdivision two of section one  
39 hundred twelve and sections one hundred fifteen, one hundred sixty-one,  
40 and one hundred sixty-three of the state finance law and sections three  
41 and six of the New York state printing and public documents law or any  
42 other law to the contrary, the state university trustees are authorized  
43 and empowered to:

44 a. (i) purchase materials, proprietary electronic information  
45 resources including but not limited to academic, professional, and  
46 industry journals, reference handbooks and manuals, research tracking  
47 tools, indexes and abstracts, equipment and supplies, including computer  
48 equipment and motor vehicles, where the amount for a single purchase  
49 does not exceed fifty thousand dollars, (ii) execute contracts for  
50 services and construction [~~and construction-related services~~] contracts  
51 to an amount not exceeding fifty thousand dollars, and (iii) contract  
52 for printing to an amount not exceeding fifty thousand dollars, without  
53 prior approval by any other state officer or agency, but subject to  
54 rules and regulations or guidelines of the state comptroller not other-

1 wise inconsistent with the provisions of this section and in accordance  
2 with guidelines promulgated by the state university board of trustees  
3 after consultation with the state comptroller. In addition, the trus-  
4 tees, after consultation with the commissioner of general services, are  
5 authorized to annually negotiate with the state comptroller increases in  
6 the aforementioned dollar limits and the exemption of any articles,  
7 categories of articles or commodities from these limits. Guidelines  
8 promulgated by the state university board of trustees shall, to the  
9 extent practicable, require that competitive proposals be solicited for  
10 purchases, and shall include requirements that purchases and contracts  
11 authorized under this section be at the lowest available price, includ-  
12 ing consideration of prices available through other state agencies,  
13 consistent with quality requirements, and as will best promote the  
14 public interest. Such purchases may be made directly from any contractor  
15 pursuant to any contract for commodities let by the office of general  
16 services or any other state agency;

17 [~~a-1. execute contracts for services to an amount not exceeding twenty~~  
18 ~~thousand dollars without prior approval by any other state officer or~~  
19 ~~agency, but subject to rules and regulations of the state comptroller~~  
20 ~~not otherwise inconsistent with the provisions of this section and in~~  
21 ~~accordance with the guidelines promulgated by the state university board~~  
22 ~~of trustees after consultation with the state comptroller. In addition,~~  
23 ~~the trustees, after consultation with the commissioner of general~~  
24 ~~services, are authorized to annually negotiate with the state comp-~~  
25 ~~troller increases in the aforementioned dollar limits and the exemption~~  
26 ~~of any services or categories of services from these limits,]~~

27 b. to establish cash advance accounts for the purpose of purchasing  
28 materials, supplies, or services, for cash advances for travel expenses  
29 and per diem allowances, or for advance payment of wages and salary. The  
30 account may be used to purchase such materials, supplies, or services  
31 where the amount of a single purchase does not exceed [~~one thousand~~ two  
32 hundred fifty dollars, in accordance with such guidelines as shall be  
33 prescribed by the state university trustees after consultation with the  
34 state comptroller;

35 c. establish guidelines in consultation with the commissioner of  
36 general services authorizing participation by the state university in  
37 programs administered by the office of general services for the purchase  
38 of available New York state food products. The commissioner of general  
39 services shall provide assistance to the state university necessary to  
40 enable the university to participate in these programs;

41 d. award contract extensions for campus transportation without compet-  
42 itive bidding where such contracts were secured either through compet-  
43 itive bidding or through evaluation of proposals in response to a  
44 request for proposals, however such extensions may be rejected if the  
45 amount to be paid to the contractor in any year of such proposed exten-  
46 sion fails to reflect any decrease in the regional consumer price index  
47 for the New York, New York-Northeastern, New Jersey area, based upon the  
48 index for all urban consumers (CPI-U) during the preceding twelve-month  
49 period. At the time of any contract extension, consideration shall be  
50 given to any competitive proposal offered by a public transportation  
51 agency. Such contract may be increased for each year of the contract  
52 extension by an amount not to exceed the regional consumer price index  
53 increase for the New York, New York-Northeastern, New Jersey area, based  
54 upon the index for all urban consumers (CPI-U), during the preceding  
55 twelve-month period, provided it has been satisfactorily established by

1 the contractor that there has been at least an equivalent increase in  
2 the amount of his cost of operation, during the period of the contract.

3 ~~[e. guidelines promulgated by the state university board of trustees~~  
4 ~~shall, to the extent practicable, require that competitive proposals be~~  
5 ~~solicited for purchases, and shall include requirements that purchases~~  
6 ~~and contracts authorized under this section be at the lowest available~~  
7 ~~price, including consideration of prices available through other state~~  
8 ~~agencies, consistent with quality requirements, and as will best promote~~  
9 ~~the public interest. Such purchases may be made directly from any~~  
10 ~~contractor pursuant to any contract for commodities let by the office of~~  
11 ~~general services or any other state agency.]~~

12 6. To enter into any contract or agreement deemed necessary or advis-  
13 able after consultation with appropriate state agencies for carrying out  
14 the objects and purposes of state university without prior review or  
15 approval by any state officer or agency other than the state comptroller  
16 and the attorney general including contracts with non-profit corpo-  
17 rations organized by officers, employees, alumni or students of state  
18 university for the furtherance of its academic objects and purposes.  
19 Contracts or agreements entered into with the federal government to  
20 enable participation in federal student loan programs, including any and  
21 all instruments required thereunder, shall not be subject to the  
22 requirements of section forty-one of the state finance law; provided,  
23 however, that the state shall not be liable for any portion of any  
24 defaults which it has agreed to assume pursuant to any such agreement in  
25 an amount in excess of money appropriated or otherwise lawfully avail-  
26 able therefor at the time the liability for payment arises. ~~[The forego-~~  
27 ~~ing notwithstanding, any contract made for or by the state university~~  
28 ~~for the purchase of: (i) materials, equipment and supplies, including~~  
29 ~~computer equipment; (ii) motor vehicles; (iii) construction and~~  
30 ~~construction related services contracts; and (iv) printing shall not be~~  
31 ~~subject to prior approval by any other state officer or agency.]~~

32 § 3. Paragraph b of subdivision 16 of section 355 of the education  
33 law, as amended by section 1 of subpart C of part D of chapter 58 of the  
34 laws of 2011, is amended to read as follows:

35 b. Notwithstanding the provisions of subdivision two of section one  
36 hundred twelve of the state finance law~~[7]~~ relating to the dollar thresh-  
37 hold requiring the comptroller's approval of contracts, subdivision six  
38 of section one hundred sixty-three of the state finance law ~~[and section~~  
39 ~~sixty-three of the executive law (i)]~~ authorize contracts for the  
40 purchase of goods for state university health care facilities ~~[without~~  
41 ~~prior approval by any other state officer or agency,~~] including  
42 contracts for joint or group purchasing arrangements of goods, in  
43 accordance with procedures and requirements found in paragraph a of  
44 subdivision five of this section~~[,~~ ~~and (ii) authorize contracts for~~  
45 ~~services]~~ which do not exceed seventy-five thousand dollars ~~[without~~  
46 ~~prior approval by any other state officer or agency in accordance with~~  
47 ~~procedures and requirements found in paragraph a of subdivision five of~~  
48 ~~this section]~~. Contracts authorized pursuant to this paragraph shall be  
49 subject to article fourteen of the civil service law and the applicable  
50 provisions of agreements between the state and employee organizations  
51 pursuant to article fourteen of the civil service law.

52 The trustees are authorized to negotiate annually with the state comp-  
53 troller increases in the aforementioned dollar limits.

54 § 4. Subdivision 12 of section 373 of the education law, as amended by  
55 section 2 of subpart A of part D of chapter 58 of the laws of 2011, is  
56 amended to read as follows:

1 12. To procure and execute contracts, lease agreements, and all other  
2 instruments necessary or convenient for the exercise of its corporate  
3 powers and the fulfillment of its corporate purposes under this article.  
4 [~~Notwithstanding subdivision two of section one hundred twelve of the~~  
5 ~~state finance law or any other law to the contrary, fund procurements~~  
6 ~~shall not be subject to the prior approval of any state officer or agen-~~  
7 ~~cy.~~]

8 § 5. Subdivisions a and a-1 of section 6218 of the education law,  
9 subdivision a as amended and subdivision a-1 as added by section 2 of  
10 subpart B of part D of chapter 58 of the laws of 2011, subparagraph (i)  
11 of paragraph 1 of subdivision a as amended by section 33 of part L of  
12 chapter 55 of the laws of 2012, are amended to read as follows:

13 a. Notwithstanding the provisions of subdivision two of section one  
14 hundred twelve and sections one hundred fifteen, one hundred sixty-one  
15 and one hundred sixty-three of the state finance law and sections three  
16 and six of the New York state printing and public documents law or any  
17 other law to the contrary, the city university is authorized and  
18 empowered to:

19 [~~(1)~~] (i) purchase materials; proprietary electronic information  
20 resources, including, but not limited to, academic, professional and  
21 industry journals, reference handbooks and manuals, research tracking  
22 tools, indexes and abstracts; and equipment and supplies, including  
23 computer equipment and motor vehicles, where the amount for a single  
24 purchase does not exceed fifty thousand dollars, (ii) execute contracts  
25 for [~~construction and construction-related services contracts~~] services  
26 to an amount not exceeding fifty thousand dollars, and (iii) contract  
27 for printing to an amount not exceeding fifty thousand dollars, without  
28 prior approval by any other state officer or agency, but subject to  
29 rules and regulations or guidelines of the state comptroller not other-  
30 wise inconsistent with the provisions of this section and in accordance  
31 with the guidelines promulgated by the city university board of trustees  
32 after consultation with the state comptroller. In addition, the trus-  
33 tees are authorized to annually negotiate with the state comptroller  
34 increases in the aforementioned dollar limits and the exemption of any  
35 articles, categories of articles or commodities from these limits.  
36 Guidelines promulgated by the city university board of trustees shall,  
37 to the extent practicable, require that competitive proposals be solici-  
38 ted for purchases, and shall include requirements that purchases and  
39 contracts authorized under this section be at the lowest possible price.

40 [~~(2)~~] ~~execute contracts for services to an amount not exceeding twenty~~  
41 ~~thousand dollars without prior approval by any other state officer or~~  
42 ~~agency, but subject to rules and regulations of the state comptroller~~  
43 ~~not otherwise inconsistent with the provisions of this section and in~~  
44 ~~accordance with the guidelines promulgated by the city university board~~  
45 ~~of trustees after consultation with the state comptroller. In addition,~~  
46 ~~the trustees, after consultation with the commissioner of general~~  
47 ~~services, are authorized to annually negotiate with the state comp-~~  
48 ~~troller increases in the aforementioned dollar limits and the exemption~~  
49 ~~of any services or categories of services from these limits.~~

50 ~~a-1. Guidelines promulgated by the city university board of trustees~~  
51 ~~shall, to the extent practicable, require that competitive proposals be~~  
52 ~~solicited for purchases, and shall include requirements that purchases~~  
53 ~~and contracts authorized under this section be at the lowest available~~  
54 ~~price.]~~

55 § 6. Section 6283 of the education law is REPEALED.

1 § 7. This act shall take effect immediately; provided, however, that  
2 the amendments to subdivisions 5 and 6 and paragraph b of subdivision 16  
3 of section 355, subdivision 12 of section 373, and subdivisions a and  
4 a-1 of section 6218 of the education law made by sections two, three,  
5 four and five of this act shall not affect the expiration of such  
6 provisions pursuant to section 4 of subpart B of part D of chapter 58 of  
7 the laws of 2011, as amended, and shall be deemed to expire therewith.

8

## PART B

9 Section 1. Subdivision 1 of section 2879 of the public authorities  
10 law, as amended by chapter 564 of the laws of 1988, is amended to read  
11 as follows:

12 1. Every public authority and public benefit corporation, a majority  
13 of the members of which consist of persons either appointed by the  
14 governor or who serve as members by virtue of holding a civil office of  
15 the state, or a combination thereof, (such entities to be hereinafter in  
16 this section referred to as "corporation") shall adopt by resolution  
17 comprehensive guidelines consistent with the methods of evaluating bids  
18 and proposals and awarding of contracts authorized by sections one  
19 hundred thirty-six-a, one hundred sixty-three and one hundred sixty-  
20 three-a of the state finance law and subdivision six of section eight of  
21 the public buildings law, unless expressly authorized otherwise by law,  
22 which detail the corporation's operative policy and instructions regard-  
23 ing the use, awarding, monitoring and reporting of procurement  
24 contracts. Guidelines approved by the corporation shall be annually  
25 reviewed and approved by the corporation.

26 § 2. This act shall take effect immediately.

27

## PART C

28 Section 1. The public authorities law is amended by adding a new  
29 section 2882 to read as follows:

30 § 2882. Third party contracting prohibited. 1. No state authority  
31 shall enter into a contract or agreement or extend an existing contract  
32 or agreement with another entity, unless authorized by special act of  
33 the legislature, (i) where the exclusive or primary role of such entity  
34 under the contract or agreement is to procure goods or services of any  
35 kind, including, but not limited to, public work, construction, alter-  
36 ations, or improvements to public facilities, grant contracts, employ-  
37 ment contracts, revenue or concession contracts, the exchange of  
38 personal or real property, the exchange of services, or any combination  
39 thereof through a contract or agreement with a third party and (ii)  
40 where such entity is acting as a procurement conduit, rather than being  
41 directly responsible for the goods or services.

42 2. The comptroller may promulgate such rules and regulations as may be  
43 necessary to enforce this section, including the standards for determin-  
44 ing whether a contract is prohibited by this section.

45 § 2. This act shall take effect immediately and shall apply to  
46 contracts entered into on and after such date.

47

## PART D

48 Section 1. The state finance law is amended by adding a new section  
49 148 to read as follows:

1 § 148. Comptroller approval of the research foundation of the state  
2 university of New York contracts. Notwithstanding any other provision of  
3 law, before any contract made for or by the research foundation of the  
4 state university of New York which is to be paid in whole or in part  
5 from monies appropriated or assigned by the state shall be executed or  
6 become effective, whenever such contract exceeds one million dollars in  
7 amount, it shall first be approved by the state comptroller and filed in  
8 his or her office. The comptroller shall make a final written determi-  
9 nation with respect to approval of such contract within ninety days of  
10 the submission of such contract to his or her office unless the comp-  
11 troller shall notify, in writing, the research foundation of the state  
12 university of New York prior to the expiration of the ninety day period,  
13 and for good cause, of the need for an extension of not more than  
14 fifteen days, or a reasonable period of time agreed to by the research  
15 foundation of the state university of New York and provided, further,  
16 that such written determination or extension shall be made part of the  
17 procurement record.

18 § 2. This act shall take effect immediately and shall apply to  
19 contracts entered into on and after such date.

20 PART E

21 Section 1. Section 139-b of the state finance law is amended by adding  
22 two new subdivisions 3 and 4 to read as follows:

23 3. A state contractor may be disqualified from selling to or submit-  
24 ting bids to or receiving awards from or entering into any contracts  
25 with the state or any public department, agency or official thereof, or  
26 any state authority, as such term is defined in section two of the  
27 public authorities law, for goods, work or services, for a knowing and  
28 willful failure by a principal to timely disclose to the contracting  
29 state entity credible evidence of fraud, conflict of interest, undue  
30 influence or duress, in connection with the award or performance of a  
31 state contract.

32 4. The office of general services, upon being notified by a contract-  
33 ing state entity of a potential violation of subdivision three of this  
34 section, shall notify the state contractor that sufficient cause exists  
35 to believe such potential violation has occurred and shall provide the  
36 state contractor an opportunity to be heard in response. In the event  
37 that a final determination is made that there has been a knowing and  
38 willful violation by the state contractor, such final determination  
39 shall be published on the office of general service's website and shall  
40 result in the state contractor being disqualified from receiving awards  
41 from or entering into any contracts with the state or any public depart-  
42 ment, agency or official thereof, or any state authority, as such term  
43 is defined in section two of the public authorities law, for goods, work  
44 or services for a period of five years. Any subsequent violation of  
45 this section will result in the state contractor being permanently  
46 disqualified.

47 § 2. The state finance law is amended by adding three new sections  
48 139-l, 139-m and 139-n to read as follows:

49 § 139-l. Conflicts of interest of state officers and employees in  
50 state procurements; prohibited. (a) No state officer or employee as  
51 defined in public officers law section seventy-three shall:

52 1. have any interest, financial or otherwise, direct or indirect, in  
53 any contract other than one permissible pursuant to paragraph (a) of  
54 subdivision four of section seventy-three of the public officers law; or

1 2. take any action or otherwise involve himself or herself in any  
2 activity which, pursuant to the provisions of this chapter or the public  
3 officers law, would be deemed a conflict of interest for a state officer  
4 or employee that may reasonably be expected to impair the officer's or  
5 employee's independent judgment or ability to act impartially and in the  
6 best interest of the state, or that may reasonably create the appearance  
7 of impropriety through the appearance of favoritism or preferential  
8 treatment.

9 (b) If such conflict of interest exists, the state officer or employee  
10 must immediately recuse himself or herself in writing from the procure-  
11 ment and submit such recusal to the state agency officer in charge of  
12 procurement and contracting to be included in the procurement record to  
13 the state agency's ethics officer, and to the agency head.

14 § 139-m. State officer or employee certification; no undue influence.  
15 Each state officer or employee as defined in public officers law section  
16 seventy-three or state consultant who exercised discretion or decision  
17 making in how a state contract was advertised, how the bids or proposals  
18 were evaluated, how the contractor was selected, or who signed the  
19 contract for the agency, shall certify in writing that no undue influ-  
20 ence was exerted upon him or her, and that to the best of his or her  
21 knowledge that there is a reasonable basis to believe that the contract  
22 was not procured through fraud, duress or undue influence. The certif-  
23 ication shall become part of the procurement record.

24 § 139-n. State contractor code of business ethics and conduct. (a)  
25 Definitions. For purposes of this section:

26 1. the term "state contractor" shall mean any individual, organiza-  
27 tion, corporation, sole proprietorship, partnership, nonprofit, joint  
28 venture, association, or any combination thereof that is pursuing or  
29 conducting business with and/or on behalf of a state agency, including,  
30 without limitation, consultants, suppliers, manufacturers, and any other  
31 vendors, bidders or proposers.

32 2. the term "state agency" shall mean any state department, or divi-  
33 sion, board, commission, or bureau of any state department.

34 (b) Policy. State contractors must conduct themselves with the highest  
35 degree of integrity and honesty. No state contractor should take action  
36 to violate or circumvent state procurement or ethics laws.

37 (c) State contractor code of business ethics and conduct. Rule with  
38 respect to conflicts of interest. No state contractor should have any  
39 interest, financial or otherwise, direct or indirect, or engage in any  
40 business or transaction or professional activity or incur any obligation  
41 of any nature, which is in substantial conflict with the proper  
42 execution of duties and responsibilities under the state contract.

43 (d) Standards. 1. No state contractor should engage in any business or  
44 professional activity which will impair his or her independence of judg-  
45 ment in the exercise of duties and responsibilities under the state  
46 contract.

47 2. No state contractor should engage in any business or professional  
48 activity which will require him or her to disclose confidential informa-  
49 tion acquired by reason of performance of duties and responsibilities  
50 under the state contract nor use such information to further his or her  
51 personal interests.

52 3. No state contractor should attempt to secure unwarranted privileges  
53 or exemptions for himself or herself or others, including but not limit-  
54 ed to, the misappropriation to himself, herself or to others of the  
55 property, services or other resources of the state for private business  
56 or other compensated non-governmental purposes.



1 4. No state contractor should engage in any transaction with any busi-  
2 ness entity in which he or she has a direct or indirect financial inter-  
3 est that might reasonably tend to conflict with the proper discharge of  
4 his or her duties and responsibilities under the state contract.

5 5. A state contractor should not by his or her conduct give reasonable  
6 basis for the impression that any person can improperly influence him or  
7 her or unduly enjoy his or her favor in the performance of his or her  
8 official duties under the contract, or that he or she is affected by the  
9 kinship, rank, position or influence of any party or person.

10 6. A state contractor should abstain from making personal investments  
11 in enterprises which he or she has reason to believe may be directly  
12 involved in decisions to be made by him or her or which will otherwise  
13 create substantial conflict between his or her duty and responsibilities  
14 under the state contract and his or her private interest.

15 7. A state contractor should endeavor to pursue a course of conduct  
16 which will not raise suspicion that he or she is likely to be engaged in  
17 acts in violation of state procurement or ethics laws.

18 (e) Violations. In addition to any penalty contained in any other  
19 provision of law, a state agency may, in its discretion, terminate a  
20 contract that was awarded in violation of the requirements of this  
21 section. Any state contractor who knowingly and intentionally violates  
22 the state contractor code of business ethics and conduct shall be  
23 subject to a civil penalty in an amount not to exceed ten thousand  
24 dollars and the value of any benefit received as a result of such  
25 violation.

26 § 3. Article 1 of the public authorities law is amended by adding a  
27 new title 3 to read as follows:

### 28 TITLE 3

#### 29 ETHICAL STANDARDS FOR STATE AUTHORITIES AND STATE AUTHORITY CONTRACTORS

30 Section 10. Conflicts of interest of state authority board members,  
31 officers and employees in authority procurements; prohib-  
32 ited.

33 11. State authority board member, officer and employee certif-  
34 ication; no undue influence

35 12. Code of business ethics and conduct for state authority  
36 contractors.

37 13. State authority contractor disqualification.

38 § 10. Conflicts of interest of state authority board members, officers  
39 and employees in authority procurements; prohibited. 1. No state author-  
40 ity board member, officer or employee shall with respect to any state  
41 contract or state authority contract:

42 (a) have any interest, financial or otherwise, direct or indirect, in  
43 any contract other than one permissible pursuant to paragraph (a) of  
44 subdivision four of section seventy-three of the public officers law; or

45 (b) take any action or otherwise involve himself or herself in any  
46 activity which, pursuant to the provisions of this chapter or the public  
47 officers law, would be deemed a conflict of interest that may reasonably  
48 be expected to impair the board member's, officer's or employee's inde-  
49 pendent judgment or ability to act impartially and in the best interest  
50 of the state authority, or that may reasonably create the appearance of  
51 impropriety through the appearance of favoritism or preferential treat-  
52 ment.

53 2. If such conflict of interest exists, the state authority board  
54 member, officer or employee must immediately recuse himself or herself  
55 in writing and submit such recusal to the state authority's ethics offi-

1 cer and any official or committee charged with overseeing ethical  
2 conduct in the authority, the chief executive official of the authority  
3 and the board chair, as appropriate, the appointing official, and the  
4 officer in charge of the authority's procurements to be included in the  
5 state authority's procurement record. Any state authority board member  
6 who submits such recusal shall also submit such recusal to the appoint-  
7 ing official with responsibility for such board member's appointment  
8 and, in the case of board members appointed at the recommendation of  
9 another official, must also submit such recusal to the recommending  
10 official.

11 § 11. State authority board member, officer or employee certification;  
12 no undue influence. Each state authority board member, officer or  
13 employee who exercised discretion or decision making in how a state  
14 authority contract was advertised, how the bids or proposals were evalu-  
15 ated, how the contractor was selected, or who signed the contract for  
16 the state authority, shall certify in writing that no undue influence  
17 was exerted upon him or her, and that to the best of his or her know-  
18 ledge that there is a reasonable basis to believe that the contract was  
19 not procured through fraud, duress or undue influence. The certification  
20 shall become part of the state authority's procurement record.

21 § 12. Code of business ethics and conduct for state authority contrac-  
22 tors. 1. Policy. State authority contractors and subcontractors must  
23 conduct themselves with the highest degree of integrity and honesty. No  
24 state authority contractor should take action to violate or circumvent  
25 state procurement or ethics laws. For purposes of this section, the term  
26 "state authority contractor" shall mean any individual, organization,  
27 corporation, sole proprietorship, partnership, nonprofit, joint venture,  
28 association, or any combination thereof that is pursuing or conducting  
29 business with and/or on behalf of a state authority, including, without  
30 limitation, consultants, suppliers, manufacturers, and any other  
31 vendors, bidders or proposers.

32 2. Code of business ethics and conduct for state authority contrac-  
33 tors. Rule with respect to conflicts of interest. No state authority  
34 contractor should have any interest, financial or otherwise, direct or  
35 indirect, or engage in any business or transaction or professional  
36 activity or incur any obligation of any nature, which is in substantial  
37 conflict with the proper execution of duties and responsibilities under  
38 the contract.

39 3. Standards. (a) No state authority contractor should engage in any  
40 business or professional activity which will impair his or her independ-  
41 ence of judgment in the exercise of duties and responsibilities under  
42 the contract.

43 (b) No state authority contractor should engage in any business or  
44 professional activity which will require him or her to disclose confi-  
45 dential information acquired by reason of performance of duties and  
46 responsibilities under the contract, nor use such information to further  
47 his or her personal interests.

48 (c) No state authority contractor should attempt to secure unwarranted  
49 privileges or exemptions for himself or herself or others, including but  
50 not limited to, the misappropriation to himself, herself or to others of  
51 the property, services or other resources of the state authority for  
52 private business or other compensated non-governmental purposes.

53 (d) No state authority contractor should engage in any transaction  
54 with any business entity in which he or she has a direct or indirect  
55 financial interest that might reasonably tend to conflict with the prop-

1 er discharge of his or her duties and responsibilities under the  
2 contract.

3 (e) A state authority contractor should not by his or her conduct give  
4 reasonable basis for the impression that any person can improperly  
5 influence him or her or unduly enjoy his or her favor in the performance  
6 of his or her duties under the contract, or that he or she is affected  
7 by the kinship, rank, position or influence of any party or person.

8 (f) A state authority contractor should abstain from making personal  
9 investments in enterprises which he or she has reason to believe may be  
10 directly involved in decisions to be made by him or her or which will  
11 otherwise create substantial conflict between his or her duty and  
12 responsibilities under the contract and his or her private interest.

13 (g) A state authority contractor should endeavor to pursue a course of  
14 conduct which will not raise suspicion that he or she is likely to be  
15 engaged in acts in violation of state procurement or ethics laws.

16 4. Violations. In addition to any penalty contained in any other  
17 provision of law, the procuring state authority may, in its discretion,  
18 terminate a contract that was awarded in violation of the requirements  
19 of this section.

20 Any state authority contractor who knowingly and intentionally  
21 violates the code of business ethics and conduct for state authority  
22 contractors shall be subject to a civil penalty in an amount not to  
23 exceed ten thousand dollars and the value of any benefit received as a  
24 result of such violation.

25 § 13. State authority contractor disqualification. 1. A state author-  
26 ity contractor may be disqualified from selling to or submitting bids to  
27 or receiving awards from or entering into any contracts with a state  
28 authority for a knowing and willful failure by a principal to timely  
29 disclose to the contracting state authority credible evidence of fraud,  
30 conflict of interest, undue influence or duress in connection with the  
31 award or performance of a state authority contract.

32 2. If a state authority has sufficient cause to believe that a  
33 violation of subdivision one of this section has occurred, the state  
34 authority shall notify the state authority contractor and shall provide  
35 the state authority contractor an opportunity to be heard in response.  
36 In the event that there is a final determination that there has been a  
37 knowing and willful violation by the state authority contractor, such  
38 final determination shall result in the state authority contractor being  
39 disqualified from selling to or submitting bids to or receiving awards  
40 from or entering into any contracts with a state authority for a period  
41 of five years. Any subsequent violation of this section will result in  
42 the state authority contractor being permanently disqualified. The state  
43 authority shall provide notice of any disqualification pursuant to this  
44 section to the office of general services who shall publish such notice  
45 on its website.

46 § 4. This act shall take effect immediately.

47 PART F

48 Section 1. Subdivision 3 of section 141 of the economic development  
49 law, as amended by section 14 of part L of chapter 55 of the laws of  
50 2012, is amended as follows:

51 3. "Procurement contract" shall mean any written agreement entered  
52 into by an agency for the acquisition of goods, services, or  
53 construction of any kind, including agreements awarded by an agency to a  
54 single source, a sole source or pursuant to any other method of procure-

1 ment that is not competitive, in the actual or estimated amount of fifty  
2 thousand dollars or more. The term does not include an agreement for  
3 employment in the civil service.

4 § 2. Paragraph (c) of subdivision 2 and subdivision 5 of section 142  
5 of the economic development law, as amended by chapter 137 of the laws  
6 of 2008, are amended and a new paragraph (d) is added to subdivision 2  
7 to read as follows:

8 (c) for all [~~other~~] procurement contracts issued by agencies pursuant  
9 to a competitive method of procurement including, but not limited to, an  
10 invitation for bid, request for proposals or other means of sollicita-  
11 tion, for an amount in excess of fifty thousand dollars (i) the name of  
12 the contracting agency; (ii) the contract identification number; (iii) a  
13 brief description of the goods or services sought, the location where  
14 goods are to be delivered or services provided and the contract term;  
15 (iv) the address where bids or proposals are to be submitted; (v) the  
16 date when bids or proposals are due; (vi) a description of any eligibil-  
17 ity or qualification requirement or preference; (vii) a statement as to  
18 whether the contract requirements may be fulfilled by a subcontracting,  
19 joint venture, or co-production arrangement; (viii) any other informa-  
20 tion deemed useful to potential contractors; (ix) the name, address, and  
21 telephone number of the person to be contacted for additional informa-  
22 tion; and (x) a statement as to whether the goods or services sought had  
23 in the immediately preceding three year period been supplied by a  
24 foreign business enterprise.

25 (d) for all procurement contracts issued by agencies to a single  
26 source, a sole source or pursuant to any other method of procurement  
27 that is not competitive, for an amount in excess of fifty thousand  
28 dollars (i) the name of the contracting agency; (ii) the name of the  
29 recipient of the intended contract, if known at the time; (iii) the  
30 contract identification number; (iv) a brief description of the goods or  
31 services sought, the location where goods are to be delivered or  
32 services provided and the contract term; (v) a description of any eligi-  
33 bility or qualification requirement or preference; (vi) a statement as  
34 to whether the contract requirements may be fulfilled by a subcontract-  
35 ing, joint venture, or co-production arrangement; (vii) any other infor-  
36 mation deemed useful to potential contractors; (viii) the name, address,  
37 and telephone number of the person to be contacted for additional infor-  
38 mation; and (ix) a statement as to whether the goods or services sought  
39 had in the immediately preceding three year period been supplied by a  
40 foreign business enterprise.

41 5. In addition to any other notice of procurement contract opportu-  
42 nities required in this section, for procurement contracts in the amount  
43 of two hundred thousand dollars or more to be awarded by all [~~state~~]  
44 agencies, each agency shall prepare for inclusion in the procurement  
45 opportunities newsletter (a) a semi-annual listing of projected procure-  
46 ment purchases by category, including projected purchases to be awarded  
47 to a single source, a sole source or pursuant to any other method of  
48 procurement that is not competitive; (b) an explanation of how to apply  
49 for placement on any bidder list maintained by the agency; and (c) a  
50 description of procedures for providing advance notification by mail to  
51 individuals or business entities on such bidder lists of any request for  
52 proposals, in accordance with rules and regulations promulgated by the  
53 agency. The commissioner, in consultation with each agency, shall  
54 arrange a schedule for each agency's semi-annual listing.

55 § 3. Subdivisions 1 and 4 of section 143 of the economic development  
56 law, subdivision 1 as added by chapter 564 of the laws of 1988 and

1 subdivision 4 as added by section 16 of part L of chapter 55 of the laws  
2 of 2012, are amended to read as follows:

3 1. Prior to awarding any procurement contract, each agency shall  
4 submit to the commissioner information sufficient to enable publication  
5 of the notices of procurement contract opportunities described in subdi-  
6 vision two of section one hundred forty-two of this article. Such infor-  
7 mation shall be submitted to the commissioner in sufficient time to  
8 allow a minimum of fifteen business days between publication of such  
9 notice and the date on which a bid or proposal is due, except where a  
10 shorter period is specifically authorized by law provided, however:

11 (a) in the case of procurement contracts issued by a public benefit  
12 corporation or state authority whose contracts and payments are not  
13 approved and pre-audited by the comptroller, to a single source, a sole  
14 source or pursuant to any other method of procurement that is not  
15 competitive, in sufficient time to allow a minimum of fifteen business  
16 days between publication of such notice and the date on which the state  
17 authority or public benefit corporation intends to make a contract  
18 award; or

19 (b) in the case of procurement contracts issued by agencies other than  
20 public benefit corporations or state authorities, to a single source, a  
21 sole source or pursuant to any other method of procurement that is not  
22 competitive, in sufficient time to allow a minimum of fifteen business  
23 days between publication of such notice and the date the agency intends  
24 to deliver the request for exemption from advertising to the state comp-  
25 troller.

26 4. At the time an agency enters into a contract with a single or sole  
27 source provider pursuant to section one hundred sixty-three of the state  
28 finance law, or pursuant to any other method of procurement that is not  
29 competitive, for an amount in excess of fifty thousand dollars, such  
30 agency shall submit an announcement of the intended contract for inclu-  
31 sion in the procurement opportunities newsletter, and shall specify the  
32 recipient of the contract.

33 § 4. Section 146 of the economic development law, as amended by chap-  
34 ter 173 of the laws of 2014, is amended to read as follows:

35 § 146. Approval of comptroller. The comptroller shall not approve or  
36 file any procurement contract for the acquisition of goods or services,  
37 or construction of any kind, in the amount of fifty thousand dollars or  
38 more unless notice as provided in section one hundred forty-two of this  
39 article shall first have been published in the procurement opportunities  
40 newsletter at least fifteen business days prior to the date on which a  
41 bid or proposal was due or, in the case of procurement contracts issued  
42 to a single source, a sole source or pursuant to any other method of  
43 procurement that is not competitive, at least fifteen business days  
44 prior to the date on which the agency intends to deliver the request for  
45 exemption from advertising to the state comptroller and enter into the  
46 contract. Provided, however, such requirement of publication of advance  
47 notice shall not apply to contracts exempt from such requirement under  
48 section one hundred forty-four of this article; provided further, that  
49 the comptroller shall not be required to disapprove a contract if he or  
50 she determines that there has been substantial compliance with the  
51 requirements of section one hundred forty-two and section one hundred  
52 forty-three of this article. The foregoing provisions of this section  
53 shall not be construed to limit, in any manner, the right of the comp-  
54 troller to demand evidence of adequate competition or such other proofs  
55 as he or she may require in the discharge of his or her responsibilities

1 pursuant to section one hundred twelve of the state finance law or any  
2 other provision of law.

3 § 5. This act shall take effect immediately and shall apply to  
4 procurements initiated on and after such date.

5 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-  
6 sion, section or part of this act shall be adjudged by any court of  
7 competent jurisdiction to be invalid, such judgment shall not affect,  
8 impair, or invalidate the remainder thereof, but shall be confined in  
9 its operation to the clause, sentence, paragraph, subdivision, section  
10 or part thereof directly involved in the controversy in which such judg-  
11 ment shall have been rendered. It is hereby declared to be the intent of  
12 the legislature that this act would have been enacted even if such  
13 invalid provisions had not been included herein.

14 § 3. This act shall take effect immediately provided, however, that  
15 the applicable effective date of Parts A through F of this act shall be  
16 as specifically set forth in the last section of such Parts.