

STATE OF NEW YORK

5748

2019-2020 Regular Sessions

IN ASSEMBLY

February 14, 2019

Introduced by M. of A. GALEF, WOERNER, MOSLEY, BLAKE, DICKENS, JAFFEE, SIMON, GOTTFRIED, D'URSO, SEAWRIGHT, HYNDMAN, NIOU, ZEBROWSKI, CAHILL, JOHNS, RAIA, GIGLIO, MONTESANO -- Multi-Sponsored by -- M. of A. BUCHWALD, CROUCH, ENGLEBRIGHT, EPSTEIN, THIELE -- 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 and individuals

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-m to read as follows:
3 § 139-m. Reporting of contributions by business entities and individ-
4 uals. 1. For the purposes of this section, the following terms shall
5 have the following 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

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

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1 H. in the case of any other form of entity organized under the laws of
2 this state or any other state or foreign jurisdiction: the entity and
3 any principal, officer, or partner thereof;

4 ii. any subsidiary directly or indirectly controlled by the business
5 entity;

6 iii. any political organization organized under section 527 of the
7 Internal Revenue Code that is directly or indirectly controlled by the
8 business entity, other than a candidate committee, election fund, or
9 political party committee; and with respect to an individual who is
10 included within the definition of business entity, such individual's
11 spouse or domestic partner, and any child residing with the individual,
12 provided, however, that, this section shall not apply to a contribution
13 made by such spouse, domestic partner, or child to a candidate for whom
14 the contributor is entitled to vote or to a political party committee
15 within whose jurisdiction the contributor resides unless such contrib-
16 ution is in violation of this section; or

17 iv. any not-for-profit organization pursuant to section one hundred
18 seventy-nine-q of this chapter, or organized under the laws of the state
19 or any other state or foreign jurisdiction.

20 b. "Contribution" means any monetary contribution, in-kind contrib-
21 ution or gift.

22 c. "In-kind contributions" shall include but not be limited to:

23 i. goods or services offered free of charge;

24 ii. goods and services offered at less than the usual and normal
25 charge; and

26 iii. payments by a third party for goods and services rendered to a
27 candidate or political committee.

28 d. "Governmental entity" shall mean:

29 i. any department, board, bureau, commission, division, office, coun-
30 cil, committee or officer of the state, whether permanent or temporary;

31 ii. each house of the state legislature;

32 iii. the unified court system;

33 iv. any public authority, public benefit corporation or commission
34 created by or existing pursuant to the public authorities law;

35 v. a public authority or public benefit corporation, at least one of
36 whose members is appointed by the governor or who serves as a member by
37 virtue of holding a civil office of the state;

38 vi. municipal agency, as that term is defined in paragraph (ii) of
39 subdivision (s) of section one-c of the legislative law; or

40 vii. a subsidiary or affiliate of such a public authority.

41 e. "Article of procurement" shall mean a commodity, service, technolo-
42 gy, public work, construction, revenue contract, the purchase, sale or
43 lease of real property or an acquisition or granting of other interest
44 in real property, that is the subject of a governmental procurement.

45 f. "Governmental procurement" shall mean:

46 i. the public announcement, public notice, or public communication to
47 any potential vendor of a determination of a need for a procurement,
48 which shall include, but not be limited to, the public notification of
49 the specifications, bid documents, request for proposals, or evaluation
50 criteria for a procurement contract;

51 ii. solicitation for a procurement contract;

52 iii. evaluation of a procurement contract;

53 iv. award, approval, denial or disapproval of a procurement contract;
54 or

55 v. approval or denial of an assignment, amendment (other than amend-
56 ments that are authorized and payable under the terms of the procurement

1 contract as it was finally awarded or approved by the comptroller, as
2 applicable), renewal or extension of a procurement contract, or any
3 other material change in the procurement contract resulting in a finan-
4 cial benefit to the offerer.

5 g. "Procurement contract" shall mean any contract or other agreement,
6 including an amendment, extension, renewal or change order to an exist-
7 ing contract (other than amendments, extensions, renewals, or change
8 orders that are authorized and payable under the terms of the contract
9 as it was finally awarded or approved by the comptroller, as applica-
10 ble), for an article of procurement involving an estimated annualized
11 expenditure in excess of fifteen thousand dollars. Grants, article
12 eleven-B state finance law contracts, program contracts between not-for-
13 profit organizations, as defined in article eleven-B of this chapter,
14 and the unified court system, intergovernmental agreements, railroad and
15 utility force accounts, utility relocation project agreements or orders,
16 contracts governing organ transplants, contracts allowing for state
17 participation in trade shows, and eminent domain transactions shall not
18 be deemed procurement contracts.

19 h. "Business dealings with the state" shall mean:

20 i. Any procurement contract for articles of procurement that is
21 entered into or in effect with the state, other than a contract procured
22 through competitive sealed bidding, or sole and single source, or an
23 emergency contract awarded for services and commodities pursuant to
24 section one hundred sixty-three of this chapter;

25 ii. Any acquisition or disposition of real property with the state or
26 governmental entity;

27 iii. One or more concessions (other than concessions awarded through a
28 competitive sealed bid) or franchises from the state or governmental
29 entity;

30 iv. Any contract for the investment of state pension funds, including
31 investments in a private equity firm and contracts with investment
32 related consultants.

33 i. The term "statewide elected official" shall mean the governor,
34 lieutenant governor, comptroller or attorney general.

35 2. No business entity or individual who engages in any business deal-
36 ings with the state or any governmental entity or its independent
37 authorities if the value of the transaction exceeds fifteen thousand
38 dollars, shall make or have made monetary or in-kind contributions or a
39 pledge of contribution in excess of one thousand dollars to an individ-
40 ual who holds the position of a statewide elected official, a member of
41 the legislature or a candidate for such position, including the candi-
42 date's committee or election fund, if such contract must be voted on,
43 endorsed, promoted, or approved by such individual or office related
44 thereto; or a state, county or municipal political party committee for
45 any political purpose or use:

46 a. within twelve months immediately preceding the commencement of the
47 bidding and negotiations to engage in business dealings with the state
48 or the commencement of the governmental procurement process;

49 b. during the length of the term of the contract or agreement in busi-
50 ness dealings with the state; or

51 c. within the twelve months immediately following the last day of the
52 term of the contract or agreement.

53 3. a. The state shall require a business entity or individual, during
54 the governmental procurement process and prior to the awarding of any
55 contract or agreement in business dealings with the state, to report
56 through a disclosure statement listing all contributions made during the

1 preceding twelve months to any statewide elected official, any member of
2 the legislature or a candidate for such position, including the candi-
3 date's committee or election fund or a state, county or municipal poli-
4 tical party committee for any political purpose or use. The business
5 entity or individual shall also provide a written affidavit that it has
6 not made a contribution that would bar the award of a contract pursuant
7 to this section.

8 b. The governmental entity conducting the governmental procurement
9 shall review such reports prior to the awarding of any contract or
10 agreement to engage in business dealings with the state to determine
11 whether such business entity or individual has made any contributions
12 exceeding the limits set forth in subdivision two of this section. If,
13 through such a review, it is determined that any such contribution, or
14 any other act that would constitute a breach of contract pursuant to
15 subdivision four of this section, or poses a conflict of interest in the
16 awarding of any contract or agreement, the business entity or individual
17 shall be disqualified from bidding on or being awarded such contract or
18 agreement to engage in business dealings with the state. The business
19 entity or individual shall have a continuing duty to report to the
20 governmental entity that oversees the governmental procurement any
21 contributions that constitute a violation of this section that are made
22 during the duration of the term of business dealings with the state.

23 4. a. A breach of contract includes:

24 i. making or soliciting a contribution in violation of this section;
25 ii. knowingly concealing or misrepresenting a contribution given or
26 received;
27 iii. making or soliciting contributions through intermediaries for the
28 purpose of concealing or misrepresenting the source of the contribution;
29 iv. engaging or employing a lobbyist or a consultant with the intent
30 of understanding that the person would make or solicit any contribution;
31 and
32 v. fund contributions made by third parties, including consultants,
33 attorneys, family members, and employees.

34 b. The governmental entity conducting the governmental procurement or
35 overseeing the business entity or individual's business dealings with
36 the state shall notify the business entity or individual of such breach
37 of contract. Such business entity or individual shall have sixty days
38 to cure the defect by requesting that the excess contributions to the
39 statewide elected official, member of the legislature or candidate be
40 returned immediately. Proof of receipt of such return shall be submitted
41 to the commissioner at least five business days prior to the awarding of
42 the contract. In the event that proof of return of the excess contrib-
43 ution limits are not submitted by the business entity or individual, the
44 state agency shall reject the proposal or application.

45 c. A business entity or individual determined to have willingly and
46 knowingly made a contribution in direct violation of this section shall
47 be liable for a penalty of up to the value of its contract with the
48 governmental entity and may be barred from contracting with any govern-
49 mental entity for a period of five years.

50 d. A business entity or individual that files a false sworn contrib-
51 utions statement shall have its contract with the governmental entity
52 declared null and void and shall be disqualified from being awarded any
53 contract with any governmental entity for a period of four years from
54 the date of the filing of such false statement. Such matter shall be
55 referred to the local district attorney for prosecution.

1 e. Contributions made by a business entity or individual made prior to
2 the effective date of this section shall not constitute a violation. The
3 disclosure requirements shall not apply to contracts related to business
4 dealings with the state awarded subsequent to the effective date of this
5 section if the request for proposal process was initiated prior to such
6 effective date.

7 f. The office of general services shall, on a bi-annual basis, in
8 January and July, compile a list of names, based on such office's
9 records, listing any business entity or individual engaged in business
10 dealings with the state, as of those months. Such list shall be made
11 available on such office's website.

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

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