STATE OF NEW YORK

5851

2019-2020 Regular Sessions

IN ASSEMBLY

February 20, 2019

Introduced by M. of A. BARCLAY, KOLB, BLANKENBUSH, CROUCH, GARBARINO, GIGLIO, GOODELL, HAWLEY, LAWRENCE, McDONOUGH, MONTESANO, RA, RAIA, STEC, FRIEND, B. MILLER, FINCH, WALSH, BRABENEC, ASHBY, SMITH, MIKULIN, NORRIS, TAGUE, MORINELLO, LiPETRI, MANKTELOW, SALKA, BYRNES, WALCZYK -- Multi-Sponsored by -- M. of A. FITZPATRICK -- read once and referred to the Committee on Ways and Means

AN ACT to amend the state finance law, in relation to establishing the lump sum allocation advisory committee (Part A); to amend the state finance law, in relation to requiring transparency, identification and disclosure of certain appropriations (Part B); to amend the executive law, in relation to withholding the salaries of the governor, agency commissioners and deputy commissioners for failing to meet certain reporting deadlines (Part C); to amend the tax law, in relation to creating a tax rate reduction board to look at personal income tax and corporate franchise tax rates (Part D); to amend the economic development law, in relation to conducting an audit of all state economic development programs (Part E); to amend the public officers law and the election law, in relation to prohibiting certain political contributions by individuals appointed to entities that oversee lump sum appropriations (Part F); and to amend the public authorities law, in relation to prohibiting certain third party contracts (Part G)

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

Section 1. Legislative findings and intent. It is the duty of the state government to be responsible, open and transparent about how it spends the taxpayer's hard earned money. With billions of dollars of lump sum appropriations included in the state budget that include no details on who receives the money, or even which elected official has control over the appropriation, and with continued delays in releasing reports by state agencies on the effectiveness of related programs, the government has failed to live up to its responsibility. Often times,

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

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this failure goes even deeper, as individuals and entities have personally benefited from the lack of accountability and transparency. Therefore, the legislature finds it necessary to create a lump sum allocation advisory committee, require greater transparency related to lump sum appropriations, implement penalties for certain state agencies and entities that fail to release timely reports, prohibit certain political contributions by appointees and conduct studies on how to simplify the current tax system and economic development environment to ensure the current system that creates winners and losers is changed. By implementing these policies, the state government can begin to repair the complete breakdown of trust over how it allocates taxpayer money.

§ 2. This act enacts into law major components of legislation providing for the creation of a lump sum allocation advisory committee, requiring greater transparency related to lump sum appropriations, implementing penalties for certain state agencies and entities that fail to release timely reports, prohibiting certain political contributions by appointees and conducting studies on how to simplify the current tax system and economic development environment to ensure the current system that creates winners and losers is changed. Each component is wholly contained within a Part identified as Parts A through G. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section four of this act sets forth the general effective date of this act.

PART A

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

§ 49-a. Lump sum allocation advisory committee. 1. Definitions. As used in this section, the following terms shall have the following meanings:

(a) "committee" shall mean the lump sum allocation advisory committee as established by subdivision two of this section;

(b) "lump sum appropriation" shall mean an item of appropriation with a single related object or purpose, the purpose of which is to fund one or more grantees by a means other than a statutorily prescribed formula or an allocation pursuant to subdivision five of section twenty-four of this chapter; and

(c) "grantee" shall have the same meaning as subdivision twenty-two of section two of this chapter.

2. Establishment. There is hereby established the lump sum allocation advisory committee consisting of the director of the division of budget, the comptroller and the attorney general.

3. Powers and duties. The committee shall have the power and duty to: (a) review all requests for allocations from a lump sum appropriation where a grantee is not identified;

(b) request and receive, and shall utilize and be provided with such facilities, resources and data of any court, department, division, board, bureau, commission, agency subsidiary or subdivision of the state or any political subdivision thereof, or of any public authority or public benefit corporation, as it may reasonably request to carry out its powers and duties pursuant to this subdivision;

(c) review and examine financial and personal relationships between any potential grantee and the entity requesting the allocation to determine if a conflict of interest exists;

(d) examine the top qualified entities for allocations from a lump sum appropriation that are allocated through a competitive process to determine if a conflict of interest exists;

(e) deny any allocation from a lump sum appropriation to a grantee if the committee determines a conflict of interest exists; and

(f) approve any allocation from a lump sum appropriation after completing a full and thorough review of such allocation.

4. Allocation. No monies from a lump sum appropriation shall be allocated unless unanimously approved by the committee.

§ 2. This act shall take effect immediately.

PART B

Section 1. Subdivisions 4 and 5 of section 24 of the state finance law, as added by chapter 1 of the laws of 2007, are amended and a new subdivision 5-a is added to read as follows:

4. Any appropriation submitted by the governor, when practicable, or added to such budget bills, pursuant to section four of article seven of the constitution, shall only contain itemized appropriations which shall not be in the form of lump sum appropriations, and provided further that for all non-federal state operations appropriations, such bill or bills shall only contain itemized appropriations and shall be made, where practicable, by agency, and within each agency by program and within each program at the following level of detail and in the following order:

(a) by fund type, which at a minimum shall include general fund, special revenue-other funds, capital projects funds and debt service funds;

(b) for personal service appropriations, separate appropriations shall be made for regular personal service, temporary personal service, and holiday and overtime pay;

(c) for nonpersonal service appropriations, separate appropriations shall be made for supplies and materials, travel, contractual services, equipment and fringe benefits, as appropriate; and

(d) at the request or discretion of the governor or a member of the legislature, such appropriation shall include the name of the governor or member of the legislature that requested such appropriation.

5. Any appropriation submitted by the governor, or added pursuant to section four of article seven of the constitution without designating a grantee shall be allocated only pursuant to a plan setting forth an itemized list of grantees with the amount to be received by each, or the methodology for allocating such appropriation. Such plan shall be subject to the approval of the chair of the senate finance committee, the chair of the assembly ways and means committee, and the director of the budget, and thereafter shall be included in a concurrent resolution calling for the expenditure of such monies, which resolution must be approved by a majority vote of all members elected to each house upon a roll call vote.

5-a. Any appropriation submitted by the governor or added to such budget bills, pursuant to section four of article seven of the constitution, or allocation from a lump sum appropriation shall be subject to the following:

(a) the governor or member of the legislature requesting such appropriation or allocation from a lump sum appropriation shall be required to submit a signed conflict of interest form and submit such form to the lump sum allocation advisory committee as established pursuant to section forty-nine-a of this chapter to ensure that no conflict of interest exists; the lump sum allocation advisory committee shall designate the form and content of the conflict of interest form. The governor or member of the legislature shall disclose on the conflict of interest form all political donations he or she is receiving or has received in the past from the intended recipient of the appropriation funding or allocation from a lump sum appropriation. Such a conflict of interest form shall be signed by the governor or member of the legislature under penalty of perjury;

(b) an appropriation provided at the discretion of the governor or member of the legislature or an allocation from a lump sum appropriation shall not be provided if the lump sum allocation advisory committee declares a conflict of interest exists between the governor or a member of the legislature designating the appropriation or allocation from a lump sum appropriation and the potential recipient. These appropriations and allocations from lump sum appropriations cannot fund an individual or entity that employs or otherwise compensates the governor or member of the legislature, governor's family or member of the legislator's family, any person sharing the home of the governor or member of the legislature or the governor's or a member of the legislator's staff for services or labor rendered. Furthermore, the governor or members of the legislature shall not designate appropriations or request allocations from a lump sum appropriation if the governor or member of the legislature, a member of the governor's or member of the legislator's family, any person sharing the home of the governor or member of the legislature or a member of the governor's or member of the legislator's staff is involved with the operations of the organization in a decision-making capacity including but not limited to working on an unpaid, volunteer basis or as a member of the directing board of an organization; and

(c) an appropriation provided at the discretion of the governor or member of the legislature or an allocation from a lump sum appropriation shall not be provided to any individual or entity who made a political donation within the past year to the governor or member of the legislature requesting the appropriation or allocation from a lump sum appropriation until the political donation is refunded to the individual or entity.

§ 2. This act shall take effect immediately.

PART C

Section 1. The executive law is amended by adding a new section 33 to read as follows:

§ 33. Lump sum appropriation reporting; enforcement. 1. Notwithstanding any law to the contrary, the comptroller is directed to withhold the salaries of the governor, agency commissioners and deputy commissioners when economic development state agencies, subsidiaries and authorities, and/or any state entity required to issue a report related to a lump sum appropriation fails to meet statutorily required reporting deadlines.

2. For purposes of this section "economic development state agencies, subsidiaries and authorities" shall include, but are not limited to the department of economic development, empire state development corporation

and all of its subsidiaries, the department of taxation and finance, and the dormitory authority of the state of New York and its subsidiaries.

3. The comptroller shall withhold the salaries of the governor and offending agency commissioners and deputy commissioners until such required reports, as described in subdivision one of this section, are issued.

4. Agencies may receive an extension to submit a required report, as described in subdivision one of this section, if requested and approved by all legislative conference leaders.

§ 2. This act shall take effect immediately.

PART D

Section 1. The tax law is amended by adding a new section 171-q to read as follows:

§ 171-q. Tax rate reduction board; personal and corporate tax study. (1) (a) The commissioner shall contract with a nationally recognized entity to conduct a study to examine the corresponding personal income tax brackets and dollar amounts that could be enacted if a proportionate reduction in the personal income tax bracket and dollar amounts as provided in section six hundred one of this chapter for taxable years beginning after two thousand eleven and before two thousand twenty-one and for taxable years beginning after two thousand twenty, if all of the personal income tax credits provided in section six hundred six of this chapter were eliminated and personal income tax receipts were forecasted to be revenue neutral based on current law.

(b) The commissioner shall contract with a nationally recognized entity to conduct a study to examine the corresponding reduction in the imposition of the corporate franchise tax that could be enacted if a proportionate reduction in the imposition of the corporate franchise tax as provided by sections two hundred nine and two hundred ten of this chapter, if all the credits provided in section two hundred ten-B of this chapter were eliminated and the corporate franchise tax receipts were forecasted to be revenue neutral based on current law.

(2) There is hereby established a tax rate reduction board consisting of four members. One representative shall be appointed from each of the following:

(a) the speaker of the assembly;

(b) the minority leader of the assembly;

(c) the temporary president of the senate; and

(d) the minority leader of the senate.

(3) The tax rate reduction board shall:

(a) approve the selection of the nationally recognized entity described in subdivision one of this section, priority for such entity shall be given to firms that are not current vendors doing business with the state;

(b) oversee the required reports described in paragraphs (a) and (b) of subdivision one of this section; and

(c) assist in the determination of areas of inquiry for, review the progress of, and evaluate the results of such required reports.

(4) Such board, in consultation with the commissioner shall oversee the analysis of the contracting entity and issue a report to the governor, the speaker of the assembly, the minority leader of the assembly, the temporary president of the senate and the minority leader of the senate detailing the results of such studies described in paragraphs (a)

and (b) of subdivision one of this section within one year after the effective date of this section.

§ 2. This act shall take effect immediately.

PART E

Section 1. The economic development law is amended by adding a new section 107 to read as follows:

§ 107. Economic development audit board. 1. The comptroller in coordination with the commissioner and the commissioner of taxation and finance shall contract with a nationally recognized entity to conduct an audit of all state economic development programs. Such audit shall include, but not be limited to:

(a) identifying all programs by type and funding source;

(b) identifying the types of businesses that have received financial assistance;

(c) reviewing information available on job creation or other data on economic expansion;

(d) analyzing the geographic distribution of financial assistance throughout the state;

(e) reviewing a sample of loans and grants to determine if statutory requirements for the programs were followed;

(f) reviewing information available on economic development programs in other states; and

(g) any other information deemed necessary by the comptroller in coordination with the commissioner and the commissioner of taxation and finance.

2. There is hereby established an economic development audit board consisting of four members. One representative shall be appointed from each of the following:

(a) the speaker of the assembly;

(b) the minority leader of the assembly;

(c) the temporary president of the senate; and

(d) the minority leader of the senate.

3. The economic development board shall:

(a) approve the selection of the nationally recognized entity described in subdivision one of this section, priority for such entity shall be given to firms that are not current vendors doing business with the state;

(b) oversee the required reports described in subdivision five of this section; and

(c) assist in the determination of areas of inquiry for, review the progress of, and evaluate the results of such required reports.

4. The economic development audit board in consultation with the comptroller, the commissioner, and the commissioner of taxation and finance shall develop all necessary rules and regulations to conduct an audit of economic development programs pursuant to this section. Following the review and audit of such economic development programs, the board shall recommend all necessary changes to make such economic development programs more transparent, streamlined, and to ensure that such programs are meeting the goals of the laws that established them and providing for a return on investment to the state. The results of this audit shall be filed with the governor, the temporary president of the senate, the minority leader of the senate, the speaker of the assembly and the minority leader of the assembly and made available for public review online.

5. After the conclusion of the audit, the board in consultation with the comptroller, the commissioner and the commissioner of taxation and finance shall study the feasibility of reducing the number of economic development programs currently offered by the state and its subsidiaries and replacing these programs with one centralized competitive program. A report of the study, outlining the impact of such consolidation of programs shall be posted online for public review and filed with the governor, the temporary president of the senate, the minority leader of the senate, the speaker of the assembly and the minority leader of the assembly within one year after the effective date of this section.

§ 2. This act shall take effect immediately.

PART F

Section 1. Paragraph (c) of subdivision 17 of section 73 of the public officers law, as added by chapter 14 of the laws of 2007, is amended to read as follows:

(c) **(i)** No state officer or employee shall, directly or indirectly, use his or her official authority to compel or induce any other state officer or employee to make or promise to make any political contribution, whether by gift of money, service or other thing of value.

(ii) No officer, appointed by one or more state officers, or by the legislature, including but not limited to appointees to a commission, board, council or panel, charged with the distribution of state lump sum appropriations, as defined by subdivision twenty-one of section two of the state finance law, shall not make any political contributions to such appointing authority. This contribution prohibition shall also apply to anyone residing in the appointee's household including, but not limited to, a spouse, domestic partner and/or child. Such contribution prohibition shall be for the term of one year prior to, one year following, and during the term of his or her appointment. When an individual is appointed to such a position, the appointee must identify any contributions made to the appointing authority, and the appointing authority must refund the entire contribution made within the previous twelve month period.

§ 2. The election law is amended by adding a new section 14-133 to read as follows:

§ 14-133. Contributions by appointed party officers. Any appointed party officer, including but not limited to appointees to a commission, board, council or panel charged with the distribution of state lump sum appropriations, as defined by subdivision twenty-one of section two of the state finance law, shall not make any political contributions to such appointing authority. This contribution prohibition shall also apply to anyone residing in the appointee's household including, but not limited to, a spouse, domestic partner and/or child. Such contribution prohibition shall be for the term of one year prior to, one year following, and during the term of his or her appointment. When an individual is appointed to such a position, the appointee must identify any contributions made to the appointing authority, and the appointing authority must refund the entire contribution made within the previous twelve month period.

§ 3. This act shall take effect immediately.

PART G

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

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

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

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

§ 3. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

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