STATE OF NEW YORK

7732

2019-2020 Regular Sessions

IN ASSEMBLY

May 17, 2019

Introduced by M. of A. AUBRY -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the legislative law and the election law, in relation to disclosures required for lobbyists; and to amend the election law and the public officers law, in relation to campaign funds for personal use

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

Section 1. This act shall be known and may be cited as the "Lobbyist Disclosure Campaign Fund Act".

§ 2. Section 1-c of the legislative law is amended by adding a new subdivision (x) to read as follows:

(x) The term "family member" shall mean any of the following, including parents, stepparents, spouse, domestic partners, grandparents, brothers, sisters, uncles, and aunts, whether of the whole blood or half blood or by or through legal sanction.

§ 3. Paragraph 5 of subdivision (b) of section 1-h of the legislative law is amended by adding two new subparagraphs (vi) and (vii) to read as follows:

(vi) the campaign contributions made, in any form, to any campaign or political committee in New York state by the client by whom or on whose behalf the lobbyist is retained, employed or designated, by the lobbyist, and by any employees of the lobbyist.

(vii) the amount of compensation paid and the names of any family members of a public official to whom a lobbyist and the client by whom or on whose behalf the lobbyist is retained, employed or designated has paid compensation of more than five hundred dollars in the preceding calendar year for personal employment or professional services.

§ 4. Subdivision (b) of section 1-h of the legislative law is amended by adding a new paragraph 6 to read as follows:

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

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(6) the name, address and telephone number of any public official with whom the lobbyist has any business relationship.

§ 5. Paragraph 5 of subdivision (b) of section 1-j of the legislative law is amended by adding two new subparagraphs (vi) and (vii) to read as follows:

(vi) the campaign contributions made, in any form, to any campaign or political committee in New York state by the client by whom or on whose behalf the lobbyist is retained, employed or designated, by the lobbyist, and by any employees of the lobbyist.

(vii) the amount of compensation paid and the names of any family members of a public official to whom a lobbyist and the client by whom or on whose behalf the lobbyist is retained, employed or designated has paid compensation of more than five hundred dollars in the preceding calendar year for personal employment or professional services.

§ 6. Subdivision (b) of section 1-j of the legislative law is amended by adding a new paragraph 7 to read as follows:

(7) the name, address and telephone number of any public official with whom the lobbyist has any business relationship.

§ 7. The election law is amended by adding two new sections 14-134 and 14-136 to read as follows:

§ 14-134. Government contractor reporting and contribution limits. 1. Definitions. The following definitions shall apply to this section:

a. "agent" means any person acting at the direction of or on behalf of an individual or business entity;

b. "business entity" means a business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of this state or any other state or foreign jurisdiction, including any subsidiary directly or indirectly controlled by the business entity, and any political organization, including but not limited to any political organization organized under section 527 of the Internal Revenue Code, that is directly or indirectly controlled by the business entity;

c. "immediate family" means any spouse or child of an individual or any financially dependent relatives who reside in the individual's household;

d. "housekeeping account" means an account maintained by a party committee or constituted committee from which expenditures are made to maintain a permanent headquarters and staff and carry on ordinary party activities which are not for the express purpose of promoting the candidacy of specific candidates;

e. "candidate for state office" means a candidate for the following state offices: governor, lieutenant governor, attorney general, comptroller, senator, and member of the assembly; and

f. "personal business transaction" means transactions for services offered by the elected official in his or her capacity as a private citizen to any member of the public.

2. The following persons and business entities who make a contribution to a candidate for state office, a political committee working directly or indirectly to aid or participate in such candidate's nomination or election, a political committee established or controlled by such candidate, or a state or local committee of a political party, including a housekeeping account, shall file reports as required by subdivision three of this section with the board of elections within seven calendar days after the date of a contribution made within thirty-six days of an election, or, for contributions made at any other time, within thirty-

six days of the date of the contribution or the date of any applicable contract, whichever occurs later:

a. any person, organization, group of persons, or business entity that has received, in a calendar year fifty thousand dollars or more through contracts from the state or any state-appointed entity with contracting power;

b. any person who owns more than ten percent of a business entity that is described in paragraph a of this subdivision;

c. any person employed by an organization, group, or business entity described in paragraph a of this subdivision who holds a senior management position as defined by the state ethics commission;

d. the immediate family member of a person who is described in paragraph a, b or c of this subdivision; or

e. any political committee established or controlled by a person, organization, group of persons or business entity described in paragraph a, b, c and d of this subdivision.

3. The board of elections shall prescribe forms and procedures for the reporting required in subdivision two of this section which, at a minimum, shall require the electronic filing of the following information:

a. the name, address, employer and the name of spouse of the person making the contribution and the name of the spouse's employer;

b. the name of the candidate, political committee, or state or local committee of a political party, including a housekeeping account, receiving the contribution;

c. the amount of the contract with the state or other entity defined in paragraph a of subdivision two of this section, and the dates and other information identifying each contract for services or goods; and

d. if an organization, group of persons, or business entity is making the contribution:

(i) the names and business addresses of all persons who own more than ten percent of the organization, group or entity; or

(ii) the names and business addresses of all persons employed by the organization, group, or business entity who hold a senior management position as defined by the commission on governmental ethics.

4. The board of elections shall maintain completed forms and reports described in subdivision two of this section for public inspection both at the board of elections office and through the board of elections electronic filing system for campaign finance disclosure (EFS).

5. From twelve months after a bid or proposal to the relevant agency or contracting authority for a contract described in subdivision two of this section and either twelve months after completion of the applicable contract, or upon completion of the applicable elected official's term in office, whichever is longer, it shall be unlawful for any person, organization, group of persons or business entity described in paragraphs a, b, c and d or e of subdivision two of this section to:

a. make contributions to a candidate for state office, any political committee working directly or indirectly to aid or participate in such candidate's nomination or election, or any other political committee established or controlled by such candidate that exceed the following amounts per election for the following offices:

(i) governor: five hundred dollars;

(ii) lieutenant governor: five hundred dollars;

(iii) comptroller: five hundred dollars;

(iv) attorney general: five hundred dollars;

(v) senator: three hundred fifty dollars; or

(vi) member of assembly: two hundred fifty dollars;

b. make contributions to:

(i) political committees working directly or indirectly to aid or participate in the nomination or election of a candidate for the offices described in subparagraphs (i), (ii), (iii), (iv), (v) and (vi) of paragraph a of this subdivision, or other political committees established or controlled by a candidate for the offices described in subparagraphs (i), (ii), (iii), (iv), (v) and (vi) of paragraph a of this subdivision that in the aggregate exceed four thousand dollars per election; or

(ii) state or local committees of a political party, or any housekeeping account, in an amount greater than one thousand dollars per election, and in an aggregate to all state or local committees of political parties in an aggregate that exceeds two thousand dollars per election;

c. solicit a contribution on behalf of, or transmit a contribution on behalf of another to:

(i) a candidate for any of the offices for which contributions are limited under paragraph a of this subdivision;

(ii) any political committee working directly or indirectly to aid or participate in the nomination or election of a candidate for office for which their contributions are limited in paragraph a of this subdivision, or any other political committee established or controlled by a candidate for the offices for which their contributions are limited under paragraph a of this subdivision;

(iii) a state or local committee of a political party including a housekeeping account;

d. participate in any fund-raising activities for:

(i) a candidate for any of the offices for which contributions are limited under paragraph a of this subdivision;

(ii) any political committee working directly or indirectly to aid or participate in the nomination or election of a candidate for office for which their contributions are limited in paragraph a of this subdivision, or any other political committee established or controlled by a candidate for the offices for which their contributions are limited under paragraph a of this subdivision;

(iii) a state or local committee of a political party, including a housekeeping account;

e. serve as chairperson, treasurer, or any other officer of:

(i) any political committee working directly or indirectly to aid or participate in the nomination or election of a candidate for office for which their contributions are limited under paragraph a of this subdivision; or

(ii) any other political committee established or controlled by a candidate for which their contributions are limited under paragraph a of this subdivision;

f. conduct personal business transactions in an amount over two thousand dollars in any calendar year with a public official holding the offices for which their contributions are limited under paragraph a of this subdivision;

g. deliver to any conduit or intermediary any contribution earmarked for a particular candidate for the offices for which their contributions are limited under paragraph a of this subdivision, or any committee working directly or indirectly to aid or participate in such candidate's nomination or election, or any other political committee established or controlled by such candidate; or

h. knowingly take any step to circumvent the restrictions in this subdivision.

i. the provisions of this section shall not apply for a contractor making a contribution, or any disclosure thereof required by this article, in any calendar year in which such contractor receives funds disbursed by the state or any instrumentality thereof pursuant to a federal statute, rule or regulation that would render the state or such instrumentality or contractor ineligible to receive such funds by virtue of the operation of this section.

This subdivision shall not be applicable to contributions made by any person, organization, group of persons or business entity at a time when the person, organization, group of persons or business entity did not meet the descriptions of paragraphs a, b, c, d and e of subdivision two of this section.

6. The state or any state department, public entity or authority with contract-making power shall not enter into an agreement or otherwise contract to procure services or any material, supplies or equipment, or to acquire, sell, or lease any land or building from any person, organization, group of persons or business entity described in paragraphs a, b, c and d of subdivision two of this section who has made a contribution prohibited in subdivision five of this section. This subdivision shall not be applicable to contributions made by any person, organization, group of persons or business entity at a time when the person, organization, group of persons or business entity did not meet the descriptions of paragraph a, b, c, d or e of subdivision two of this section. Nothing in this section shall impair the power of the state or any instrumentality thereof to enter into a contract with any contractor where federal funds would support the payment or performance of such contract and a federal statute, rule or regulation would render the state or such instrumentality or contractor ineligible to receive such funds by virtue of the operation of this section.

7. Every contract and bid application and specifications promulgated by the state or any state department, public entity or authority with contract-making power shall contain a provision describing the requirements of section 14-116 of this article.

8. Before entering into any agreement or any other contract to procure from any person, organization, group of persons or business entity services or any material, supplies or equipment, or to acquire, sell, or lease any land or building, the state or any state department, public entity or authority with contract-making power shall receive a sworn statement from the contractor, made under penalty of perjury, that the bidder or offerer has not made a contribution in violation of this section.

9. No candidate for state office shall accept campaign contributions from a person, organization, group of persons or business entity described in paragraph a, b, c, d or e of subdivision two of this section in an amount exceeding those permitted in paragraph a of subdivision five of this section for twelve months after completion of the applicable contract, or the remainder of the candidate's term in office, whichever is longer. This subdivision shall not be applicable to contributions made by any person, organization, group of persons or business entity at a time when the person, organization, group of persons or business entity did not meet the descriptions of paragraph a, b, c, d or e of subdivision two of this section.

10. No public official holding any of the offices listed in paragraph a of subdivision five of this section shall conduct personal business transactions in an amount over two thousand dollars in any calendar year with any person, organization, group of persons or business entity

described in paragraphs a, b, c and d of subdivision two of this section.

11. This section shall not prohibit any person from informing any other person of a position taken by a public official or a candidate for public office.

12. The provisions of subdivisions two and five of this section shall not apply to the campaign of any person described in paragraph a, b, c or d of subdivision two of this section who is a candidate for any of those offices listed in paragraph a of subdivision five of this section.

§ 14-136. Commissioning authorities and licensing authorities. The following persons shall not be appointed to a state public board or commission which has the authority to award or audit any public contract:

1. a lobbyist registered under section one-e of the legislative law;

2. any person or business entity who, in the previous two years, has received fifty thousand dollars or more through one or more contracts from the state or any state-appointed entity with contracting power;

3. any person who owns more than ten percent of a business entity that is described in subdivision two of this section;

4. any person employed by an organization, group, or business entity described in subdivision two of this section who holds a senior management position as defined by the commission on governmental ethics; or

5. an immediate family member of a person described in subdivision one, two, three, or four of this section.

§ 8. Section 14-130 of the election law, as amended by section 9 of part CC of chapter 56 of the laws of 2015, is amended to read as follows:

§ 14-130. Campaign funds for personal use. 1. Contributions received by a candidate or a political committee may only be expended for [~~any lawful purpose. Such funds shall not be converted by any person to a personal use which is unrelated to a political campaign or the holding of a public office or party position~~] bona fide purposes directly related to either:

a. promoting the nomination or election of a candidate; or

b. performing those duties of public office or party position which are not paid for or eligible for reimbursement by the state or any political subdivision or private party.

2. Permissible ordinary and necessary expenses relating to the holding of public office or party position shall include:

a. production and circulation of flyers or other written materials related to duties of officeholder; the placement of holiday greetings and congratulatory ads and memorial notices in local newspapers, magazines, journals or other publication;

b. sponsorship or hosting of community meetings; tickets or donations to local charitable, non-profit or political events, organizations or activities that promote the welfare of constituents or political campaigns;

c. incidental expenditures for the operation of legislative offices, including purchase of items such as memorial or get-well gifts, flowers or similar items of nominal value for constituents or others;

d. membership in organizations related to official duties and costs of attending informational meetings attended in connection with such duties; and

e. travel related to duties of office, provided that the travel is not undertaken for any purpose resulting in a personal or financial benefit to the candidate or officeholder. If such expenses involve both personal

activity and campaign or official activities, the incremental expenses associated with the personal activities are personal uses unless the campaign is reimbursed for such sums from other than campaign funds within thirty days of the expenditure.

Nothing in this section shall prohibit a candidate from purchasing office equipment with personal funds and leasing or renting such equipment or property to a committee working with or for the candidate, provided the candidate or the campaign treasurer sign a written lease or rental agreement and files it with the appropriate required campaign financial filing which shall include the lease or rental price which shall not exceed the fair lease or rental value of the equipment or in the aggregate exceed the cost of its purchase.

3. Campaign funds shall not be converted to personal use, which shall be defined as expenditures that:

a. are for the personal benefit of or to defray normal living expenses of the candidate, officeholder, immediate family or partner of either or any other person;

b. are used to fulfill any commitment, obligation, or expense that would exist irrespective of the candidate's campaign or duties as an officeholder; or

c. are put to any use for which the candidate or officeholder would be required to treat the amount of the expenditure as gross income under section 61 of the Internal Revenue Code.

4. Expenditures for personal use shall also include, but are not limited to, expenditures for:

a. residential or household items, supplies, maintenance or other expenditures, including mortgage, rent, utilities, repairs, or improvements for any part of any personal residence of a candidate or officeholder, his or her immediate family or partner;

b. rent or utility payments that exceed fair market value for use of any part of any non-residential property owned by a candidate, or a member of a candidate's family or partner used for campaign purposes;

c. salary and other fees for bona fide services to a campaign or legislative office that exceed fair and reasonable market value of such services;

d. interest or any other finance charges for monies loaned to the campaign by the candidate or the spouse or partner of such candidate;

e. tuition payments;

f. dues, fees, or gratuities at private clubs, recreational facilities or other nonpolitical organizations, unless connected to a specific widely attended fundraising event that takes place on the organization's premises;

g. automobile purchases or long term leases; short term car rentals and cellular equipment and services not used exclusively for campaign purposes or duties as an officeholder;

h. admission to sporting events, concerts, theaters, or other forms of entertainment, unless part of a specific campaign or officeholder related activity; and

i. payment of any fines, fees, or penalties assessed pursuant to this chapter.

5. No campaign funds shall be used to pay attorney's fees or any costs of defending against any civil or criminal investigation or prosecution for alleged violations of state or federal law alleged to have been committed while holding public office or as a candidate for office where the candidate or public or party official, members of their immediate families or partners or the campaign is the target of such investigation

or prosecution unless such expenditure is used exclusively for costs related to civil or criminal actions for alleged violations related to activities promoting the nomination or election of a candidate.

[~~2.~~] 6. No contribution shall be used to pay interest or any other finance charges upon monies loaned to the campaign by such candidate or the spouse of such candidate.

[~~3.~~] 7. For the purposes of this section, contributions "converted by any person to a personal use" are expenditures that are exclusively for the personal benefit of the candidate or any other individual, not in connection with a political campaign or the holding of a public office or party position. "Converted by any person to a personal use", when meeting the definition in this subdivision, shall include, but not be limited to, expenses for the following:

(i) any residential or household items, supplies or expenditures, including mortgage, rent or utility payments for any part of any personal residence of a candidate or officeholder or a member of the candidate's or officeholder's family that are not incurred as a result of, or to facilitate, the individual's campaign, or the execution of his or her duties of public office or party position. In the event that any property or building is used for both personal and campaign use or as part of the execution of his or her duties of public office or party position, personal use shall constitute expenses that exceed the pro-rated amount for such expenses based on fair-market value.

(ii) mortgage, rent, or utility payments to a candidate or officeholder for any part of any non-residential property that is owned by a candidate or officeholder or a member of a candidate's or officeholder's family and used for campaign purposes, to the extent the payments exceed the fair market value of the property's usage for campaign activities;

(iii) clothing, other than items that are used in the campaign or in the execution of the duties of public office or party position;

(iv) tuition payments unrelated to a political campaign or the holding of a public office or party position;

(v) salary payments or other compensation provided to any person for services where such services are not solely for campaign purposes or provided in connection with the execution of the duties of public office or party position;

(vi) salary payments or other compensation provided to a member of a candidate's family, unless the family member is providing bona fide services to the campaign. If a family member provides bona fide services to a campaign, any salary payments or other compensation in excess of the fair market value of the services provided shall be considered payments for personal use;

(vii) admission to a sporting event, concert, theater, or other form of entertainment, unless such event is part of, or in connection with, a campaign or is related to the holding of public office or party position;

(viii) payment of any fines or penalties assessed against the candidate pursuant to this chapter or in connection with a criminal conviction or by the joint commission for public ethics pursuant to section ninety-four of the executive law or sections seventy-three or seventy-three-a of the public officers law or the legislative ethics commission pursuant to section eighty of the legislative law;

(ix) dues, fees, or gratuities at a country club, health club, recreational facility or other entities with a similar purpose, unless they are expenses connected with a specific fundraising event or activity

associated with a political campaign or the holding of public office or party position that takes place on the organization's premises; and

(x) travel expenses including automobile purchases or leases, unless used for campaign purposes or in connection with the execution of the duties of public office or party position and usage of such vehicle which is incidental to such purposes or the execution of such duties.

[~~4.~~] 8. Nothing in this section shall prohibit a candidate from purchasing equipment or property from his or her personal funds and leasing or renting such equipment or property to a committee working directly or indirectly with him to aid or participate in his or her nomination or election, including an exploratory committee, provided that the candidate and his or her campaign treasurer sign a written lease or rental agreement. Such agreement shall include the lease or rental price, which shall not exceed the fair lease or rental value of the equipment. The candidate shall not receive lease or rental payments which, in the aggregate, exceed the cost of purchasing the equipment or property.

[~~5.~~] 9. Nothing in this section shall prohibit an elected public officeholder from using campaign contributions to facilitate, support, or otherwise assist in the execution or performance of the duties of his or her public office.

[~~6.~~] 10. The state board of elections shall issue advisory opinions upon request regarding expenditures that may or may not be considered personal use of contributions. Any formal or informal advisory opinions issued by a majority vote of the commissioners of the state board of elections shall be binding on the board, the chief enforcement counsel established by subdivision three-a of section 3-100 of this chapter, and in any subsequent civil or criminal action or proceeding or administrative proceeding.

§ 9. The election law is amended by adding a new section 14-138 to read as follows:

§ 14-138. Disposition of campaign funds. 1. An authorized continuing candidate committee must dispose of all funds and close within four years after the later of (a) the end of the individual's most recent term of office, or (b) the date of the election in which the individual last was a filed candidate.

2. Any candidate or political committee required to dispose of funds pursuant to this section shall, at the option of the candidate, or the treasurer of a political committee formed solely to promote the passage or defeat of a ballot proposal, dispose of such funds by any of the following means, or any combination thereof:

a. returning, pro rata, to each contributor the funds that have not been spent or obligated;

b. donating the funds to a charitable organization or organizations that meet the qualifications of section 501(c)(3) of the Internal Revenue Code;

c. donating the funds to the state university;

d. donating the funds to the state's general fund;

e. transferring the funds to a political party committee registered with the state board of elections; or

f. contributing the funds to a candidate or political committee such that this does not exceed the limits set forth in section 14-114 of this article.

3. No candidate or political committee shall dispose of campaign funds by making expenditures for personal use as defined in section 14-130 of this article.

4. Upon the death of a candidate, former candidate or holder of elective office, who received campaign contributions, all contributions shall be disposed of according to this section within twelve months of the death of the candidate.

§ 10. Subdivision 1 of section 14-102 of the election law, as amended by chapter 8 and redesignated by chapter 9 of the laws of 1978, is amended to read as follows:

1. The treasurer of every political committee which, or any officer, member or agent of any such committee who, in connection with any election, receives or expends any money or other valuable thing or incurs any liability to pay money or its equivalent shall file statements sworn, or subscribed and bearing a form notice that false statements made therein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law, at the times prescribed by this article setting forth all the receipts, contributions to and the expenditures by and liabilities of the committee, and of its officers, members and agents in its behalf. Such statements shall include the dollar amount of any receipt, contribution or transfer, or the fair market value of any receipt, contribution or transfer, which is other than of money, the name and address of the transferor, contributor or person from whom received, **if the contributor is a lobbyist registered pursuant to article one-A of the legislative law** and if the transferor, contributor or person is a political committee; the name of and the political unit represented by the committee, the date of its receipt, the dollar amount of every expenditure, the name and address of the person to whom it was made or the name of and the political unit represented by the committee to which it was made and the date thereof, and shall state clearly the purpose of such expenditure. Any statement reporting a loan shall have attached to it a copy of the evidence of indebtedness. Expenditures in sums under fifty dollars need not be specifically accounted for by separate items in said statements, and receipts and contributions aggregating not more than ninety-nine dollars, from any one contributor need not be specifically accounted for by separate items in said statements, provided however, that such expenditures, receipts and contributions shall be subject to the other provisions of section 14-118 of this article.

§ 11. Subdivision 3 of section 74 of the public officers law is amended by adding a new paragraph j to read as follows:

j. No officer or employee of a state agency required to file an annual statement of financial disclosure pursuant to section seventy-three-a of this article shall solicit or receive contributions for a campaign for state or federal office.

§ 12. This act shall take effect on the first of January next succeeding the date on which it shall have become a law; provided that section 14-134 of the election law as added by section seven of this act shall take effect two years after such effective date; and provided further that sections eight, nine, ten and eleven of this act shall take effect on the sixtieth day after it shall have become a law; provided, however, that the state board of elections shall notify all registered campaign committees of the applicable provisions of sections eight, nine, ten and eleven of this act within thirty days after this act shall have become a law.