

STATE OF NEW YORK

1126--B

2021-2022 Regular Sessions

IN SENATE

January 7, 2021

Introduced by Sens. GIANARIS, HARCKHAM, HOYLMAN, JACKSON, KRUEGER, MAYER, MYRIE, RAMOS, SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Elections -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Elections in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the election law, in relation to enacting the "democracy preservation act"; and in relation to prohibiting contributions by foreign-influenced business entities and requiring certification

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

1 Section 1. This act shall be known and may be cited as the "democracy
2 preservation act".

3 § 2. Legislative Findings. The legislature hereby finds and declares
4 that New York state welcomes immigrants, visitors, and investors from
5 around the world. However, its elections should be decided by the people
6 of New York and not by foreign investors or the business entities over
7 which they exert influence. Corporations with partial foreign ownership
8 have been spending money to influence state and local elections in New
9 York and around the country. The public has a compelling interest in
10 limiting the participation of foreign entities in activities of American
11 democratic self-government, which include spending money to influence
12 voters and finance campaigns, in the interest of preventing foreign
13 influence over the United States political process.

14 Investors are the ultimate beneficiaries of corporate interests. Where
15 part of the shareholders' equity is attributable to foreign investors,
16 spending corporate treasury funds on New York elections means spending
17 the equity of foreign entities on New York elections.

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

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1 Business corporations and similar entities have a fiduciary duty to
2 their shareholders, including investors around the world, and generally
3 prioritize the interests of such shareholders, which may diverge
4 substantially from the interests of the people of New York and of citi-
5 zens of the United States. In addition, both formal procedures of corpo-
6 rate democracy and informal mechanisms of influence can provide foreign
7 investors with substantial influence even with only a minority of
8 shares. The United States Securities and Exchange Commission, major
9 capital investors, corporate managers, and corporate governance experts
10 broadly agree that ownership or control of one percent or more of shares
11 can confer substantial influence on corporate decision-making.

12 Political spending by foreign-influenced business entities can weaken,
13 interfere with, or disrupt New York's democratic self-government and the
14 faith that the electorate has in its elected officials. To protect the
15 integrity of New York's democratic self-government, it is necessary to
16 prevent foreign-influenced business entities from influencing New York
17 elections through political spending.

18 § 3. The election law is amended by adding a new section 14-116-a to
19 read as follows:

20 § 14-116-a. Prohibited contributions by foreign-influenced business
21 entities. 1. Notwithstanding any provision of law to the contrary, it
22 shall be unlawful for a foreign-influenced business entity, directly or
23 indirectly, to make a contribution or donation of money or other thing
24 of value, or to make an express or implied promise to make a contrib-
25 ution or donation, in connection with a state or local election.

26 2. It shall be unlawful for a business entity prohibited under subdivi-
27 sion one of this section, directly or indirectly, to make a contrib-
28 ution or donation to a constituted committee, independent expenditure
29 committee, political committee, or party committee.

30 3. It shall be unlawful for a business entity prohibited under subdivi-
31 sion one of this section, directly or indirectly, to make an expendi-
32 ture, independent expenditure, or disbursement for a political communi-
33 cation.

34 4. It shall be unlawful for a person to knowingly solicit, accept, or
35 receive a contribution or donation described in subdivision one, two or
36 three of this section from a foreign-influenced business entity.

37 5. Except as provided in subdivision six of this section, it shall be
38 unlawful for a person who receives a contribution or donation from a
39 business entity to use that contribution or donation, directly or indi-
40 rectly, for any of the purposes described in subdivision one, two, or
41 three of this section, or to contribute, donate, transfer, or convey
42 funds from such a contribution or donation to another person for use for
43 any of the purposes described in subdivision one, two, or three of this
44 section. However, a person may use funds that do not comply with the
45 requirements of this section for other lawful purposes.

46 6. A person who receives a contribution or donation from a business
47 entity, and also receives from the business entity a copy of the state-
48 ment of certification described in subdivision four of section 14-116 of
49 this title, may use such funds for the purposes described in subdivision
50 one, two, or three of this section only if the person separately desig-
51 nates, records, and accounts for such funds, and ensures that disburse-
52 ments for the purposes described in subdivision one, two, or three of
53 this section are only made from funds that comply with the requirements
54 of this section. A person may rely in good faith on a statement of
55 certification that meets the requirements of subdivision four of section
56 14-116 of this title.

1 7. Any person found in violation of this section shall be guilty of a
2 class E felony and shall be subject to a civil penalty equal to the
3 contribution or donation amount plus a fine of up to ten thousand
4 dollars, to be recoverable in a special proceeding or civil action to be
5 brought by the state board of elections chief enforcement counsel.

6 § 4. Section 14-100 of the election law is amended by adding three new
7 subdivisions 18, 19 and 20 to read as follows:

8 18. "foreign-influenced" shall mean a business entity for which at
9 least one of the following conditions is met:

10 i. a single foreign owner holds, owns, controls, or otherwise has
11 direct or indirect beneficial ownership of one percent or more of the
12 total equity, outstanding voting shares, membership units, or other
13 applicable ownership interests of the business entity; or

14 ii. two or more foreign owners, in aggregate, hold, own, control, or
15 otherwise have direct or indirect beneficial ownership of five percent
16 or more of the total equity, outstanding voting shares, membership
17 units, or other applicable ownership interests of the business entity;
18 or

19 iii. a foreign owner participates directly or indirectly in the busi-
20 ness entity's decision-making process with respect to the business enti-
21 ty's political activities in the United States.

22 19. "business entity" shall mean a for-profit entity doing business
23 for profit in the state or elsewhere, including a for-profit corpo-
24 ration, company, limited liability company, limited partnership, busi-
25 ness trust, business association, joint-stock association or other simi-
26 lar entity.

27 20. "foreign owner" shall mean:

28 i. a foreign national; or

29 ii. a business entity wherein a foreign national holds, owns,
30 controls, or otherwise has directly or indirectly acquired beneficial
31 ownership of equity or voting shares in an amount that is equal to or
32 greater than fifty percent of the total equity or outstanding voting
33 shares.

34 § 5. Section 14-116 of the election law is amended by adding a new
35 subdivision 4 to read as follows:

36 4. Every business entity that makes an expenditure, or contribution,
37 for political purposes for a state or local election shall file with the
38 state board of elections, within seven business days after making such
39 expenditure or contribution, on the form prescribed by the state board
40 of elections, a statement of certification signed by the chief executive
41 officer, president or owner under penalty of perjury, avowing that after
42 due inquiry, such business entity was not a foreign-influenced business
43 entity on the date such expenditure or contribution was made. Business
44 entities shall provide a copy of the statement of certification required
45 by this subdivision to any campaign or committee to which they contrib-
46 ute, and, upon request of the recipient, to any other person to whom
47 they contribute.

48 § 6. This act shall take effect on the one hundred eightieth day after
49 it shall have become a law. Effective immediately, the addition, amend-
50 ment and/or repeal of any rule or regulation necessary for the implemen-
51 tation of this act on its effective date are authorized to be made on or
52 before such effective date.