

STATE OF NEW YORK

7458

2021-2022 Regular Sessions

IN ASSEMBLY

May 10, 2021

Introduced by M. of A. WALKER -- read once and referred to the Committee on Election Law

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.

18 Business corporations and similar entities have a fiduciary duty to
19 their shareholders, including investors around the world, and generally
20 prioritize the interests of such shareholders, which may diverge
21 substantially from the interests of the people of New York and of citi-
22 zens of the United States. In addition, both formal procedures of corpo-
23 rate democracy and informal mechanisms of influence can provide foreign
24 investors with substantial influence even with only a minority of

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

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1 shares. The United States Securities and Exchange Commission, major
2 capital investors, corporate managers, and corporate governance experts
3 broadly agree that ownership or control of one percent or more of shares
4 can confer substantial influence on corporate decision-making.

5 Political spending by foreign-influenced business entities can weaken,
6 interfere with, or disrupt New York's democratic self-government and the
7 faith that the electorate has in its elected officials. To protect the
8 integrity of New York's democratic self-government, it is necessary to
9 prevent foreign-influenced business entities from influencing New York
10 elections through political spending.

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

13 § 14-116-a. Prohibited contributions by foreign-influenced business
14 entities. 1. Notwithstanding any provision of law to the contrary, it
15 shall be unlawful for a foreign-influenced business entity, directly or
16 indirectly, to make a contribution or donation of money or other thing
17 of value, or to make an express or implied promise to make a contrib-
18 ution or donation, in connection with a state or local election.

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

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

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

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

39 6. A person who receives a contribution or donation from a business
40 entity, and also receives from the business entity a copy of the state-
41 ment of certification described in subdivision four of section 14-116 of
42 this title, may use such funds for the purposes described in subdivision
43 one, two, or three of this section only if the person separately desi-
44 gnates, records, and accounts for such funds, and ensures that disburse-
45 ments for the purposes described in subdivision one, two, or three of
46 this section are only made from funds that comply with the requirements
47 of this section. A person may rely in good faith on a statement of
48 certification that meets the requirements of subdivision four of section
49 14-116 of this title.

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

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

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

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

7 ii. two or more foreign owners, in aggregate, hold, own, control, or
8 otherwise have direct or indirect beneficial ownership of five percent
9 or more of the total equity, outstanding voting shares, membership
10 units, or other applicable ownership interests of the business entity;
11 or

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

15 19. "business entity" shall mean a corporation, company, limited
16 liability company, limited partnership, business trust, business associ-
17 ation, joint-stock association or other corporate entity doing business
18 for profit in the state or elsewhere.

19 20. "foreign owner" shall mean:

20 i. a foreign national; or

21 ii. a business entity wherein a foreign national holds, owns,
22 controls, or otherwise has directly or indirectly acquired beneficial
23 ownership of equity or voting shares in an amount that is equal to or
24 greater than fifty percent of the total equity or outstanding voting
25 shares.

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

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

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