STATE OF NEW YORK

7458--A

2021-2022 Regular Sessions

IN ASSEMBLY

May 10, 2021

Introduced by M. of A. WALKER, SIMON -- read once and referred to the Committee on Election Law -- recommitted to the Committee on Election Law in accordance with Assembly Rule 3, sec. 2 -- 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:

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

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

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

Business corporations and similar entities have a fiduciary duty to their shareholders, including investors around the world, and generally prioritize the interests of such shareholders, which may diverge substantially from the interests of the people of New York and of citi-

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

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zens of the United States. In addition, both formal procedures of corporate democracy and informal mechanisms of influence can provide foreign investors with substantial influence even with only a minority of shares. The United States Securities and Exchange Commission, major capital investors, corporate managers, and corporate governance experts broadly agree that ownership or control of one percent or more of shares can confer substantial influence on corporate decision-making.

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

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

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

2. It shall be unlawful for a business entity prohibited under subdivision one of this section, directly or indirectly, to make a contribution or donation to a constituted committee, independent expenditure committee, political committee, or party committee.

3. It shall be unlawful for a business entity prohibited under subdivision one of this section, directly or indirectly, to make an expenditure, independent expenditure, or disbursement for a political communication.

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

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

6. A person who receives a contribution or donation from a business entity, and also receives from the business entity a copy of the statement of certification described in subdivision four of section 14-116 of this title, may use such funds for the purposes described in subdivision one, two, or three of this section only if the person separately designates, records, and accounts for such funds, and ensures that disbursements for the purposes described in subdivision one, two, or three of this section are only made from funds that comply with the requirements of this section. A person may rely in good faith on a statement of certification that meets the requirements of subdivision four of section 14-116 of this title.

7. Any person found in violation of this section shall be guilty of a class E felony and shall be subject to a civil penalty equal to the contribution or donation amount plus a fine of up to ten thousand

dollars, to be recoverable in a special proceeding or civil action to be brought by the state board of elections chief enforcement counsel.

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

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

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

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

iii. a foreign owner participates directly or indirectly in the business entity's decision-making process with respect to the business entity's political activities in the United States.

19. "business entity" shall mean a for-profit entity doing business for profit in the state or elsewhere, including a for-profit corporation, company, limited liability company, limited partnership, business trust, business association, joint-stock association or other similar entity.

20. "foreign owner" shall mean:

i. a foreign national; or

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

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

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

§ 6. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made on or before such effective date.