

STATE OF NEW YORK

7179

2023-2024 Regular Sessions

IN ASSEMBLY

May 12, 2023

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

AN ACT to amend the election law, in relation to contributions from persons doing or seeking business dealings with a state governmental entity

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

1 Section 1. The election law is amended by adding a new section 14-131
2 to read as follows:

3 § 14-131. Contributions from persons doing or seeking business deal-
4 ings with a state governmental entity. 1. The legislature finds that it
5 is necessary to reduce the appearance of or actual improper influence of
6 the state contracting process and increase its fairness by banning
7 campaign contributions from a company seeking state contracts to office-
8 holders with authority over procuring entities during a restricted
9 contribution period.

10 2. For the purpose of this section, the following terms shall have the
11 following meanings:

12 (a) "state governmental entity" shall mean the state of New York, any
13 public authority, public benefit corporation or not-for-profit corpo-
14 ration, the majority of whose board members are officials of the state
15 or are appointed by such officials, or any agency or entity affiliated
16 with the state of New York.

17 (b) "person" shall include any chief executive officer, chief finan-
18 cial officer or chief operating officer of a business entity or persons
19 serving in an equivalent capacity, any person employed in a senior mana-
20 gerial capacity regarding a business entity, or any person with an
21 interest in a business entity which exceeds ten percent of the value of
22 such entity at fair market value.

23 (c) "senior managerial capacity" shall mean a high-level supervisory
24 capacity, either by virtue of title or duties, in which substantial

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

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1 discretion and oversight is exercised over the solicitation, letting or
2 administration of business transactions with a state governmental enti-
3 ty, including contracts, franchises, concession, grants, economic devel-
4 opment agreements and application for land use approvals.

5 (d) (i) "business dealing with a state governmental entity" shall
6 mean:

7 (A) one or more contracts with a single person or business entity for
8 the procurement of goods, services or construction that are in effect or
9 that were entered into within the preceding one-year period with a state
10 governmental entity and have a total value at or above one hundred thou-
11 sand dollars, or, with respect to contracts for construction, at or
12 above five hundred thousand dollars, and shall include any contract for
13 the underwriting of the debt of a state governmental entity and the
14 retention of any bond counsel, disclosure counsel or underwriter's coun-
15 sel in connection therewith; or

16 (B) any acquisition or disposition of real property, other than a
17 public auction or competitive sealed bid transaction or the acquisition
18 of property pursuant to the department of environmental conservation
19 land acquisition processes with a state governmental entity; or

20 (C) acquisition of office space by the office of general services or
21 any other state governmental entity, including acquisitions by purchase,
22 condemnation, exchange or lease; or

23 (D) one or more concessions or one or more franchises with a single
24 person or business entity that are in effect or that were entered into
25 within the preceding one-year period from a state governmental entity
26 which have a total estimated annual value at or above one hundred thou-
27 sand dollars; or

28 (E) one or more grants made to a single person or entity that are in
29 effect or that were entered into within the preceding one-year period
30 that have a total value at or above one hundred thousand dollars,
31 received from a state governmental entity; or

32 (F) any economic development agreement entered into or in effect with
33 a state governmental entity; or

34 (G) any contract for the investment of pension funds, including
35 investments in a private equity firm and contracts with investment
36 related consultants.

37 (ii) for purposes of clauses (A), (D) and (E) of subparagraph (i) of
38 this paragraph, all contracts, concessions, franchises and grants that
39 are five thousand dollars or less in value shall be excluded from any
40 calculation as to whether a contract, concession, franchise or grant is
41 a business dealing with a state governmental entity. The division of
42 homes and community renewal shall promulgate rules setting forth which
43 categories of actions, transactions and agreements providing affordable
44 housing shall and shall not constitute business dealings with a state
45 governmental entity for purposes of this paragraph. The division shall
46 consider the significance of the affordable housing program and the
47 degree of discretion by state officials in determining which actions,
48 transactions and agreements shall and shall not constitute such business
49 dealings. Notwithstanding any provision of this paragraph, a housing
50 assistance payment contract between a landlord and the division of homes
51 and community renewal relating to the provision of rent subsidies pursu-
52 ant to Section 8 of the United States Housing Act of 1937, 42 U.S.C.
53 1437 et. seq., shall not constitute business dealings with a state
54 governmental entity for the purposes of this paragraph.

55 (e) (i) "intermediary" shall mean an individual, business entity,
56 political committee, employee organization or other entity which:

1 (A) other than in the regular course of business as a postal, delivery
2 or messenger service, delivers any contribution from another person or
3 business entity to a candidate or other authorized committee; or

4 (B) solicits contributions to a candidate or other authorized commit-
5 tee where such solicitation is known to such candidate or his or her
6 authorized committee. For purposes of this clause, only persons clearly
7 identified as the solicitor of a contribution to the candidate or his or
8 her authorized committee shall be presumed to be known to such candidate
9 or his or her authorized committee.

10 (ii) "intermediary" shall not mean spouses, domestic partners,
11 parents, children or siblings of the person making such contribution, or
12 any fundraising agent, as such term is defined by the board, or any
13 hosts of a campaign sponsored fundraising event paid for in whole or in
14 part by the campaign. Where there are multiple individual hosts for a
15 non-campaign sponsored event, the hosts shall designate one such host as
16 the intermediary.

17 (f) "restricted contribution period" shall mean the period during
18 which any person, organization, group of persons, or business entity
19 that has business dealings or submits bids or proposals for business
20 dealings with a state governmental entity shall be prohibited from
21 making contributions or loans, or serving as an intermediary for such
22 contribution or loan, to any officeholder of or with authority over the
23 state governmental entity or entities responsible for the business deal-
24 ing under its jurisdiction, or to any candidate for an office of such
25 governmental entity, including to such officeholder's or candidate's
26 authorized political committees or political committees the officeholder
27 or candidate exerts operational control over.

28 (g) "business entity" shall mean a business corporation, professional
29 services corporation, limited liability company, partnership, limited
30 partnership, business trust, association or any other legal commercial
31 entity organized under the laws of this state or any other state or
32 foreign jurisdiction, including any subsidiary directly or indirectly
33 controlled by the business entity, and any political organization,
34 including but not limited to any political organization organized under
35 section 527 of the internal revenue code, that is directly or indirectly
36 controlled by the business entity.

37 3. (a) No person, organization, group of persons, or business entity
38 that has business dealings or submits bids or proposals for business
39 dealings with a state governmental entity shall, during the restricted
40 contribution period, make a contribution or loan to, or serve as an
41 intermediary for such contribution or loan for, any officeholder of or
42 with authority over the state governmental entity or entities responsi-
43 ble for the business dealing under its jurisdiction or to any candidate
44 for an office of such governmental entity, including to such
45 officeholder's or candidate's authorized political committees or poli-
46 tical committees the officeholder or candidate exerts operational
47 control over.

48 (b) Pursuant to section 14-120 of this title, no person, organization,
49 group of persons, or business entity that has business dealings or
50 submits bids or proposals for business dealings with a state govern-
51 mental entity shall, during the restricted contribution period, make
52 contributions to political committees not authorized or operationally
53 controlled by the officeholder or candidate for the purpose of trans-
54 ferring a contribution to the officeholder's or candidate's authorized
55 political committees or political committees they exert operational
56 control over where such contribution would be prohibited under paragraph

1 (a) of this subdivision if made directly to the officeholder's or candi-
2 date's authorized political committees or political committees they
3 exert operational control over.

4 (c) The state governmental entity directly responsible for a business
5 dealing shall provide notice of the prohibition established by this
6 section and the restricted contribution period commencement date to any
7 person, organization, group of persons, or business entity that has
8 business dealings or has submitted bids or proposals for business deal-
9 ings with such state governmental entity. State government entities
10 responsible for evaluating responses to a procurement posting or solici-
11 itation shall provide to any person, organization, group of persons, or
12 business entity that submits a proposal in response to such posting or
13 solicitation notice of the prohibition established by this section and
14 the restricted contribution period commencement date.

15 4. (a) For business dealings with a governmental entity, the
16 restricted contribution period shall commence, with respect to a specif-
17 ic person, organization, group of persons, or business entity when it
18 files a statement of registration pursuant to section one-e of the
19 legislative law, to generate a procurement opportunity or pilot program
20 or engages lobbying, as defined by subdivision (c) of section one-c of
21 the legislative law, to generate a procurement opportunity or pilot
22 program or submits a bid, quotation, offer or response to the state
23 governmental entity posting or solicitation, at the earliest posting, on
24 a state governmental entity's website, in a newspaper of general circu-
25 lation or in the procurement opportunities newsletter in accordance with
26 article four-C of the economic development law of written notice, adver-
27 tisement or solicitation of a request for proposal, invitation for bids,
28 or solicitations of proposals, or any other method provided for by law
29 or regulation for soliciting a response from offerers intending to
30 result in a procurement contract with a state governmental entity. The
31 restricted contribution period does not apply to a person, organization,
32 group of persons or business entity that is responding to a state
33 governmental entity's request for information or other informational
34 exchanges occurring prior to such governmental entity's posting or
35 solicitation for procurement provided it has not filed a statement of
36 registration pursuant to section one-e of the legislative law or engaged
37 in lobbying, to generate a procurement opportunity or pilot program as
38 defined by subdivision (c) of section one-c of the legislative law, to
39 generate a procurement opportunity or pilot program.

40 (b) Leases in which a state governmental entity is the proposed lessee
41 shall only constitute business dealings with a state governmental entity
42 from the date the application for acquisition is filed or the date of
43 the certification of such application to a period of one year after the
44 commencement of the lease term or after the commencement of any renewal
45 and, where the state governmental entity is disposing of any real prop-
46 erty interest, shall only constitute business dealings with a state
47 governmental entity from the date of the submission of a proposal and
48 during the term of any agreement and one year after.

49 (c) Bids or proposals for franchises and concessions shall only
50 constitute business dealings with a state governmental entity for the
51 period from the submission of the bid or proposal until one year after
52 the date of such submission, concessions shall only constitute business
53 dealings with a state governmental entity during the term of such
54 concession and for one year after the end of such term, and franchises
55 shall only constitute business dealings with a state governmental entity

1 for the period of one year after the commencement of the term of the
2 franchise or after the commencement of any renewal.

3 (d) Grants shall constitute business dealings with a state govern-
4 mental entity for one year after such grant is made.

5 (e) Economic development agreements shall constitute business dealings
6 with a state governmental entity from the submission of an application
7 for such agreement and during the term of such agreement and for one
8 year after the end of such term.

9 (f) Contracts for the investment of pension funds, including the
10 investments in a private equity firm and contracts with investment
11 related consultants, shall constitute business dealings with a state
12 governmental entity from the time of presentation of investment opportu-
13 nity or the submission of a proposal, whichever is earlier, and during
14 the term of such contract and for one year after the end of such term.

15 5. The restricted contribution period described in this section shall
16 end for business dealings pursuant to clause (A) of subparagraph (i) of
17 paragraph (d) of subdivision two of this section with respect to a
18 specific person, organization, group of persons, or business entity if:

19 (a) the person, organization, group of persons, or business entity is
20 the recipient of the final contract award, the restricted contribution
21 period shall end six months after the expiration of the final contract;
22 or

23 (b) the person, organization, group of persons, or business entity is
24 not the recipient of the final contract award, the restricted contrib-
25 ution period shall end with the final contract award and approval by the
26 state governmental entity and, where applicable, the state comptroller.

27 6. The restricted contribution period for a governmental entity shall
28 recommence if a person, organization, group of persons or business enti-
29 ty engages in additional business dealings with such governmental enti-
30 ty.

31 7. Notwithstanding any provision of law to the contrary, the office of
32 the state comptroller, in consultation with the office of general
33 services, division of the budget, and authorities budget office, shall
34 create, operate, maintain, and update a computerized searchable data-
35 base, or modify an existing database, which contains the names of
36 persons who have business dealings or submit bids or proposals for busi-
37 ness dealings with a state governmental entity. Such database shall be
38 updated at least once a month in any general election year. Such data-
39 base and all reported data on such database shall be made available to
40 the public on the comptroller's website. Such database shall contain a
41 function to enable members of the public to determine if a given person
42 is in the database because such person has business dealings or has
43 submitted bids or proposals for business dealings with a state govern-
44 mental entity and the date a person is considered to have business deal-
45 ing a state governmental entity. Such database shall also contain a
46 searchable list of persons removed from such database within the preced-
47 ing five years, including the date the persons were considered to have
48 business dealings or have submitted bids or proposals for business deal-
49 ings with a state governmental entity and the date of removal from such
50 database.

51 8. Notwithstanding any provision of law to the contrary, a person who:
52 (a) has submitted bids or proposals on contracts for the procurement of
53 goods, services or construction; (b) has submitted bids or proposals for
54 franchises or concessions that are no longer being considered for an
55 award; or (c) for any other reason believes he or she should not be on
56 the database, may apply to the office of the state comptroller or other

1 person designated by the comptroller for removal from the database and
2 shall be removed from the database upon a determination that said person
3 should not be included in the database.

4 § 2. Section 14-126 of the election law is amended by adding a new
5 subdivision 8 to read as follows:

6 8. (a) Any person, organization, group of persons, or business entity
7 as that term is used in section 14-131 of this title, who, under circum-
8 stances evincing an intent to violate such law, makes a contribution in
9 contravention of section 14-131 or paragraph f of subdivision one of
10 section 14-114 of this title shall be subject to a civil penalty not to
11 exceed the greater of ten thousand dollars or an amount equal to two
12 hundred percent of the contribution, to be recoverable in a special
13 proceeding or civil action to be brought by the state board of elections
14 chief enforcement counsel.

15 (b) Any person who, acting as or on behalf of an officeholder, candi-
16 date, or political committee, accepts a contribution or receives a
17 transfer in contravention of section 14-131 or paragraph f of subdivi-
18 sion one of section 14-114 of this title shall be required to refund
19 such contribution.

20 § 3. This act shall take effect on the one hundred eightieth day after
21 it shall have become a law.