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:

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

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

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

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

(b) "person" shall include any chief executive officer, chief financial officer or chief operating officer of a business entity or persons serving in an equivalent capacity, any person employed in a senior managerial capacity regarding a business entity, or any person with an interest in a business entity which exceeds ten percent of the value of such entity at fair market value.

(c) "senior managerial capacity" shall mean a high-level supervisory 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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discretion and oversight is exercised over the solicitation, letting or administration of business transactions with a state governmental entity, including contracts, franchises, concession, grants, economic development agreements and application for land use approvals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) "business entity" shall mean 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.

3. (a) No person, organization, group of persons, or business entity that has business dealings or submits bids or proposals for business dealings with a state governmental entity shall, during the restricted contribution period, make a contribution or loan to, or serve as an intermediary for such contribution or loan for, any officeholder of or with authority over the state governmental entity or entities responsible for the business dealing under its jurisdiction or to any candidate for an office of such governmental entity, including to such officeholder's or candidate's authorized political committees or political committees the officeholder or candidate exerts operational control over.

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

(a) of this subdivision if made directly to the officeholder's or candidate's authorized political committees or political committees they exert operational control over.

(c) The state governmental entity directly responsible for a business dealing shall provide notice of the prohibition established by this section and the restricted contribution period commencement date to any person, organization, group of persons, or business entity that has business dealings or has submitted bids or proposals for business dealings with such state governmental entity. State government entities responsible for evaluating responses to a procurement posting or solicitation shall provide to any person, organization, group of persons, or business entity that submits a proposal in response to such posting or solicitation notice of the prohibition established by this section and the restricted contribution period commencement date.

4. (a) For business dealings with a governmental entity, the restricted contribution period shall commence, with respect to a specific person, organization, group of persons, or business entity when it files a statement of registration pursuant to section one-e of the legislative law, to generate a procurement opportunity or pilot program or engages lobbying, as defined by subdivision (c) of section one-c of the legislative law, to generate a procurement opportunity or pilot program or submits a bid, quotation, offer or response to the state governmental entity posting or solicitation, at the earliest posting, on a state governmental entity's website, in a newspaper of general circulation or in the procurement opportunities newsletter in accordance with article four-C of the economic development law of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitations of proposals, or any other method provided for by law or regulation for soliciting a response from offerers intending to result in a procurement contract with a state governmental entity. The restricted contribution period does not apply to a person, organization, group of persons or business entity that is responding to a state governmental entity's request for information or other informational exchanges occurring prior to such governmental entity's posting or solicitation for procurement provided it has not filed a statement of registration pursuant to section one-e of the legislative law or engaged in lobbying, to generate a procurement opportunity or pilot program as defined by subdivision (c) of section one-c of the legislative law, to generate a procurement opportunity or pilot program.

(b) Leases in which a state governmental entity is the proposed lessee shall only constitute business dealings with a state governmental entity from the date the application for acquisition is filed or the date of the certification of such application to a period of one year after the commencement of the lease term or after the commencement of any renewal and, where the state governmental entity is disposing of any real property interest, shall only constitute business dealings with a state governmental entity from the date of the submission of a proposal and during the term of any agreement and one year after.

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

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

(d) Grants shall constitute business dealings with a state governmental entity for one year after such grant is made.

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

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

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

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

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

6. The restricted contribution period for a governmental entity shall recommence if a person, organization, group of persons or business entity engages in additional business dealings with such governmental entity.

7. Notwithstanding any provision of law to the contrary, the office of the state comptroller, in consultation with the office of general services, division of the budget, and authorities budget office, shall create, operate, maintain, and update a computerized searchable database, or modify an existing database, which contains the names of persons who have business dealings or submit bids or proposals for business dealings with a state governmental entity. Such database shall be updated at least once a month in any general election year. Such database and all reported data on such database shall be made available to the public on the comptroller's website. Such database shall contain a function to enable members of the public to determine if a given person is in the database because such person has business dealings or has submitted bids or proposals for business dealings with a state governmental entity and the date a person is considered to have business dealing a state governmental entity. Such database shall also contain a searchable list of persons removed from such database within the preceding five years, including the date the persons were considered to have business dealings or have submitted bids or proposals for business dealings with a state governmental entity and the date of removal from such database.

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

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

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

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

(b) Any person who, acting as or on behalf of an officeholder, candidate, or political committee, accepts a contribution or receives a transfer in contravention of section 14-131 or paragraph f of subdivision one of section 14-114 of this title shall be required to refund such contribution.

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