



Legislation Text

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Int. No. 694

By Council Members Van Bramer, Brannan and Holden

A Local Law to amend the administrative code of the city of New York, in relation to conflict of interest disclosures from officers of city contractors

Be it enacted by the Council as follows:

Section 1. Paragraph i of subdivision b of section 6-116.2 of the administrative code of the city of New York, as added by local law 5 for the year 1991, the opening paragraph as amended by local law 44 for the year 1992, subparagraph 1 as amended by local law number 21 for the year 1992, subparagraph 22 as amended and subparagraph 23 as added by local law number 49 for the year 1992, is hereby amended to read as follows:

b. (i) The mayor and comptroller shall be responsible for the maintenance of a computerized data system which shall contain information for every contract, in the following manner: the mayor shall be responsible for operation of the system; the mayor and the comptroller shall be jointly responsible for all policy decisions relating to the system. In addition, the mayor and the comptroller shall jointly review the operation of the system to ensure that the information required by this subdivision is maintained in a form that will enable each of them, and agencies, New York city affiliated agencies, elected officials and the council, to utilize the information in the performance of their duties. This system shall have access to information stored on other computerized data systems maintained by agencies, which information shall collectively include, but not be limited to:

(1) the current addresses and telephone numbers of:

A. the contractor's principal executive offices and the contractor's primary place of business in the New

York city metropolitan area, if different,

B. the addresses of the three largest sites at which it is anticipated that work would occur in connection with the proposed contract, based on the number of persons to be employed at each site,

C. any other names under which the contractor has conducted business within the prior five years, and

D. the addresses and telephone numbers of all principal places of business and primary places of business in the New York city metropolitan area, if different, where the contractor has conducted business within the prior five years;

(2) the dun & bradstreet number of the contractor, if any;

(3) the taxpayer identification numbers, employer identification numbers or social security numbers of the contractor or the division or branch of the contractor which is actually entering into the contract;

(4) the type of business entity of the contractor including, but not limited to, sole proprietorship, partnership, joint venture or corporation;

(5) the date such business entity was formed, the state, county and country, if not within the United States, in which it was formed and the other counties within New York State in which a certificate of incorporation, certificate of doing business, or the equivalent, has been filed within the prior five years;

(6) the principal owners and officers of the contractor, their dates of birth, taxpayer identification numbers, social security numbers and their current business addresses and telephone numbers;

(7) the names, current business addresses and telephone numbers, taxpayer identification numbers and employer identification numbers of affiliates of the contractors;

(8) the principal owners and officers of affiliates of the contractor and their current business addresses and telephone numbers;

(9) the principal owners and officers of every subcontractor;

(10) the type, amount and contract registration number of all other contracts awarded to the contractor, as reflected in the database maintained pursuant to subdivision a of this section;

(11) the contract sanction history of the contractor for the prior five years, including, but not limited to, all cautions, suspensions, debarments, cancellations of a contract based upon the contractor's business conduct, declarations of default on any contract made by any governmental entity, determinations of ineligibility to bid or propose on contracts and whether any proceedings to determine eligibility to bid or propose on contracts are pending;

(12) the contract sanction history for the prior five years of affiliates of the contractor including, but not limited to, all cautions, suspensions, debarments, cancellations of a contract based upon such entity's business conduct, declarations of default on any contract made by any governmental entity, determinations of ineligibility to bid or propose on contracts and whether any proceedings to determine eligibility to bid or propose on contracts are pending;

(13) the name and telephone number of the chief contracting officer or other employee of the agency, elected official or the council responsible for supervision of those charged with day-to-day management of the contract;

(14) judgments or injunctions obtained within the prior five years in any judicial actions or proceedings initiated by any agency, any elected official or the council against the contractor with respect to a contract and any such judicial actions or proceedings that are pending;

(15) record of all sanctions imposed within the prior five years as a result of judicial or administrative disciplinary proceedings with respect to any professional licenses held by the contractor, or a principal owner or officer of the contractor;

(16) whether city of New York income tax returns, where required, have been filed for the past five years;

(17) outstanding tax warrants and unsatisfied tax liens, as reflected in the records of the city;

(18) information from public reports of the organized crime control bureau and the New York state organized crime task force which indicates involvement in criminal activity;

(19) criminal proceedings pending against the contractor and any principal owner or officer of such contractor;

(20) record of all criminal convictions of the contractor, any current principal owner or officer for any crime related to truthfulness or business conduct and for any other felony committed within the prior ten years, and of any former principal owner or officer, within the prior ten years, for any crime related to truthfulness or business conduct and for any other felony committed while he or she held such position or status;

(21) all pending bankruptcy proceedings and all bankruptcy proceedings initiated within the past seven years by or against the contractor and its affiliates;

(22) whether the contractor has certified that it was not founded or established or is not operated in a manner to evade the application or defeat the purpose of this section and is not the successor, assignee or affiliate of an entity which is ineligible to bid or propose on contracts or against which a proceeding to determine eligibility to bid or propose on contracts is pending;

(23) the name and main business address of anyone who the contractor retained, employed or designated influence the preparation of contract specifications or the solicitation or award of this contract[.];

(24) if a large contractor, whether the large contractor has certified that its officers have filed annual disclosure reports pursuant to section 12-110 of the administrative code of the city of New York.

§2. Subdivision i of section 6-116.2 of the administrative code of the city of New York, as added by local law 5 for the year 1991, as amended by local law 44 for the year 1992 and local law 72 for the year 2017 is hereby amended to read as follows:

i. Except as otherwise provided, for the purposes of subdivision b of this section,

[(1)] "affiliate" shall mean an entity in which the parent of the contractor owns more than fifty percent of the voting stock, or an entity in which a group of principal owners which owns more than fifty percent of the contractor also owns more than fifty per cent of the voting stock;

[(2)] "cautionary information" shall mean, in regard to a contractor, any adverse action by any New York city affiliated agency, including but not limited to poor performance evaluation, default, non-responsibility determination, debarment, suspension, withdrawal of prequalified status, or denial of prequalified status;

[(3)] "contract" shall mean and include any agreement between an agency, New York city affiliated agency, elected official or the council and a contractor, or any agreement between such a contractor and a subcontractor, which (a) is for the provision of goods, services or construction and has a value that when aggregated with the values of all other such agreements with the same contractor or subcontractor and any franchises or concessions awarded to such contractor or subcontractor during the immediately preceding twelve-month period is valued at \$250,000 or more; or (b) is for the provision of goods, services or construction, is awarded to a sole source and is valued at \$10,000 or more; or (c) is a concession and has a value that when aggregated with the value of all other contracts held by the same concessionaire is valued at \$100,000 or more; or (d) is a franchise. However, the amount provided for in clause a herein may be varied by rule of the procurement policy board, where applicable, or rule of the council relating to procurement, or, for franchises and concessions, rule of the franchise and concession review committee, as that amount applies to the information required by paragraphs 7, 8, 9 and 12 of subdivision b of this section, and the procurement policy board, where applicable, or the council, or, for franchises and concessions, the franchise and concession review committee, may by rule define specifically identified and limited circumstances in which contractors may be exempt from the requirement to submit information otherwise required by subdivision b of this section, but the rulemaking procedure required by chapter forty-five of the charter may not be initiated for such rule of the procurement policy board or franchise and concession review committee less than forty-five days after the submission by the procurement policy board or, for franchises and concessions, the franchise and concession review committee, to the council of a report stating the intention to promulgate such rule, the proposed text of such rule and the reasons therefor;

[(4)] "contractor" shall mean and include all individuals, sole proprietorships, partnerships, joint ventures or corporations who enter into a contract[, as defined in paragraph three herein,] with an agency, New York city affiliated agency, elected official or the council;

"large contractor" shall mean and include all individuals, sole proprietorships, partnerships, joint ventures or corporations who enter into a contract valued at fifty million dollars or more with an agency, New York city affiliated agency, elected official or the council;

[(5)] "officer" shall mean any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the contractor, by whatever titles known;

[(6)] "New York city affiliated agency" shall mean any entity the expenses of which are paid in whole or in part from the city treasury and the majority of the members of whose board are city officials or are appointed directly or indirectly by city officials, but shall not include any entity established under the New York city charter, this code or by executive order, any court or any corporation or institution maintaining or operating a public library, museum, botanical garden, arboretum, tomb, memorial building, aquarium, zoological garden or similar facility;

"officer" shall mean any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the contractor, by whatever titles known;

[(7)] "parent" shall mean an individual, partnership, joint venture or corporation which owns more than fifty percent of the voting stock of a contractor;

[(8)] "principal owner" shall mean an individual, partnership, joint venture or corporation which holds a ten percent or greater ownership interest in a contractor or subcontractor;

[(9)] "subcontract" shall mean any contract[, as defined in paragraph three herein,] between a subcontractor and a contractor; and

[(10)] "subcontractor" shall mean an individual, sole proprietorship, partnership, joint venture or corporation which is engaged by a contractor pursuant to a contract[, as defined in paragraph three herein].

§3. Subdivisions a and b of section 12-110 of the administrative code of the city of New York, as added by local law 43 for the year 2003, as amended by local law 58 for the year 2012, are hereby amended to read as follows:

a. Definitions. As used in this section:

1. The term "affiliated" shall mean a firm that is a subsidiary of another firm, or two firms that have a parent in common, or two firms with a stockholder in common who owns at least twenty-five per cent of the shares of each such firm.

2. The term "agency" or "city agency" shall mean a city, county, borough or other office, position, administration, department, division, bureau, board, commission, authority, corporation, committee or other agency of government, the expenses of which are paid in whole or in part from the city treasury, and shall include but not be limited to the council, the offices of each elected city official, the board of education, community boards, the health and hospitals corporation, the New York city industrial development agency, the offices of the district attorneys of the counties of Bronx, Kings, New York, Queens and Richmond, and of the special narcotics prosecutor, the New York city housing authority, and the New York city housing development corporation, but shall not include any court or any corporation or institution maintaining or operating a public library, museum, botanical garden, arboretum, tomb, memorial building, aquarium, zoological garden or similar facility or any advisory committee as that term is defined in subdivision one of section twenty-six hundred one of the charter.

3. The term "business dealings" shall mean any transaction involving the sale, purchase, rental, disposition or exchange of any goods, services, or property, any license, permit, grant or benefit, and any performance of or litigation with respect to any of the foregoing, but shall not include any transaction involving a public servant's residence or any ministerial matter.

4. The term "city" shall mean the city of New York and shall include an agency of the city.

5. The term "conflicts of interest board" or "board" shall mean the conflicts of interest board appointed pursuant to section twenty-six hundred two of the New York city charter.;

6. The term "domestic partners" shall mean persons who have a registered domestic partnership, which shall include any partnership registered pursuant to section 3-240 of the administrative code of the city of New York.

7. The term "gift" shall mean anything of value for which a person pays nothing or less than fair market value and may be in the form of money, services, reduced interest on a loan, travel, travel reimbursement, entertainment, hospitality, thing, promise, or in any other form. "Gift" shall not include reimbursements.

8. The term "income" shall include, but not be limited to, salary from government employment, income from other compensated employment whether public or private, directorships and other fiduciary or advisory positions, contractual arrangements, teaching income, partnership income, lecture fees, consultant fees, bank and bond interest, dividends, income derived from a trust, real estate rents, and recognized gains from the sale or exchange of real or other property.

9. The term "independent body" shall mean any organization or group of voters which nominates a candidate or candidates for office to be voted for at an election, and which is not a political party as defined in paragraph [twelve]thirteen of this subdivision.

10. The term "large contractor" shall mean all individuals, sole proprietorships, partnerships, joint ventures or corporations who enter into a contract valued at fifty million dollars or more with an agency.

[10.] 11. The terms "local authority," "local public authority" or "city public authority" shall be given the same meaning as the term "local authority" is given in subdivision two of section two of the public authorities law and shall include only such entities that have their primary office in the city of New York.

[11.] 12. The term "local political party official" shall mean:

(a) any chair of a county committee elected pursuant to section 2-112 of the election law, or his or her successor in office, who received compensation or expenses, or both, from constituted committee or political

committee funds, or both, during the reporting period aggregating thirty thousand dollars or more;

(b) that person (usually designated by the rules of a county committee as the "county leader" or "chair of the executive committee") by whatever title designated, who pursuant to the rules of a county committee or in actual practice, possesses or performs any or all of the following duties or roles, provided that such person received compensation or expenses, or both, from constituted committee or political committee funds, or both, during the reporting period aggregating thirty thousand dollars or more:

(1) the principal political, executive and administrative officer of the county committee;

(2) the power of general management over the affairs of the county committee;

(3) the power to exercise the powers of the chair of the county committee as provided for in the rules of the county committee;

(4) the power to preside at all meetings of the county executive committee if such a committee is created by the rules of the county committee or exists de facto, or any other committee or subcommittee of the county committee vested by such rules with or having de facto the power of general management over the affairs of the county committee at times when the county committee is not in actual session;

(5) the power to call a meeting of the county committee or of any committee or subcommittee vested with the rights, powers, duties or privileges of the county committee pursuant to the rules of the county committee, for the purpose of filling an office at a special election in accordance with section 6-114 of the election law, for the purpose of filling a vacancy in accordance with section 6-116 of such law or for the purpose of filling a vacancy or vacancies in the county committee which exist by reason of an increase in the number of election districts within the county occasioned by a change of the boundaries of one or more election districts, taking effect after the election of its members, or for the purpose of determining the districts that the elected members shall represent until the next election at which such members of such committee are elected; provided, however, that in no event shall such power encompass the power of a chair of an assembly district committee or other district committee smaller than a county and created by the rules of the county committee,

to call a meeting of such district committee for such purpose;

(6) the power to direct the treasurer of the party to expend funds of the county committee; or

(7) the power to procure from one or more bank accounts of the county committee the necessary funds to defray the expenses of the county committee. The terms "constituted committee" and "political committee" as used in this subparagraph shall have the same meanings as those contained in section 14-100 of the election law.

[12.] 13. The term "policymaking position" shall mean the position held by a person charged with "substantial policy discretion" as referenced in paragraphs twelve and fifteen of subdivision b of section twenty-six hundred four of the New York city charter and as defined by rule of the conflicts of interest board.

[13.] 14. The term "political party" shall mean any political organization which at the last preceding election for governor polled at least fifty thousand votes for its candidate for governor.

[14.] 15. The term "political organization" shall mean any political party as defined in paragraph thirteen of this subdivision, or independent body, as defined in paragraph nine of this subdivision, or any organization that is affiliated with or a subsidiary of a party or independent body.

[15.] 16. The term "reimbursements" shall mean any travel-related expenses provided by non-governmental sources, whether directly or as repayment, for activities related to the reporting person's official duties, such as speaking engagements, conferences, or fact-finding events, but shall not include gifts.

[16.] 17. The term "relative" shall mean the spouse, domestic partner, child, stepchild, brother, sister, parent, or stepparent of the person reporting, or any person whom the person reporting claimed as a dependent on his or her most recently filed personal income tax return, and each such relative's spouse or domestic partner.

[17.] 18. The term "securities" shall mean bonds, mortgages, notes, obligations, warrants and stocks of any class, investment interests in limited or general partnerships and such other evidences of indebtedness and certificates of interest as are usually referred to as securities.

[18.] 19. The terms "state agency" and "local agency" shall be given the same meanings as such terms

are given in section eight hundred ten of the general municipal law.

[19.] 20. The term "unemancipated child" shall mean any son, daughter, stepson or stepdaughter who is under age eighteen, unmarried and living in the household of the person reporting at the time the person files his or her annual disclosure report, and shall also include any son or daughter of the spouse or domestic partner of such person who is under age eighteen, unmarried and living in the household of the person reporting at the time the person files his or her annual disclosure report.

b. Persons required to file an annual disclosure report.

The following persons shall file with the conflicts of interest board an annual disclosure report, in such form as the board shall determine, disclosing certain financial interests as hereinafter provided. Reports shall, except as otherwise provided by the board, be filed electronically, in such form as the board may determine.

1. Elected and political party officials.

(a) Each elected officer described in sections four, twenty-four, twenty-five, eighty-one, ninety-one and eleven hundred twenty-five of the New York city charter, and each local political party official described in paragraph eleven of subdivision a of this section, shall file such report not later than such date designated by the conflicts of interest board each year.

(b) A local political party official required to file a report pursuant to subparagraph (a) of this paragraph who is also subject to the financial disclosure filing requirements of subdivision two of section seventy-three-a of the public officers law may satisfy the requirements of paragraph one by filing with the conflicts of interest board a copy of the statement filed pursuant to section seventy-three-a of the public officers law, on or before the filing deadline provided in such section seventy-three-a, notwithstanding the filing deadline otherwise imposed by paragraph one of this subdivision.

2. Candidates for public office.

(a) Each person, other than any person described in paragraph one, who has declared his or her intention to seek nomination or election and who has filed papers or petitions for nomination or election, or on whose

behalf a declaration or nominating paper or petition has been made or filed which has not been declined, for an office described in paragraph one of subdivision b of this section shall file such report on or before the last day for filing his or her designating petitions pursuant to the election law.

(b) Each person, other than any person described in paragraph one, who was a write-in candidate at the primary election for an office described in paragraph one of subdivision b of this section and whose name is thereafter entered in the nomination book at the board of elections, shall file such report within twenty days after such primary election.

(c) Each person, other than any person described in paragraph one, who has been designated to fill a vacancy in a designation or nomination for an office described in paragraph one of subdivision b of this section shall file such report within fifteen days after a certificate designating such person to fill such vacancy is filed with the board of elections, or within five days before the election for which the certificate is filed, whichever is earlier.

(d) The conflicts of interest board shall obtain from the board of elections lists of all candidates for the elected positions set forth below, and from such lists, shall determine and publish lists of those candidates who have not, within ten days after the required date for filing such reports, filed the reports required by this section.

3. (a) The following categories of persons who had such status during the preceding calendar year or up until the date of filing their annual disclosure report shall be required to file a report not later than the date designated by the conflicts of interest board each year:

(1) Each agency head, deputy agency head, assistant agency head, and member of any board or commission who on the date designated by the board for filing holds a policymaking position, as defined by rule of the board and as annually determined by the head of his or her agency, subject to review by the board;

(2) Each officer or employee of the city in the mayor's office, the city council, a district attorney's office, the office of the special narcotics prosecutor, or any other agency that does not employ M-level mayor's management plan indicators for its managers, whose responsibilities on the date designated by the board for

filing involve the independent exercise of managerial or policymaking functions or who holds a policymaking position on such date, as defined by rule of the board and as annually determined by the appointing authority of his or her agency, subject to review by the board;

(3) Each officer or employee of the city, other than an officer or employee of the city in the mayor's office, the city council, a district attorney's office or the special narcotics prosecutor's office, who, on the date designated by the board for filing, is paid in accordance with the mayor's management pay plan at level M4 or higher, or who holds a policymaking position on such date, as defined by rule of the board and as annually determined by the head of his or her agency, subject to review by the board;

(4) Each officer or employee of the city whose duties at any time during the preceding calendar year involved the negotiation, authorization or approval of contracts, leases, franchises, revocable consents, concessions and applications for zoning changes, variances and special permits, as defined by rule of the board and as annually determined by his or her agency head, subject to review by the board.

(5) Each assessor required to file a report solely by reason of section three hundred thirty-six of the real property tax law.

(6) Each of the following members, officers and employees of city public authorities:

(i) Each member of the authority;

(ii) Each head, deputy head or assistant head of the authority;

(iii) Each officer and employee of the authority who on the date designated by the board for filing holds a policymaking position, as defined by rule of the board and as annually determined by the head of his or her authority, subject to review by the board; and

(iv) Each officer or employee of the authority whose duties at any time during the preceding calendar year involved the negotiation, authorization or approval of contracts, leases, franchises, revocable consents, concessions and applications for zoning changes, variances and special permits, as defined by rule of the conflicts of interest board and as annually determined by the head of his or her authority, subject to review by

the board.

(7) Each officer of a large contractor.

[(7)] (8) Any person required by New York state law to file an annual disclosure report with the conflicts of interest board.

(b) Separation from service:

(1) Each person described in this paragraph shall, following separation from service, file such report for the portion of the last calendar year in which he or she served in his or her position within sixty days of his or her separation from service or on or before the date designated by the conflicts of interest board for filing pursuant to subparagraph (a) of this paragraph, whichever is earlier, if such person met the criteria of this subparagraph on his or her last day of service. Each such person who leaves service prior to the date designated by the board for filing pursuant to subparagraph (a) of this paragraph shall also file a report for the previous calendar year within sixty days of his or her separation from service or on or before such date designated by the board, whichever is earlier.

(2) Each such person who is terminating or separating from service shall not receive his or her final paycheck, and/or any lump sum payment to which he or she may be entitled, until such person has complied with the requirements of this section.

(3) Each elected officer and each local political party official described in paragraph eleven of subdivision a of this section shall, after leaving office, file such report for the previous calendar year, if such officer or local political party official has not previously filed such report, and shall file such report for the portion of the last calendar year in which he or she served in office, within sixty days of his or her last day in office or on or before the date designated by the board for filing pursuant to subparagraph (a) of paragraph one of this subdivision, whichever is earlier.

§4. Paragraph 1 of subdivision d of section 12-110 of the administrative code of the city of New York,

as added by local law 58 for the year 2012, is hereby amended to read as follows:

d. Information to be reported.

1. Officers and employees of the city; members of city boards and commissions entitled to compensation; officers of large contractors; candidates for public office; elected and political party officials. The report filed by officers and employees of the city, members of city boards and commissions entitled to compensation, officers of city-funded not-for-profit organizations, candidates for public office, elected officials, political party officials, and any other person required by state law to file a report other than a person described by paragraph three or four of this subdivision, shall contain the information required by this paragraph on such form as the board shall prescribe. For purposes of filing an annual disclosure report, members of the New York city housing development corporation shall be deemed to be members of a city board or commission entitled to compensation.

§5. This law shall take effect 45 days after its enactment into law and shall apply to contracts for which a request for bids or proposals is issued on or after the effective date.

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