[STATE] CORPORATE WELFARE ACCOUNTABILITY ACT

Model State Legislation

This is model legislation drafted by The Existentialist Republic. Bracketed terms such as [State], [State Legislature], and [State Economic Development Agency] are placeholders; an adopting state replaces each with its own equivalent.

Section 1. Short Title

This Act shall be known and may be cited as the "[State] Corporate Welfare Accountability Act."

Section 2. Legislative Findings and Purpose

(a) The [State Legislature] finds that:

(1) [State], through its agencies and political subdivisions, provides substantial economic benefits to for-profit corporations through tax abatements, tax credits, economic development incentives, direct subsidies, grants, and government contracts;

(2) These discretionary benefits represent public resources allocated to private entities based on determinations that such allocations serve the public interest;

(3) Corporations that possess sufficient financial resources to make political campaign contributions from corporate treasury funds do not require taxpayer-funded assistance;

(4) The simultaneous receipt of public economic benefits and expenditure of corporate treasury funds on political campaigns creates the appearance, if not the reality, of quid pro quo corruption in the allocation of public resources;

(5) Federal law has prohibited political contributions by government contractors since 1940. The United States Court of Appeals for the District of Columbia Circuit, sitting en banc, unanimously upheld that prohibition in Wagner v. Federal Election Commission, 793 F.3d 1 (D.C. Cir. 2015), and held the ban closely drawn to the government's interests in preventing quid pro quo corruption and its appearance and in protecting merit-based public administration. The Supreme Court of the United States denied review in 2016;

(6) The closely drawn standard governs such restrictions, and courts sustain them when they rest on a demonstrated record of quid pro quo corruption or its appearance. The United States Court of Appeals for the Ninth Circuit applied that standard to uphold Hawaii's ban on contractor contributions in Yamada v. Snipes, 786 F.3d 1182 (9th Cir. 2015). The United States Court of Appeals for the Second Circuit applied it to uphold Connecticut's ban on contractor contributions in Green Party of Connecticut v. Garfield, 616 F.3d 189 (2d Cir. 2010), a ban the State enacted after a series of contracting scandals. A restriction grounded in a record of corruption and its appearance, rather than in a general interest alone, satisfies that standard;

(7) The State has a compelling interest in ensuring that discretionary public benefits are allocated based on merit and public benefit rather than political influence;

(8) The State has a compelling interest in ensuring that taxpayer funds are directed to entities that demonstrate genuine need for public assistance;

(9) Coordinated action among states strengthens the effectiveness of such requirements and reduces competitive disadvantages that may arise from unilateral action;

(10) This Act prohibits no political expenditure and expressly excludes independent expenditures from the definition of a political contribution in Section 3(g). The Supreme Court of the United States held in Citizens United v. Federal Election Commission, 558 U.S. 310 (2010), that independent political expenditures may not be prohibited. This Act imposes a condition on the voluntary receipt of discretionary public benefits, restricts only the use of corporate treasury funds for political contributions, and reaches payments to outside political organizations solely to prevent the use of those organizations to circumvent that condition. It leaves every individual free to make political contributions from personal funds.

(11) The Supreme Court of the United States sustained disclosure and disclaimer requirements for political spending in Citizens United v. Federal Election Commission, 558 U.S. 310 (2010), by a vote of eight to one, and the disclosure of political spending is a settled and constitutional means of informing the public. This Act requires a covered entity to disclose its political spending so that residents of [State] may know what political spending accompanies the receipt of public economic benefits.

(b) The purpose of this Act is to:

(1) Establish standards of accountability for the allocation of discretionary [State] economic benefits;

(2) Condition receipt of such benefits on abstention from political campaign contributions using corporate treasury funds;

(3) Preserve the constitutional rights of individuals to make political contributions from personal funds;

(4) Provide mechanisms for certification, disclosure, and enforcement;

(5) Authorize interstate cooperation to advance the purposes of this Act.

Section 3. Definitions

As used in this Act:

(a) "Covered benefit" means any of the following provided by the State, any agency of the State, or any political subdivision of the State to a for-profit business entity:

(1) A tax abatement, tax credit, tax exemption, or tax increment financing arrangement that is discretionary, negotiated, or targeted to a specific recipient or class of recipients, rather than generally available to all taxpayers meeting objective statutory criteria;

(2) An economic development incentive, including but not limited to grants, loans, loan guarantees, or infrastructure improvements provided to induce location, expansion, or retention of business operations;

(3) A direct subsidy or grant of public funds;

(4) A contract for goods or services with a value exceeding fifty thousand dollars ($50,000) in a single fiscal year or one hundred thousand dollars ($100,000) in aggregate over any consecutive thirty-six month period.

(b) "Covered benefit" does not include:

(1) Tax provisions of general applicability available to all taxpayers meeting objective statutory criteria without discretionary approval;

(2) Benefits provided to organizations exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code;

(3) Unemployment insurance benefits, workers' compensation benefits, or other benefits provided to individual employees;

(4) Contracts for emergency services necessary to protect public health or safety when no alternative provider is available.

(c) "Covered entity" means:

(1) Any for-profit corporation, limited liability company, partnership, or other business entity that receives or applies for a covered benefit;

(2) Any parent corporation, subsidiary corporation, or affiliated corporation under common ownership or control with an entity described in paragraph (1);

(3) Any successor entity that acquires substantially all the assets or business operations of an entity described in paragraph (1) during the benefit period.

(d) "Corporate treasury funds" means any funds, assets, or resources owned or controlled by a covered entity, including but not limited to retained earnings, operating revenue, capital reserves, and borrowed funds. "Corporate treasury funds" does not include funds held in a separate segregated fund established pursuant to Section 4(d)(2) of this Act that are derived exclusively from voluntary individual contributions.

(e) "Executive officer" means any individual designated as an executive officer, chief executive officer, chief financial officer, chief operating officer, president, or executive vice president in the

covered entity's organizational documents, filings with the Secretary of State, or filings with the Securities and Exchange Commission, or any individual performing equivalent functions regardless of title.

(f) "Political contribution" means:

(1) Any gift, subscription, loan, advance, deposit of money, or anything of value made to influence any election for federal, state, or local office, or to influence the outcome of any ballot measure;

(2) Any payment made to a political party, political committee, political action committee, candidate campaign, or any organization organized under Section 527 of the Internal Revenue Code;

(3) Any payment exceeding one thousand dollars ($1,000) in a calendar year made to an organization organized under Section 501(c)(4), 501(c)(5), or 501(c)(6) of the Internal Revenue Code that, during the preceding twenty-four months, has made expenditures for election-related activities constituting more than fifteen percent (15%) of its total expenditures, as reported in public filings or as reasonably determinable from publicly available information.

(g) "Political contribution" does not include:

(1) Contributions made by any natural person from personal funds, including funds derived from salary, wages, dividends, or other personal income, that are not reimbursed or provided, directly or indirectly, by a covered entity;

(2) Nonpartisan voter registration or get-out-the-vote activities;

(3) Communications to shareholders, members, or employees of a covered entity on any subject;

(4) Expenditures for lobbying activities directed at legislative or executive branch officials regarding pending legislation or regulations;

(5) Any independent expenditure made by a covered entity, meaning an expenditure for a communication advocating the election or defeat of a candidate that is not made to, controlled by, coordinated with, or made at the request or suggestion of any candidate, candidate's committee, or political party.

(h) "Benefit period" means the period beginning on the date a covered entity submits an application for a covered benefit, or the date negotiations for a covered benefit commence, whichever is earlier, and ending twelve (12) months after the date on which the covered entity ceases to receive any portion of the covered benefit.

(i) "Granting authority" means the State agency, department, authority, political subdivision, or other governmental entity that awards, administers, or is responsible for a covered benefit.

(j) "Independent expenditure" means an expenditure for a communication that expressly advocates the election or defeat of a clearly identified candidate and that is not made to, controlled by, coordinated with, or made at the request or suggestion of any candidate, candidate's committee, or political party.

(k) "Electioneering communication" means a broadcast, cable, satellite, print, mail, or digital communication that refers to a clearly identified candidate, is publicly distributed within sixty (60) days before a general election or thirty (30) days before a primary election for the office sought by that candidate, and is targeted to the relevant electorate.

(l) "Reportable political spending" means, with respect to a covered entity, all political contributions, all independent expenditures, and all electioneering communications made using corporate treasury funds.

Section 4. Prohibition on Political Contributions

(a) During the benefit period, no covered entity shall make any political contribution using corporate treasury funds.

(b) During the benefit period, no covered entity shall reimburse, directly or indirectly, any natural person for a political contribution.

(c) During the benefit period, no covered entity shall condition employment, compensation, promotion, or any other term or condition of employment on any natural person making or refraining from making a political contribution.

(d) Nothing in this section shall be construed to prohibit or restrict:

(1) Any natural person, including any executive officer, director, shareholder, or employee of a covered entity, from making political contributions from personal funds, including funds derived from salary, wages, dividends, or other personal income, provided such contributions are not reimbursed or provided, directly or indirectly, by a covered entity;

(2) A covered entity from establishing, administering, and soliciting contributions for a separate segregated fund for political purposes, provided that: (A) all contributions to such fund are made voluntarily by natural persons from personal funds; (B) no corporate treasury funds are contributed to such fund; and (C) corporate treasury funds used for establishment, administration, and solicitation costs do not exceed twenty-five thousand dollars ($25,000) per calendar year;

(3) A covered entity from engaging in lobbying activities directed at legislative or executive branch officials;

(4) A covered entity from making communications to its shareholders, members, or employees on any subject, including political subjects.

(e) A granting authority shall not award a covered benefit to a covered entity that has made, within the twelve (12) months preceding its application or the commencement of negotiations for the benefit, whichever is earlier, a contribution that would be prohibited by subsection (a) if made during the benefit period.

(f) For purposes of this section, a political contribution is attributed to a covered entity if it is made by an entity described in Section 3(c)(2) or 3(c)(3), or by a natural person using funds reimbursed or provided, directly or indirectly, by the covered entity, or at the direction of the covered entity.

Section 5. Certification Requirements

(a) Prior to receiving any covered benefit, a covered entity shall submit to the granting authority a certification, signed under penalty of perjury by an executive officer of the covered entity, attesting that:

(1) The covered entity has not made any political contribution prohibited by Section 4 of this Act during the twelve (12) months preceding the date of certification;

(2) The covered entity will not make any political contribution prohibited by Section 4 of this Act during the benefit period;

(3) The covered entity has established policies and procedures to ensure compliance with this Act;

(4) The information provided in the certification is true, accurate, and complete to the best of the certifying officer's knowledge and belief;

(5) That the covered entity has disclosed to the granting authority, in a schedule accompanying this certification, each parent entity, subsidiary entity, and affiliated entity under common ownership or control with the covered entity, and each natural person who directly or indirectly owns or controls twenty-five percent (25%) or more of the covered entity or otherwise exercises control over it.

(b) A covered entity receiving a covered benefit with a duration exceeding twelve (12) months shall submit an annual recertification to the granting authority within thirty (30) days of each anniversary of the initial certification.

(c) A covered entity shall notify the granting authority in writing within thirty (30) days of discovering any violation of Section 4 of this Act. Such notice shall include a description of the violation, the circumstances of its discovery, and the corrective actions taken or proposed.

Section 6. Disclosure Requirements

(a) The [State Economic Development Agency] shall establish and maintain a public database containing:

(1) The name and address of each covered entity receiving a covered benefit;

(2) A description of each covered benefit, including the estimated value and duration;

(3) The names of all executive officers of each covered entity;

(4) Copies of all certifications and recertifications submitted pursuant to Section 5;

(5) Any enforcement actions taken pursuant to Section 7.

(b) The information required by subsection (a) shall be made available to the public on the agency's website within thirty (30) days of receipt and shall be maintained for a period of not less than six (6) years following the end of the benefit period.

(c) Each covered entity shall maintain records sufficient to demonstrate compliance with this Act for a period of not less than six (6) years following the end of the benefit period and shall make such records available for inspection by the granting authority or the Attorney General upon request.

(d) For each calendar year during the benefit period, a covered entity shall file with the [State Economic Development Agency] a report of all reportable political spending made using corporate treasury funds. The report shall be filed within ninety (90) days after the end of the calendar year, and a final report shall be filed within ninety (90) days after the end of the benefit period.

(e) Each report filed under subsection (d) shall state, for the period it covers:

(1) Each political contribution, identifying the recipient, the date, and the amount;

(2) Each independent expenditure, identifying the candidate or ballot measure referenced, the date, and the amount;

(3) Each electioneering communication, identifying the candidate referenced, the date, and the amount.

(f) The [State Economic Development Agency] shall publish each report filed under subsection (d) in the public database maintained under subsection (a) within thirty (30) days of receipt, indexed to the covered benefits the covered entity has received and the value of those benefits, so that the covered entity's reportable political spending appears alongside the public economic benefits it has received.

(g) The duty to report under this section is independent of the prohibition in Section 4. The making or reporting of an independent expenditure or an electioneering communication does not violate this Act. No covered entity may be denied a covered benefit, and no penalty under

Section 7 may be imposed on a covered entity, on the basis of an independent expenditure or an electioneering communication it has made or reported.

Section 7. Penalties and Enforcement

(a) Safe harbor for voluntary disclosure and cure. A covered entity that voluntarily discovers a violation of Section 4, discloses the violation to the granting authority within thirty (30) days of discovery pursuant to Section 5(c), and cures the violation within sixty (60) days of discovery by requesting a refund of any political contribution made in violation of this Act from the recipient and, if such refund is not obtained within the sixty-day period, making a payment to the State treasury in an amount equal to the political contribution, shall not be subject to the penalties set forth in subsection (b), provided that:

(1) The violation was not willful;

(2) The covered entity has not previously invoked this safe harbor provision within the preceding thirty-six (36) months;

(3) The covered entity demonstrates that it has implemented additional compliance measures to prevent future violations.

(b) First violation. A covered entity that violates Section 4 of this Act and does not qualify for the safe harbor under subsection (a) shall be subject to the following penalties:

(1) Repayment to the State of all covered benefits received during the twelve (12) months preceding the violation through the date of violation, plus interest at the rate established for delinquent taxes under [State] law;

(2) A civil penalty equal to the greater of: (A) twice the amount of the political contribution made in violation of this Act; or (B) twenty-five thousand dollars ($25,000);

(3) Ineligibility to receive any new covered benefit for a period of two (2) years following the date of final determination of violation.

(c) Subsequent violations. A covered entity that commits a second or subsequent violation of Section 4 within sixty (60) months of a previous violation shall be subject to the following penalties:

(1) Immediate termination of any covered benefit;

(2) Repayment to the State of all covered benefits received during the benefit period, plus interest at the rate established for delinquent taxes under [State] law;

(3) A civil penalty equal to the greater of: (A) three times the amount of the political contribution made in violation of this Act; or (B) one hundred thousand dollars ($100,000);

(4) Ineligibility to receive any covered benefit for a period of five (5) years following the date of final determination of violation;

(5) Disgorgement to the State treasury of any political contribution made in violation of this Act, to the extent such contribution can be recovered.

(d) False certification. A covered entity that knowingly submits a false certification pursuant to Section 5 of this Act shall be subject to:

(1) The penalties set forth in subsection (c);

(2) Referral to the appropriate prosecuting authority for consideration of charges under [State] perjury and false statement statutes.

(e) Administrative enforcement. The [State Economic Development Agency] shall have authority to investigate potential violations of this Act, hold administrative hearings, and impose penalties pursuant to this Section, subject to judicial review under the [State] Administrative Procedure Act.

(f) Attorney General enforcement. The Attorney General shall have authority to investigate potential violations of this Act and to bring civil actions to enforce its provisions in cases involving: (1) willful violations; (2) violations exceeding one hundred thousand dollars ($100,000) in political contributions; or (3) false certifications.

(g) Citizen enforcement. Any resident of [State] shall have standing to bring a civil action to enforce this Act if:

(1) The resident has submitted a written complaint to the Attorney General documenting a potential violation with specificity and supporting evidence;

(2) The Attorney General has failed to commence an investigation or bring an enforcement action within one hundred twenty (120) days of receiving such complaint;

(3) The Attorney General has not provided a written explanation for declining to pursue the complaint.

(h) A court may award reasonable attorney's fees and costs to a prevailing plaintiff in an action brought pursuant to subsection (g).

(i) Statute of limitations. A civil enforcement action under this Section must be commenced within four (4) years of the date of the alleged violation.

(j) Criminal liability.

(1) A covered entity that willfully violates Section 4 of this Act is guilty of a misdemeanor and upon conviction shall be fined the greater of one hundred thousand dollars ($100,000) or three times the amount of the political contribution made in violation of this Act.

(2) Any executive officer who knowingly authorizes, directs, or makes a political contribution in violation of Section 4 is guilty of a misdemeanor and upon conviction shall be fined not more than twenty-five thousand dollars ($25,000), imprisoned for not more than one (1) year, or both.

(3) A violation under this subsection that involves political contributions exceeding one hundred thousand dollars ($100,000), or that is committed after a prior conviction under this subsection, is a felony, and an executive officer convicted of such a felony shall be imprisoned for not less than one (1) year and not more than five (5) years.

(4) A criminal prosecution under this subsection must be commenced within four (4) years of the date of the violation.

Section 8. Rules and Regulations

(a) The [State Economic Development Agency], in consultation with the Attorney General and the [State Board of Elections], shall promulgate rules and regulations necessary to implement this Act within two hundred seventy (270) days of its effective date.

(b) Such rules shall include:

(1) Procedures for submission and review of certifications;

(2) Standards for determining the value of covered benefits;

(3) Guidelines for identifying executive officers;

(4) Procedures for investigation of potential violations;

(5) Standards and procedures for the safe harbor provision under Section 7(a);

(6) Processes for administrative hearings and appeals;

(7) Guidelines for coordination with other states pursuant to Section 9;

(8) Procedures and forms for the reporting and publication of reportable political spending under Section 6.

Section 9. Interstate Cooperation

(a) The Governor may enter into agreements with other states that have enacted substantially similar legislation for the purpose of coordinating enforcement efforts, sharing information regarding covered entities and compliance, establishing uniform standards and procedures where practicable, and reducing competitive disadvantages that may arise from inconsistent state requirements.

(b) The Attorney General may enter into cooperative agreements with attorneys general of other states for joint investigation and enforcement of violations involving covered entities operating in multiple states.

(c) The [State Economic Development Agency] shall submit an annual report to the [State Legislature] regarding the status of any agreements entered into pursuant to this Section, efforts to encourage adoption of similar legislation in other states, and any competitive effects observed as a result of this Act.

Section 10. Severability

(a) If any provision of this Act or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

(b) Without limiting the generality of subsection (a), the [State Legislature] specifically finds and declares that:

(1) Each paragraph within the definition of "political contribution" in Section 3(f) is intended to operate independently, and the invalidity of any paragraph shall not affect the validity of the remaining paragraphs;

(2) The provisions of this Act applicable to direct contributions to candidates, political parties, and political committees are severable from any provisions applicable to payments to Section 501(c)(4), 501(c)(5), or 501(c)(6) organizations;

(3) The disclosure requirements of Section 6 are severable from the prohibition in Section 4, and the invalidity of either does not affect the other;

(4) This Act would have been enacted regardless of whether any particular provision is held invalid.

Section 11. Effective Date

(a) This Act shall take effect upon ratification, provided that:

(1) Sections 1 through 3 and Sections 8 through 10 shall take effect immediately upon ratification;

(2) Sections 4 through 7 shall apply to covered benefits for which applications are submitted or negotiations commence on or after the effective date.

(b) This Act shall not apply to covered benefits for which binding agreements were executed prior to the effective date, except that any amendment, extension, or renewal of such agreements occurring on or after the effective date shall be subject to this Act.

This model legislation was drafted by The Existentialist Republic.