

GOVERNOR'S PROGRAM BILL

2011

MEMORANDUM

AN ACT to amend the public officers law, the executive law, the legislative law, the retirement and social security law, the criminal procedure law, and the election law to improve the enforcement and expand the reach of public ethics and certain election laws in New York State

Purpose:

This bill would comprehensively reform both the requirements and enforcement of public ethics for New York State government officials to restore public confidence in our government. Among other reforms, the bill would establish a new Joint Commission on Public Ethics to oversee and investigate compliance with the financial disclosure and other ethics requirements by executive and legislative employees and elected officials in both branches of government, and to oversee the conduct of registered lobbyists; expand and enhance financial and client disclosures required of executive and legislative employees and elected officials, including disclosure of outside clients and customers; establish a new database to aggregate information concerning all firms and individuals that appear in a representative capacity before any state agency, public authority, board, or commission and make such information readily available to the public; require mandatory ethics training for executive and legislative employees and elected officials and lobbyists; increase penalties for violations of certain provisions of the code of ethics contained in the Public Officers Law § 74; require the reduction or forfeiture of a public officer's pension under certain circumstances where he or she has been convicted of a felony related to his office; expand the definition of "lobbying" to include advocacy related to the "introduction" of legislation and resolutions; require lobbyists that lobby on their own behalf and clients of lobbyists that devote substantial funds to lobbying in New York State to disclose the sources of such funding; and clarify certain definitions in the existing gift ban to facilitate better compliance and improve enforcement. The bill would also amend certain provisions of the election law to enhance penalties for violations of the campaign finance laws, and require the State Board of Elections to enforce requirements that entities and individuals that spend funds on advertising and other forms of advocacy to influence the outcome of elections or ballot proposals must disclose such expenditures.

Summary of Provisions:

Section one. The title of the bill being "Public Integrity Reform Act of 2011."

Section 2.

Part A: Ethics Enforcement & Financial Disclosure Reform

Sections 1, 3, 5, 7, 10, 11, 12 and 13 make conforming changes by changing existing references in law to the State Ethics Commission and Legislative Ethics Committee or Commission to the newly constituted Joint Commission on Public Ethics, thereby subjecting all legislators and legislative employees to investigative jurisdiction of a unified, independent body, the current iteration of which has jurisdiction over only executive employees and statewide elected officials and lobbyists.

Section 2 amends subdivision 2 of section 73 of the Public Officers Law by prohibiting the receipt by any state officer or employee of any compensation for action or decisions regarding "any legislation or resolution before the state legislature" or any "executive order."

Section 3 amends paragraph (a) of subdivision 6 of section 73 of the Public Officers Law to require legislative employees not subject to section 73-a of the Public Officers Law to file financial disclosure forms with both the Joint Commission on Public Ethics and the Legislative Ethics Commission.

Section 4 establishes a new database ("Project Sunlight") to aggregate information concerning all firms and individuals that appear in a representative capacity before any state agency, public authority, board, or commission and requires that such state entities track and provide such information for inclusion in the database. The information in the database will be made publicly and readily available and will, for the first time, allow the public to understand more fully any potential conflicts of interest raised by such appearances.

Section 5 amends section 73-a of the Public Officers Law by providing that all financial disclosure statements be filed with the new Joint Commission on Public Ethics, which shall post those statements of elected officials on the internet and end the practice of redacting the monetary values and amounts reported by the filer. This section also provides for greater and more precise disclosure of financial information by expanding the categories of value used by reporting individuals to disclose the dollar amounts in their financial disclosure statements; newly requires disclosure of the reporting individual's and his or her firm's outside clients and customers doing business with, receiving grants or contracts from, seeking legislation or resolutions from, or involved in a case or proceeding before the State; and expressly authorizes the Joint Commission to impose civil penalties in addition to referring any potential criminal violations to the appropriate prosecutor, rather than just in lieu of such referral. If sufficient cause is found, the Joint Commission is also required to refer evidence of any violations of other state or federal laws to the appropriate prosecutor(s).

Section 6 amends section 94 of the Executive Law by replacing the Commission on Public Integrity with the Joint Commission on Public Ethics with jurisdiction over all elected state officials and their employees, both executive and legislative, as well as lobbyists. The bipartisan Joint Commission shall have 14 members, six appointed by the governor and lieutenant governor at least three of whom shall be enrolled members of the major political party that is not that of the governor; and eight appointed by the legislative leaders (four from each major political party). Among other restrictions, no individual shall be eligible to serve on the Joint Commission who is or has been within

the last three years a registered lobbyist, a statewide elected officeholder or member of the legislature, or a political party chairman, and no individual who is or has been a state officer or employee or a legislative employee within the last year is eligible to be appointed.

The executive director of the Joint Commission shall be selected without regard to his or her political party affiliation, and may be removed only for neglect of duty, misconduct, or inability or failure to discharge the powers or duties of the office, including the failure to follow the lawful instructions of the Joint Commission.

Among other new powers, the Joint Commission shall have jurisdiction to investigate potential violations of law by legislators and legislative employees and, if any violation is found, shall issue a written report to the Legislative Ethics Commission that sets forth the Joint Commission's findings of fact and conclusions of law. To continue and conduct a full investigation to determine if there is a substantial basis to find a violation of law, the Joint Commission requires a vote of eight members and such vote must occur within 45 days of receiving a complaint or referral or the Joint Commission's initiation of a preliminary review. The Joint Commission's investigative report must be made public within 45 days of being provided to the Legislative Ethics Commission (with the option of one 45-day extension), and that Commission must dispose of the matter and indicate in a public statement the nature and reasons for such disposition within 90 days. The Legislative Ethics Commission shall have exclusive jurisdiction to impose penalties on members of the legislature and legislative employees based upon the findings of fact and law in the Joint Commission's investigative report. With respect to executive employees and lobbyists, like the current Commission on Public Integrity, the Joint Commission shall have jurisdiction to investigate and penalize such individuals and the report and disposition of such matters will be made public.

A majority (8 members) of the board must consent to the initiation of the investigation, and at least two of whom are of the same branch and, except for executive employees not directly appointed by a statewide elected official, of the same party as the subject of the investigation. The same procedure applies to issue findings of fact and conclusions of law. If the subject of the investigation is a lobbyist, only a simple majority is required.

The Joint Commission and its staff will be subject to strict confidentiality restrictions to protect the integrity of its investigations, punishable as a Class A misdemeanor.

The commissioners of the Joint Commission shall be prohibited from making campaign contributions to candidates for elected executive or legislative offices during their tenure on the Joint Commission.

The Joint Commission shall conduct mandatory ethics training for executive and legislative officials that meets requirements set forth in this section, except where either chamber of the legislature already provides such training and that training meets the same requirements. The Joint Commission will also track, in coordination with the Legislative Ethics Commission, the status of compliance with these new training requirements by state agencies and by the legislature, and shall make such aggregate compliance statistics available to the public on an annual basis.

The Joint Commission will conduct a program of random reviews of financial disclosure statements to help determine compliance with applicable disclosure requirements.

Section 7 amends section 1-d of the Legislative Law to mandate online ethics training for lobbyists under the auspices of the Joint Commission.

Sections 7-a, 7-b, and 8 amend section 1-e, subdivision (b) of section 1-j and section 1-c of the Legislative Law, respectively, to require that lobbyists disclose the names of every state official and employee, including legislators and legislative employees, with whom the lobbyist has a "reportable business relationship," a term also newly defined in the bill.

Section 9 amends section 80 of the Legislative Law to clarify that the Legislative Ethics Commission will have the authority and jurisdiction to impose penalties upon members and employees of the legislature, but will no longer have investigative jurisdiction over the legislature. This section establishes the procedure to be followed by the Legislative Ethics Commission upon its receipt of an investigative report from the Joint Commission on Public Ethics to ensure that the Legislative Ethics Commission issues a public disposition of each matter within 90 days of receiving such report.

This section also establishes that written advisory opinions issued by the Legislative Ethics Commission shall be binding upon that Commission with respect to the imposition of any penalties, but the Joint Commission on Public Ethics shall have jurisdiction to investigate both whether the person's advisory opinion was supported by his or her full disclosure of the relevant facts and whether that opinion covered the person's actual conduct. The Joint Commission will have full authority to investigate conduct falling outside the proper scope of such an advisory opinion issued by the Legislative Ethics Commission.

This section further amends the Legislative Law to clarify that the executive director of the Legislative Ethics Commission may be removed for neglect of duty, misconduct in office, or inability or failure to discharge the powers or duties of office.

This section also amends the Legislative Law to increase the penalties for violations of certain provisions of the code of ethics contained in Public Officers Law § 74, including those provisions addressing financial conflicts of interest damaging to public confidence in the State government.

Sections 14 through 21 ensure that the existing authority, records, and business of the Commission on Public Integrity will be properly transferred to the Joint Commission on Public Ethics.

Section 22 provides for the effective date.

Part B: Disclosure by Lobbyists Lobbying on Their Own Behalf and by Clients of Lobbyists of Their Sources of Funding for Lobbying Activities

Section 1 amends subdivision c of section 1-h of the Legislative Law to require that registered lobbyists whose lobbying activity is performed on their own behalf and not pursuant to retention by a client, and that have spent at least \$50,000 and at least 3% of their total expenditures during the last year on such activity in New York State, must

disclose each source of funding over \$5,000 used for such lobbying. Such lobbyists may seek an exemption to avoid such disclosure based upon a showing that it may cause harm, threats, harassment, or reprisals to the source of funding or its property. If the Joint Commission declines to grant such an exemption, the lobbyist may appeal that decision to an independent judicial hearing officer pursuant to regulations developed by the Joint Commission.

In addition, not-for-profit organizations qualified as exempt organizations under I.R.C. § 501(c)(3) are exempted from this disclosure requirement. Not-for-profit organizations qualified as exempt under I.R.C. § 501(c)(4) shall also be exempted pursuant to regulations promulgated by the Joint Commission if their primary activities concern any area of public concern that would create a substantial likelihood that such disclosure would lead to harm, threats, harassment, or reprisals. The bill expressly identifies the area of "civil rights and civil liberties" as one area in which organizations are expected to qualify for such an exemption in the Joint Commission's regulations. Among other issues included in this area, organizations whose primary activities focus on the question of abortion rights, family planning, discrimination or persecution based upon race, ethnicity, gender, sexual orientation or religion, immigrant rights, and the rights of certain criminal defendants are expected to be covered by such an exemption.

Section 2 amends subdivision c of section 1-j of the Legislative Law to require that clients of lobbyists that meet the same threshold criteria as those set forth above must similarly disclose the sources of their funding for their lobbying activity. The same set of potential exemptions would apply to clients of lobbyists as well.

Section 3 provides for the effective date.

Part C: Pension Forfeiture for Public Officials

Section 1 amends the Retirement and Social Security Law by adding a new Article 3-B to establish a procedure whereby certain public officials who commit crimes related to their public offices may have their pensions reduced or forfeited under certain circumstances. This new article would apply prospectively to officials who enter any of the applicable retirement systems upon or after the effective date of the law.

Section 2 amends the criminal procedure law to require that criminal defendants whose pensions may ultimately be reduced or forfeited shall be notified of that possibility by the court prior to any trial or plea entered in their criminal case.

Section 3 provides for the effective date.

Part D: Expanded Definition of Lobbying and Clarification of Definitions in Gift Ban

Section 1 amends subdivisions (c) and (j) of section 1-c of the legislative law to expand the definition of lobbying to include advocacy to affect the "introduction" of legislation or a resolution. This section further amends these provisions principally to clarify certain definitions in the gift ban to assist public officials in their efforts to comply with that ban and to facilitate its enforcement.

Section 2 provides for the effective date.

Part E: Campaign Finance Enforcement

Section 1 requires that the State Board of Elections issue regulations by January 1, 2012, setting forth and clarifying the requirements under existing law for individuals, corporations, political committees, and any other entities to disclose independent expenditures made for advertisements or any other type of advocacy that expressly identifies a political candidate or ballot proposal and that is not coordinated or approved by the candidate in question.

Section 2 amends section 14-106 of the Election Law to require that broadcast television scripts and internet advertisements used in political campaigns must be disclosed and provided to the board of elections.

Section 3 amends section 14-126 of the Election Law to increase substantially the penalties for violations of existing filing requirements and contribution limits.

Sections 4 and 5 expand or create jurisdiction in the county and supreme court for proceedings to enforce the requirements of the Election Law relating to campaign finance restrictions and specify the standards to be applied by the court in determining an appropriate penalty for such violations.

Statement in Support:

Once a national model, New York State government has been widely discredited for its corruption, for the lack of truly independent ethics oversight over all public officials, and for the failure to require more robust disclosure of outside income sources. Currently, our State government's ethics laws are policed by several separate entities using differing interpretations of the same laws, leading to an absence of true independence and fragmented enforcement. Our financial disclosure laws require disclosure of the amounts of outside income earned, but do not of the clients and customers of the reporting individual or his or her firm that may have business before the State.

This legislation establishes an independent Joint Commission on Public Ethics with robust enforcement powers to investigate violations of law by members of both the executive and legislative branches and oversee their financial disclosure requirements. It also provides for the Legislative Ethics Commission's jurisdiction to impose penalties on members based upon the investigations completed by the Joint Commission on Public Ethics.

This legislation also expands financial disclosure requirements significantly and, for the first time, makes such information fully available to the public. It requires disclosure of a reporting individual's clients and of clients of that individual's firm if those clients or customers are being represented with respect to a proposed bill or resolution before the legislature, have received contracts or grants from the State, or are the subject of or party in any proceeding by or before or involving a State agency. In addition, it narrows and increases the number of categories of value that must be

disclosed, and requires the Joint Commission to post the financial disclosure statements of elected officials on its website without value amounts or any other information redacted (except for unemancipated children).

The bill also establishes a new database called Project Sunlight that will be publicly available and will aggregate information from across the State government concerning the identities of any individual or firm that appears in a representative capacity before any State governmental entity. That information will allow members of the public to understand in detail and to assess any potential conflicts of interest that may be raised by such appearances.

The bill further addresses and expands both the scope and applicability of the lobbying disclosure requirements in this State. The bill requires the disclosure by lobbyists of any "reportable business relationships" over \$1,000 with public officials; expands the definition of lobbying to include advocacy to affect the "introduction" of legislation or resolutions, a change that will help to ensure that all relevant lobbying activities are regulated by the new Joint Commission.

This legislation also sheds sunlight on the activities of lobbyists and clients of lobbyists that devote substantial resources to such activities by requiring that they disclose each source of funding over \$5,000 used for such lobbying. Appropriate exemptions to this requirement would be made for 501(c)(3) organizations and those 501(c)(4) organizations for whom such disclosure could lead to harm to or harassment of their donors. Particularly in light of the impact of the U.S. Supreme Court's decision in *Citizens United v Federal Election Commission*, 130 S.Ct. 876 (2010), which threatens to open the door to corporations and other entities spending money to advocate for or against candidates, New York State must enhance disclosure of the sources of funding for advocacy across numerous areas of public concern. This bill would take a critical first step to provide such disclosure with respect to lobbying so that the public could better understand the real parties in interest behind substantial lobbying initiatives.

Moreover, in the wake of *Citizens United*, which effectively limited the ability of states and the federal government to ban electioneering communications by outside entities, it is increasingly important that disclosure of such expenditures be required and made publicly available. Under existing law, such independent expenditures must be disclosed and the entities that make them must register with the State Board of Elections. However, there remain significant concerns that such expenditures are not being disclosed and that the problem will only increase over time. Accordingly, this new requirement will not only clarify and publicize the requirements for registration and reporting of independent expenditures, and also help to identify any gaps in existing law that can be filled in the future.

In addition, this bill expands substantially the penalties that may be imposed for violations of the filing requirements and contribution limits in the Election Law, and provides for a special enforcement proceeding in the Supreme Court and jurisdiction in county courts to help improve enforcement efforts. These steps will provide a critical starting point for comprehensive campaign finance reforms in future years.

Budget Implications:

This legislation is not expected to have a significant impact on the budget.

Effective Date:

This act shall take effect as provided in each of Parts A through E.