

GOVERNOR'S PROGRAM BILL

2016

MEMORANDUM

AN ACT to amend the election law, in relation to independent expenditures during election campaigns (Part A); to amend the election law, in relation to monies received and expenditures made by a party committee or constituted committee (Part B); to amend the election law, in relation to disposition of campaign funds (Part C); to amend the legislative law, in relation to reports by lobbyists (Part D); to amend the legislative law, in relation to contingent fees (Part E); to amend the executive law, in relation to the disclosure of certain donations by charitable non-profit entities (Part F); to amend the executive law, in relation to disclosure of certain activities by non-charitable non-profit entities (Part G); to amend the executive law, in relation to in relation to the registration of certain service providers (Part H); to amend the legislative law, in relation to communications with professional journalists and newscasters; and in relation to reporting of certain funding by lobbyists (Part I); to amend the executive law, in relation to investigations by the joint commission on public ethics and violations of the lobbying act (Part J); to amend the public officers law, in relation to financial disclosure forms (Part K)

Purpose of the Bill:

The purpose of this bill is to provide New York State with comprehensive ethics, lobbying, campaign finance, and public officer's law reform.

Summary of Provisions:

Part A

Section 1 of the bill would add "coordination" to the list of non-independent expenditures and define the following scenarios as prohibited coordination:

- The independent expenditure committee was formed by the candidate or the candidate's agents;
- The candidate or the candidate's agents appeared at events sponsored by the

independent expenditure committee;

- The independent expenditure committee retained a candidate's former staffer;
- The independent expenditure committee is operated by a member of the candidate's immediate family;
- The communication reproduces non-public campaign-related material;
- The independent expenditure committee shares space with the candidate or the candidate's agents;
- The independent expenditure committee has strategic discussions with the candidate or the candidate's agents;
- The independent expenditure committee and the candidate or the candidate's agents share a professional campaign services provider, provided that a campaign services provider shall be permitted to maintain a confidentiality agreement with both parties in order to serve in a shared role;
- The independent expenditure committee utilizes non-public information from a person who was previously retained by the candidate;

Section 1 would also define certain relevant terms and establish non-coordination status for responses to policy issue inquiries and for communications related to preexisting commercial interests.

Section 2 would make a conforming change in the election law related to the monetary disclosure threshold for independent expenditures.

Section 3 would require persons making independent expenditures to register as independent expenditure committees and would require additional disclosures for such committees upon registration.

Section 4 would require independent expenditure committees to make certain additional disclosures as part of their filing obligations.

Section 5 would establish that any criminal penalties resulting from section 14-107 of the election law shall require a knowing and willful violation in accordance with existing section 14-126 of the election law, and that a knowing and willful violation of certain provisions of section 14-107 the election law shall result in a civil penalty.

Section 6 would amend the definition of "contribution" in the election law to reference coordinated communications as defined in this bill.

Section 7 would create and define the terms "independent expenditure committee" and "political action committee."

Section 8 would make a conforming change in the election law related to authorization statements filed by political committees.

Section 9 would require political action committees to disclose any individuals who exert operational control over the political action committee, as well as any salaried employees of the political action committee.

Section 10 would prohibit certain forms of spending by independent expenditure committees and political action committees.

Section 11 would establish a civil penalty for a knowing and willful violation of the spending restrictions on independent expenditure committees and political action committees.

Section 12 would establish severability.

Section 13 would establish an immediate effective date.

Part B

Section 1 would amend section 14-124 of the election law to require housekeeping accounts to be deposited in a segregated account.

Section 2 would establish an immediate effective date.

Part C

Section 1 of this bill would amend section 14-104 of the election law to permit a candidate to designate a three-person committee to be charged with appointing or removing the treasurer of the candidate's authorized committee. The candidate would retain the right to revoke designation of committee members at any time.

Section 2 of this bill would amend section 14-132 of the election law to facilitate the winding down of an authorized candidate committee and to set a two-year time frame for winding down upon the death of a candidate. The bill would provide multiple possible uses for funds in an authorized account upon wind down including: Returning donations to the contributor; Donating the funds to a charity; Donating the funds to SUNY or CUNY; Donating the funds to the state general fund; Contributing the funds to a candidate or party.

Section 3 would set forth the effective date of the bill.

Part D

Section 1 and 2 would amend section 1-h and 1-j of the legislative law to require lobbyists to disclose their source of funding to the Joint Commission on Public Ethics (JCOPE) when lobbying spending totals over fifteen thousand dollars, or when at least 3% of their expenditures were devoted to lobbying, and would require registration for each expense over two thousand five hundred dollars. Membership dues, fees and assessments would not be required to be disclosed. 501(c)(4)'s would also be required to disclose in-kind donations from 501(c)(3)'s. These sections would also trigger a reporting requirement for a 501(c)(3) who gives an in-kind donation of over \$2500 to a 501(c)(4), to disclose their sources of funding to the Attorney General.

Section 3 would make it effective on the 30th day after enactment.

Part E

Section 1 would amend section 1-k of the legislative law to require that any lobbyist in receipt of contingent fees be subject to a misdemeanor A charge as well as the greater of a

\$10,000 civil penalty or disgorgement of any ill-gotten gains from the illegal contingency fee arrangement.

Section 2 would establish an immediate effective date.

Part F

Section 1 would add a new section 172-e to the executive law that would require a 501(c)(3) to report their sources of funding to the Department of Law when such entity makes an in kind donation to a 501(c)(4) of over \$2500. Reporting would be mandated on a semi-annual basis. The source of funding reports would be shared with JCOPE for the purpose of posting such reports on the commission's website. The bill also articulates a disclosure waiver, and appeal, process.

Section 2 would make the bill effective the ninetieth day after becoming law.

Part G

Section 1 would add a new section 172-f to the executive law that would require 501(c)(4) organizations who engage in issue advocacy to make certain disclosures regarding the issue advocacy to the Department of law. The bill requires the Department of Law to make such disclosures public on their website and provides for a disclosure waiver, and appeal, process.

Section 2 would make the bill effective the thirtieth day after becoming law.

Part H

Section 1 would add a new section 109 to the executive law that would require persons providing political consulting services to, or on behalf of, an elected official or candidate for elected office, to register with the Department of State and provide certain information to the department of state in their registration.

Section 2 would make the bill effective the sixtieth day after becoming law.

Part I

Section 1 would amend section 1-c of the Legislative Law to exclude communications with journalists and editorial boards from the definition of lobbying.

Section 2 would provide for an immediate effective date.

Part J

Sections 1 and 2 would amend section 94 of the executive law to require JCOPE to provide persons under investigation with several due process rights including the right to be heard prior to a final determination by the commission, and a right be notified about charges and information when such information is not prejudicial to the complainant or investigation. Section 1 of the bill would also allow JCOPE sixty days to complete an investigation and would require JCOPE to notify the subject of an investigation when such investigation is closed.

Section 3 would provide for an immediate effective date.

Part K

Section 1 through 10 would make technical amendments including using gender inclusive pronouns and substituting "commission" for "committee" to conform with an updated agency name for JCOPE.

Section 2 would make it effective immediately and provide for specific effective dates pertaining to the technical amendments to the Financial Disclosure Statement.

Statement in Support:

This bill strengthens New York State's election, lobbying, ethics, and public officer's laws. First, in response to the Supreme Court's *Citizens United* decision, this bill would institute the strictest anti-coordination law in the nation, and specifically prohibit coordination in New York State election law for the first time. The bill would also expressly identify which activities constitute prohibited coordination, and strictly prohibit coordination in egregious scenarios, such as the "independent" spender being an immediate family member of the candidate, as well as in subtle scenarios, such as the dissemination of a candidate's campaign material by supposedly "independent" groups. This will allow New York's electoral politics to achieve a clear and meaningful demarcation between candidates and unlimited expenditures and will provide a much-needed reform to New York's campaign finance system.

Second, the bill would increase penalties for egregious lobbying violations, while also providing for enhanced due process for persons under investigation for ethics and lobbying violations. The bill would also require political consultants that provide services to sitting elected officials or candidates for elected office and who also have clients with business before the state or a locality to register with the state and to disclose their clients. This reform prevents organizations from corrupting the political process and utilizing funds that are not intended for political purposes. Disclosure of political relationships and funding behaviors widely recognized to be influential, but which operate in the shadows, is essential to restoring the public's faith and trust in our political process.

Budget Implications:

None

Effective Date:

This act shall take effect immediately provided, however, that the applicable effective date of Parts B through K of this act shall be as specifically set forth in the last section of such Parts.