S T A T E O F N E W Y O R K

11666

I N A S S E M B L Y

July 6, 2010

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Kellner) -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the penal law, the public officers law, the executive law and the legislative law, in relation to the crimes of scheme to defraud the government in the first and second degrees and the provision of faithful public services; and to amend the legislative law, in relation to reportable business relationships for legislative ethics purposes

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act shall be known and may be cited as the "public corruption prevention and enforcement act of 2010".

S 2. Section 10.00 of the penal law is amended by adding three new subdivisions 21, 22 and 23 to read as follows:

21. FOR THE PURPOSES OF SECTIONS 195.18 AND 195.20 OF THIS CHAPTER "SCHEME" MEANS ANY PLAN, PATTERN, DEVICE, CONTRIVANCE, OR COURSE OF ACTION, AND "INTENT TO DEFRAUD" INCLUDES AN INTENT TO DEPRIVE THE STATE OR A POLITICAL SUBDIVISION OF THE STATE OR A GOVERNMENTAL INSTRUMENTALITY OF FAITHFUL PUBLIC SERVICES.

22. "FAITHFUL PUBLIC SERVICES" MEANS CONDUCT THAT IS FREE OF UNDISCLOSED SELF-DEALING AND FREE OF THE UNAUTHORIZED OR UNLAWFUL CONFERRAL OR INTENDED CONFERRAL OF A BENEFIT, DIRECTLY OR INDIRECTLY, ON A PUBLIC SERVANT.

23. "SELF-DEALING" MEANS ANY ACTION TAKEN BY A PUBLIC SERVANT IN HIS OR HER OFFICIAL CAPACITY WITH INTENT TO BENEFIT HIMSELF OR HERSELF, DIRECTLY OR INDIRECTLY, AND WHICH RELATES TO HIS OR HER PRIVATE BUSINESS INTERESTS.

S 3. Section 195.20 of the penal law, as amended by chapter 1 of the laws of 2010, is amended to read as follows:

S 195.20 [Defrauding] SCHEME TO DEFRAUD the government IN THE FIRST DEGREE.

A person is guilty of [defrauding] A SCHEME TO DEFRAUD the government IN THE FIRST DEGREE when, being a public servant or party officer OR ACTING IN CONCERT WITH A PUBLIC SERVANT OR PARTY OFFICER, he or she:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD17862-02-0

(a) engages in a scheme constituting a systematic ongoing course of conduct with intent to:

(i) defraud the state or a political subdivision of the state or a governmental instrumentality within the state; or

(II) to obtain property, services or other resources from the state or a political subdivision of the state or a governmental instrumentality within the state by false or fraudulent pretenses, representations or promises; or

[(ii)] (III) defraud the state or a political subdivision of the state or a governmental instrumentality within the state by making use of property, services or resources of the state, political subdivision of the state or a governmental instrumentality within the state for private business purposes or other compensated non-governmental purposes; and

(b) EITHER (I) so obtains property, services or other resources with a value in excess of one thousand dollars from such state, political subdivision or governmental instrumentality, OR (II) CONFERS OR OBTAINS A BENEFIT OR BENEFITS, DIRECTLY OR INDIRECTLY, WITH A COMBINED VALUE IN EXCESS OF ONE THOUSAND DOLLARS.

[Defrauding] SCHEME TO DEFRAUD the government IN THE FIRST DEGREE is a class [E] D felony.

S 4. The penal law is amended by adding a new section 195.18 to read as follows:

S 195.18 SCHEME TO DEFRAUD THE GOVERNMENT IN THE SECOND DEGREE.

A PERSON IS GUILTY OF A SCHEME TO DEFRAUD THE GOVERNMENT IN THE SECOND DEGREE WHEN, BEING A PUBLIC SERVANT OR PARTY OFFICER OR ACTING IN CONCERT WITH A PUBLIC SERVANT OR PARTY OFFICER, HE OR SHE ENGAGES IN A SCHEME CONSTITUTING A SYSTEMATIC ONGOING COURSE OF CONDUCT WITH INTENT TO:

(A) DEFRAUD THE STATE OR A POLITICAL SUBDIVISION OF THE STATE OR A GOVERNMENTAL INSTRUMENTALITY WITHIN THE STATE; OR

(B) OBTAIN PROPERTY, SERVICES OR OTHER RESOURCES FROM THE STATE OR A POLITICAL SUBDIVISION OF THE STATE OR A GOVERNMENTAL INSTRUMENTALITY WITHIN THE STATE BY FALSE OR FRAUDULENT PRETENSES, REPRESENTATIONS OR PROMISES; OR

(C) DEFRAUD THE STATE OR A POLITICAL SUBDIVISION OF THE STATE OR A GOVERNMENTAL INSTRUMENTALITY WITHIN THE STATE BY MAKING USE OF PROPERTY, SERVICES OR RESOURCES OF THE STATE, POLITICAL SUBDIVISION OF THE STATE OR A GOVERNMENTAL INSTRUMENTALITY WITHIN THE STATE FOR PRIVATE BUSINESS PURPOSES OR OTHER COMPENSATED NON-GOVERNMENTAL PURPOSES.

SCHEME TO DEFRAUD THE GOVERNMENT IN THE SECOND DEGREE IS A CLASS E FELONY.

S 5. The penal law is amended by adding a new section 200.28 to read as follows:

S 200.28 DUTY TO PROVIDE FAITHFUL PUBLIC SERVICES.

FOR PURPOSES OF THIS ARTICLE, THE DUTIES OF A PUBLIC SERVANT SHALL INCLUDE BUT NOT BE LIMITED TO THE DUTY TO PROVIDE FAITHFUL PUBLIC SERVICES. IN EXECUTING THE DUTIES OF HIS OR HER OFFICE, EVERY PUBLIC SERVANT SHALL HAVE THE DUTY TO PROVIDE FAITHFUL PUBLIC SERVICES TO HIS OR HER CONSTITUENTS AND THE STATE OR POLITICAL SUBDIVISION THEREOF, AS APPLICABLE. IN EXECUTING THE DUTIES OF HIS OR HER OFFICE OR EMPLOYMENT, EVERY PUBLIC SERVANT SHALL ALSO HAVE THE DUTY TO PROVIDE FAITHFUL PUBLIC SERVICES TO A STATE OR LOCAL AGENCY OR LEGISLATURE, AS APPLICABLE.

S 6. Subdivision 1 of section 74 of the public officers law, as amended by chapter 1012 of the laws of 1965, the opening paragraph as amended by chapter 14 of the laws of 2007, is amended to read as follows:

1. [Definition. As used in this section:] DEFINITIONS OF TERMS OF GENERAL USE IN THIS SECTION:

A. The term "state agency" shall mean any state department, or division, board, commission, or bureau of any state department or any public benefit corporation or public authority at least one of whose members is appointed by the governor or corporations closely affiliated with specific state agencies as defined by paragraph (d) of subdivision five of section fifty-three-a of the state finance law or their successors.

B. The term "legislative employee" shall mean any officer or employee of the legislature but it shall not include members of the legislature.

C. THE TERM "FAITHFUL PUBLIC SERVICES" SHALL MEAN CONDUCT THAT IS FREE OF UNDISCLOSED SELF-DEALING AND FREE OF THE UNAUTHORIZED OR UNLAWFUL CONFERRAL OR INTENDED CONFERRAL OF A BENEFIT, DIRECTLY OR INDIRECTLY, ON AN OFFICER OR EMPLOYEE OF A STATE AGENCY, MEMBER OF THE LEGISLATURE OR LEGISLATIVE EMPLOYEE. EVERY OFFICER OR EMPLOYEE OF A STATE AGENCY, MEMBER OF THE LEGISLATURE OR LEGISLATIVE EMPLOYEE SHALL HAVE A DUTY OF FAITHFUL PUBLIC SERVICES WITH RESPECT TO HIS OR HER CONSTITUENTS AND THE STATE OR TO A STATE AGENCY OR LEGISLATURE, AS APPLICABLE.

D. THE TERM "SELF-DEALING" SHALL MEAN ANY ACTION TAKEN BY AN OFFICER OR EMPLOYEE OF A STATE AGENCY, MEMBER OF THE LEGISLATURE OR LEGISLATIVE EMPLOYEE IN HIS OR HER OFFICIAL CAPACITY WITH INTENT TO BENEFIT HIMSELF OR HERSELF, DIRECTLY OR INDIRECTLY, AND WHICH RELATES TO HIS OR HER PRIVATE BUSINESS INTERESTS.

S 7. Subdivision 3 of section 74 of the public officers law is amended by adding a new paragraph j to read as follows:

J. IN EXECUTING THE DUTIES OF HIS OR HER OFFICE, EVERY OFFICER OR EMPLOYEE OF A STATE AGENCY, MEMBER OF THE LEGISLATURE OR LEGISLATIVE EMPLOYEE SHALL HAVE THE DUTY TO PROVIDE FAITHFUL PUBLIC SERVICES TO HIS OR HER CONSTITUENTS AND THE STATE, AS APPLICABLE. IN EXECUTING THE DUTIES OF HIS OR HER OFFICE OR EMPLOYMENT, EVERY OFFICER OR EMPLOYEE OF A STATE AGENCY, MEMBER OF THE LEGISLATURE OR LEGISLATIVE EMPLOYEE SHALL ALSO HAVE THE DUTY TO PROVIDE FAITHFUL PUBLIC SERVICES TO A STATE AGENCY OR THE LEGISLATURE, AS APPLICABLE.

S 8. Subdivision 4 of section 74 of the public officers law, as amended by chapter 14 of the laws of 2007, is amended to read as follows:

4. Violations. In addition to any penalty contained in any other provision of law any such officer, member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law. Any such individual who knowingly and intentionally violates the provisions of paragraph b, c, d or i of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. Any such individual who knowingly and intentionally violates the provisions of paragraph a, e or g of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed the value of any gift, compensation or benefit received as a result of such violation. ANY SUCH INDIVIDUAL WHO KNOWINGLY AND INTENTIONALLY VIOLATES THE PROVISIONS OF PARAGRAPH J OF SUBDIVISION THREE OF THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY IN AN AMOUNT NOT TO EXCEED TEN THOUSAND DOLLARS AND THE VALUE OF ANY GIFT, COMPENSATION OR BENEFIT RECEIVED AS A RESULT OF SUCH VIOLATION. ANY SUCH INDIVIDUAL WHO, AS PART OF OR IN FURTHERANCE OF A SCHEME OR ARTIFICE TO DEFRAUD A STATE AGENCY, THE LEGISLATURE, ANY POLITICAL SUBDIVISION, HIS OR HER CONSTITUENTS OR THE STATE, AS APPLICABLE, KNOW-

INGLY AND INTENTIONALLY VIOLATES THE PROVISIONS OF PARAGRAPH J OF SUBDIVISION THREE OF THIS SECTION SHALL, IN ADDITION TO ANY PENALTY CONTAINED IN THIS SECTION OR ANY OTHER PROVISION OF LAW, BE GUILTY OF A CLASS E FELONY.

S 9. Subdivision 13 of section 94 of the executive law, as amended by chapter 14 of the laws of 2007, is amended to read as follows:

13. An individual subject to the jurisdiction of the commission who knowingly and intentionally violates the provisions of subdivisions two through five, seven, eight, twelve or fourteen through seventeen of section seventy-three of the public officers law, section one hundred seven of the civil service law, or a reporting individual who knowingly and wilfully fails to file an annual statement of financial disclosure or who knowingly and wilfully with intent to deceive makes a false statement or fraudulent omission or gives information which such individual knows to be false on such statement of financial disclosure filed pursuant to section seventy-three-a of the public officers law shall be subject to a civil penalty in an amount not to exceed forty thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. An individual who knowingly and intentionally violates the provisions of paragraph b, c, d [or], i OR J of subdivision three of section seventy-four of the public officers law shall be subject to a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. An individual who knowingly and intentionally violates the provisions of paragraph a, e or g of subdivision three of section seventy-four of the public officers law shall be subject to a civil penalty in an amount not to exceed the value of any gift, compensation or benefit received as a result of such violation. An individual subject to the jurisdiction of the commission who knowingly and willfully violates article one-A of the legislative law shall be subject to civil penalty as provided for in that article. Assessment of a civil penalty hereunder shall be made by the commission with respect to persons subject to its jurisdiction. In assessing the amount of the civil penalties to be imposed, the commission shall consider the seriousness of the violation, the amount of gain to the individual and whether the individual previously had any civil or criminal penalties imposed pursuant to this section, and any other factors the commission deems appropriate. For a violation of this subdivision, other than for conduct which constitutes a violation of section one hundred seven of the civil service law, subdivisions twelve or fourteen through seventeen of section seventy-three or section seventy-four of the public officers law or article one-A of the legislative law, the commission may, in lieu of a civil penalty, refer a violation to the appropriate prosecutor and upon such conviction, such violation shall be punishable as a class A misdemeanor. A civil penalty for false filing may not be imposed hereunder in the event a category of "value" or "amount" reported hereunder is incorrect unless such reported information is falsely understated. Notwithstanding any other provision of law to the contrary, no other penalty, civil or criminal may be imposed for a failure to file, or for a false filing, of such statement, or a violation of section seventy-three of the public officers law, except that the appointing authority may impose disciplinary action as otherwise provided by law. The commission may refer violations of this subdivision to the appointing authority for disciplinary action as otherwise provided by law. The commission shall be deemed to be an agency within the meaning of article three of the state administrative procedure act and shall adopt rules governing

the conduct of adjudicatory proceedings and appeals taken pursuant to a proceeding commenced under article seventy-eight of the civil practice law and rules relating to the assessment of the civil penalties herein authorized and commission denials of requests for certain deletions or exemptions to be made from a financial disclosure statement as authorized in paragraph (h) or paragraph (i) of subdivision nine of this section. Such rules, which shall not be subject to the approval requirements of the state administrative procedure act, shall provide for due process procedural mechanisms substantially similar to those set forth in article three of the state administrative procedure act but such mechanisms need not be identical in terms or scope. Assessment of a civil penalty or commission denial of such a request shall be final unless modified, suspended or vacated within thirty days of imposition, with respect to the assessment of such penalty, or unless such denial of request is reversed within such time period, and upon becoming final shall be subject to review at the instance of the affected reporting individuals in a proceeding commenced against the commission, pursuant to article seventy-eight of the civil practice law and rules.

S 10. Subdivision 11 of section 80 of the legislative law, as amended by chapter 14 of the laws of 2007, is amended to read as follows:

11. An individual subject to the jurisdiction of the commission who knowingly and intentionally violates the provisions of subdivisions two through five, seven, eight, twelve, fourteen or fifteen of section seventy-three of the public officers law or a reporting individual who knowingly and wilfully fails to file an annual statement of financial disclosure or who knowingly and wilfully with intent to deceive makes a false statement or gives information which such individual knows to be false on such statement of financial disclosure filed pursuant to section seventy-three-a of the public officers law shall be subject to a civil penalty in an amount not to exceed forty thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. Any such individual who knowingly and intentionally violates the provisions of paragraph b, c, d, [or] i OR J of subdivision three of section seventy-four of the public officers law shall be subject to a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. Any such individual who knowingly and intentionally violates the provisions of paragraph a, e or g of subdivision three of section seventy-four of the public officers law shall be subject to a civil penalty in an amount equal to the value of any gift, compensation or benefit received as a result of such violation. Assessment of a civil penalty hereunder shall be made by the commission with respect to persons subject to its jurisdiction. In assessing the amount of the civil penalties to be imposed, the commission shall consider the seriousness of the violation, the amount of gain to the individual and whether the individual previously had any civil or criminal penalties imposed pursuant to this section, and any other factors the commission deems appropriate. For a violation of this section, other than for conduct which constitutes a violation of subdivision twelve, fourteen or fifteen of section seventy-three or section seventy-four of the public officers law, the legislative ethics commission may, in lieu of a civil penalty, refer a violation to the appropriate prosecutor and upon such conviction, but only after such referral, such violation shall be punishable as a class A misdemeanor. A civil penalty for false filing may not be imposed hereunder in the event a category of "value" or "amount" reported hereunder is incorrect unless such reported informa-

tion is falsely understated. Notwithstanding any other provision of law to the contrary, no other penalty, civil or criminal may be imposed for a failure to file, or for a false filing, of such statement, or a violation of section seventy-three of the public officers law, except that the appointing authority may impose disciplinary action as otherwise provided by law. The legislative ethics commission shall be deemed to be an agency within the meaning of article three of the state administrative procedure act and shall adopt rules governing the conduct of adjudicatory proceedings and appeals taken pursuant to a proceeding commenced under article seventy-eight of the civil practice law and rules relating to the assessment of the civil penalties herein authorized and commission denials of requests for certain deletions or exemptions to be made from a financial disclosure statement as authorized in paragraph i or paragraph j of subdivision seven of this section. Such rules, which shall not be subject to the promulgation and hearing requirements of the state administrative procedure act, shall provide for due process procedural mechanisms substantially similar to those set forth in such article three but such mechanisms need not be identical in terms or scope. Assessment of a civil penalty or commission denial of such a deletion or exemption request shall be final unless modified, suspended or vacated within thirty days of imposition, with respect to the assessment of such penalty, or unless such denial of request is reversed within such time period, and upon becoming final shall be subject to review at the instance of the affected reporting individuals in a proceeding commenced against the legislative ethics commission, pursuant to article seventy-eight of the civil practice law and rules.

S 11. Section 1-c of the legislative law is amended by adding a new subdivision (w) to read as follows:

(W) THE TERM "REPORTABLE BUSINESS RELATIONSHIP" SHALL MEAN A RELATIONSHIP IN WHICH COMPENSATION IS PAID BY A LOBBYIST OR BY A CLIENT OF A LOBBYIST, IN EXCHANGE FOR ANY GOODS, SERVICES OR ANYTHING OF VALUE TO BE PERFORMED OR PROVIDED BY OR INTENDED TO BE PERFORMED OR PROVIDED BY (I) ANY STATEWIDE ELECTED OFFICIAL, STATE OFFICER, STATE EMPLOYEE, MEMBER OF THE LEGISLATURE OR LEGISLATIVE EMPLOYEE OR (II) ANY ENTITY IN WHICH THE LOBBYIST OR THE CLIENT OF A LOBBYIST KNOWS OR HAS REASON TO KNOW THE STATEWIDE ELECTED OFFICIAL, STATE OFFICER, STATE EMPLOYEE, MEMBER OF THE LEGISLATURE OR LEGISLATIVE EMPLOYEE IS A PROPRIETOR, PARTNER, DIRECTOR, OFFICER OR MANAGER WHO RECEIVES TEN PERCENT OR MORE OF THE PROFITS FROM SUCH ENTITY, OR OWNS OR CONTROLS TEN PERCENT OR MORE OF THE STOCK OF SUCH ENTITY (OR ONE PERCENT IN THE CASE OF A CORPORATION WHOSE STOCK IS REGULARLY TRADED ON AN ESTABLISHED SECURITIES EXCHANGE).

S 12. Subdivision (c) of section 1-e of the legislative law is amended by adding a new paragraph 8 to read as follows:

(8) (I) THE NAME AND PUBLIC OFFICE ADDRESS OF ANY STATEWIDE ELECTED OFFICIAL, STATE OFFICER OR EMPLOYEE, MEMBER OF THE LEGISLATURE OR LEGISLATIVE EMPLOYEE AND ENTITY WITH WHOM THE LOBBYIST HAS A REPORTABLE BUSINESS RELATIONSHIP IN EXCESS OF ONE THOUSAND DOLLARS DURING THE REPORTING PERIOD;

(II) A DESCRIPTION OF THE GENERAL SUBJECT OR SUBJECTS OF THE TRANSACTIONS BETWEEN THE LOBBYIST OR LOBBYISTS AND THE STATEWIDE ELECTED OFFICIAL, STATE OFFICER OR EMPLOYEE, MEMBER OF THE LEGISLATURE OR LEGISLATIVE EMPLOYEE AND ENTITY; AND

(III) THE COMPENSATION, INCLUDING EXPENSES, TO BE PAID BY VIRTUE OF THE BUSINESS RELATIONSHIP.

S 13. Subdivision (b) of section 1-j of the legislative law is amended by adding a new paragraph 6 to read as follows:

(6) (I) THE NAME AND PUBLIC OFFICE ADDRESS OF ANY STATEWIDE ELECTED OFFICIAL, STATE OFFICER OR EMPLOYEE, MEMBER OF THE LEGISLATURE OR LEGISLATIVE EMPLOYEE AND ENTITY WITH WHOM THE CLIENT OF A LOBBYIST HAS A REPORTABLE BUSINESS RELATIONSHIP IN EXCESS OF FIVE HUNDRED DOLLARS DURING THE REPORTING PERIOD;

(II) A DESCRIPTION OF THE GENERAL SUBJECT OR SUBJECTS OF THE TRANSACTIONS BETWEEN THE CLIENT OF THE LOBBYIST OR LOBBYISTS AND THE STATEWIDE ELECTED OFFICIAL, STATE OFFICER OR EMPLOYEE, MEMBER OF THE LEGISLATURE OR LEGISLATIVE EMPLOYEE AND ENTITY; AND

(III) THE COMPENSATION, INCLUDING EXPENSES, TO BE PAID BY VIRTUE OF THE BUSINESS RELATIONSHIP.

S 14. This act shall take effect immediately, provided that sections eleven, twelve and thirteen of this act shall take effect on the ninetieth day after it shall have become a law.