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

S. 6792 A. 9886

S E N A T E - A S S E M B L Y

February 5, 2010

IN SENATE -- Introduced by Sens. SCHNEIDERMAN, SQUADRON, SAMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY -- Introduced by M. of A. SILVER, KOLB, MAGNARELLI, DESTITO, MILLMAN, BARCLAY, FARRELL, CANESTRARI, MOLINARO, DUPREY -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, the legislative law and the civil service law, in relation to making technical corrections to such provisions relating to governmental ethics and compliance; and to amend the election law, in relation to the state board of elections and the state board of elections enforcement counsel

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

Section 1. Subdivision 1 and paragraph (c) of subdivision 16-b of section 94 of the executive law, subdivision 1 as amended and paragraph (c) of subdivision 16-b as added by a chapter of the laws of 2010 amending the executive law and other laws relating to governmental ethics and compliance, as proposed in legislative bill numbers S.6457 and A.9544, are amended to read as follows:

1. There is established within the department of state an executive ethics and compliance commission which shall consist of six members and shall have and exercise the powers and duties set forth in this section only with respect to statewide elected officials, state officers and employees, as defined in sections seventy-three and seventy-three-a of the public officers law, candidates for statewide elected office, a political party chairman as defined in paragraph (k) of subdivision one of section seventy-three of the public officers law, [,] and individuals who have formerly held such positions, or who have formerly been such candidates EXCEPT AS PROVIDED IN PARAGRAPH (C) OF SUBDIVISION TWELVE OF THIS SECTION. This section shall not revoke or rescind any regulations or advisory opinions issued by the state ethics commission, the temporary lobbying commission and the commission on public integrity in effect upon the effective date of the chapter of the laws of two thou-

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

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sand ten which amended this section to the extent that such regulations or opinions are not inconsistent with any law of the state of New York, but such regulations and opinions shall apply only to matters over which such commissions had jurisdiction at the time such regulations and opinions were promulgated or issued. The commission shall undertake a comprehensive review of all such regulations and opinions, which will address the consistency of such regulations and opinions among each other and with the statutory language. The commission shall, before April first, two thousand eleven, report to the governor and legislature regarding such review and shall propose any regulatory changes and issue any advisory opinions necessitated by such review.

(c) The commission shall establish procedures necessary to prevent the unauthorized disclosure of any information received by any member of the commission or staff of the commission. Any breaches of confidentiality shall be investigated by the commission and appropriate action shall be taken IN ACCORDANCE WITH SUBDIVISION THIRTEEN OF THIS SECTION.

S 2. Subdivision (h) of section 1-d of the legislative law, as amended by a chapter of the laws of 2010 amending the executive law and other laws relating to governmental ethics and compliance, as proposed in legislative bill numbers S.6457 and A.9544, is amended to read as follows:

(h) Structure of the commission:

(i) The chief administrative officer of the commission shall be the executive director, who shall be appointed by a majority vote of the commission and shall serve a three year term, except that he or she shall be dismissed only for cause by a majority vote of the commission.

(ii) The commission shall have the power and duty to:

(1) administer and enforce all the provisions of this article;

(2) CONDUCT ANY INVESTIGATION NECESSARY TO CARRY OUT THE PROVISIONS OF THIS ARTICLE UPON ITS OWN INITIATIVE, UPON REFERRAL FROM ANOTHER OVERSIGHT BODY OR UPON RECEIPT OF A SWORN COMPLAINT. PURSUANT TO THIS POWER AND DUTY, THE COMMISSION MAY ADMINISTER OATHS OR AFFIRMATIONS, SUBPOENA WITNESSES, COMPEL THEIR ATTENDANCE AND REQUIRE THE PRODUCTION OF ANY BOOKS OR RECORDS WHICH IT MAY DEEM RELEVANT OR MATERIAL;

(3) conduct a program of random audits subject to the terms and conditions of this section. Any such program shall be carried out in the following manner:

A. The commission may randomly select reports or registration statements required to be filed by lobbyists or clients pursuant to this article for audit. Any such selection shall be done in a manner pursuant to which the identity of any particular lobbyist or client whose statement or report is selected for audit is unknown to the commission, its staff or any of their agents prior to selection.

B. The commission shall develop protocols for the conduct of such random audits. Such random audits may require the production of books, papers, records or memoranda relevant and material to the preparation of the selected statements or reports, for examination by the commission. Any such protocols shall ensure that similarly situated statements or reports are audited in a uniform manner.

C. The commission shall contract with an outside accounting entity, which shall monitor the process pursuant to which the commission selects statements or reports for audit and carries out the provisions of clauses A and B of this subparagraph and certify that such process complies with the provisions of such clauses.

D. Upon completion of a random audit conducted in accordance with the provisions of clauses A, B and C of this subparagraph, the commission

shall determine whether there is reasonable cause to believe that any such statement or report is inaccurate or incomplete. Upon a determination that such reasonable cause exists, the commission may require the production of further books, records or memoranda, subpoena witnesses, compel their attendance and testimony and administer oaths or affirmations, to the extent the commission determines such actions are necessary to obtain information relevant and material to investigating such inaccuracies or omissions;

[(3)] (4) conduct hearings pursuant to article seven of the public officers law. Any hearing may be conducted as a video conference in accordance with the provisions of subdivision four of section one hundred four of the public officers law;

[(4)] (5) prepare uniform forms for the statements and reports required by this article;

[(5)] (6) meet at least once during each bi-monthly reporting period of the year as established by subdivision (a) of section one-h of this article and may meet at such other times as the commission, or the chair and vice-chair jointly, shall determine;

[(6)] (7) issue advisory opinions to those under its jurisdiction. Such advisory opinions, which shall be published and made available to the public, shall not be binding upon such commission except with respect to the person to whom such opinion is rendered, provided, however, that a subsequent modification by such commission of such an advisory opinion shall operate prospectively only; and

[(7)] (8) submit by the first day of March next following the year for which such report is made to the governor and the members of the legislature an annual report summarizing the commission's work, listing the lobbyists and clients required to register pursuant to this article and the expenses and compensation reported pursuant to this article and making recommendations with respect to this article. The commission shall make this report available free of charge to the public.

S 3. Clause (D) of subparagraph (iii) of paragraph (b) of subdivision 4 of section 80 of the legislative law, as added by a chapter of the laws of 2010 amending the executive law and other laws relating to governmental ethics and compliance, as proposed in legislative bill numbers S.6457 and A.9544, is amended to read as follows:

(D) a summary of the governing board's findings of fact. WHERE THE GOVERNING BOARD IS UNABLE TO RECOMMEND ACTION BECAUSE OF A TIE VOTE PURSUANT TO CLAUSE (C) OF THIS SUBPARAGRAPH, IT SHALL INCLUDE, IN ADDITION TO ANY FINDINGS OF FACT UPON WHICH A MAJORITY OF THE MEMBERS AGREE, A STATEMENT INDICATING ANY FINDINGS OF FACT AGREED UPON BY ANY FOUR MEMBERS OF THE COMMISSION.

S 4. Subparagraph (iii) of paragraph (a) of subdivision 7 of section 80 of the legislative law, as added by a chapter of the laws of 2010 amending the executive law and other laws relating to governmental ethics and compliance, as proposed in legislative bill numbers S.6457 and A.9544, is amended to read as follows:

(iii) The office shall establish procedures necessary to prevent the unauthorized disclosure of any information received by any member of the board or staff of the office. Any breaches of confidentiality shall be investigated by the GOVERNING board and appropriate action shall be taken BY THE JOINT LEGISLATIVE COMMISSION ON ETHICS STANDARDS IN ACCORDANCE WITH SUBDIVISION K OF SECTION EIGHTY-ONE OF THIS ARTICLE.

S 5. Subdivisions a, b and d of section 81 of the legislative law, as added by a chapter of the laws of 2010 amending the executive law and other laws relating to governmental ethics and compliance, as proposed

in legislative bill numbers S.6457 and A.9544, are amended to read as follows:

a. There is established a joint legislative commission on ethics standards which shall consist of eight members and which shall be responsible for training, education, and advice regarding sections seventy-three, seventy-three-a and seventy-four of the public officers law and review the enforcement of such sections. Four members shall be members of the legislature and shall be appointed as follows: one by the temporary president of the senate, one by the speaker of the assembly, one by the minority leader of the senate and one by the minority leader of the assembly. The remaining four members shall not be present or former members of the legislature and shall not be and shall not have been in the previous five years, candidates for member of the legislature, employees of the legislature, or persons who have been employees of the legislature, political party chairmen as defined in paragraph (k) of subdivision one of section seventy-three of the public officers law, or lobbyists required to register in New York state or any other jurisdiction. The four members who are not legislators shall be appointed as follows: one by the temporary president of the senate, one by the speaker of the assembly, one by the minority leader of the senate, and one by the minority leader of the assembly. The commission shall serve as described in this section and have and exercise the powers and duties set forth in this section only with respect to members of the legislature, legislative employees as defined in section seventy-three of the public officers law, candidates for member of the legislature and individuals who have formerly held such positions or who have formerly been such candidates EXCEPT AS PROVIDED IN PARAGRAPH THREE OF SUBDIVISION J OF THIS SECTION.

b. Members of the legislature who serve on the commission shall each have a two year term concurrent with their legislative terms of office. The members of the commission who are not members of the legislature and who are first appointed by the [temporary president of the senate,] speaker of the assembly, [minority leader of the senate,] and minority leader of the assembly shall serve [one,] two[, three and four] year terms[, respectively] AND THE MEMBERS OF THE COMMISSION WHO ARE NOT MEMBERS OF THE LEGISLATURE AND WHO ARE FIRST APPOINTED BY THE TEMPORARY PRESIDENT OF THE SENATE AND MINORITY LEADER OF THE SENATE SHALL SERVE THREE YEAR TERMS. Each member of the commission who is not a member of the legislature shall be appointed thereafter for a term of four years and may be removed by the appointing authority for substantial neglect of duty, misconduct in office, inability to discharge the powers or duties of the office or violations of this section after written notice and opportunity for a reply.

d. Any vacancy occurring on the commission shall be filled within sixty days by the appointing authority, PROVIDED, HOWEVER THAT THIS SUBDIVISION SHALL BE CONSTRUED TO ENSURE THAT EACH LEGISLATIVE CONFERENCE HAS ONE APPOINTEE TO THE COMMISSION WHO IS A MEMBER OF THE LEGISLATURE AND ONE APPOINTEE TO THE COMMISSION WHO IS NOT A MEMBER OF THE LEGISLATURE.

S 6. Subdivision 5 of section 107 of the civil service law, as amended by chapter 14 of the laws of 2007, is amended to read as follows:

5. Violation of this section. Complaints alleging a violation of this section by a statewide elected official or a state officer or employee, as defined in section seventy-three of the public officers law, may be directed to the [commission on public integrity] EXECUTIVE ETHICS AND COMPLIANCE COMMISSION.

S 7. Subdivision 3 of section 3-100 of the election law, as amended by a chapter of the laws of 2010 amending the executive law and other laws relating to governmental ethics and compliance, as proposed in legislative bill numbers S.6457 and A.9544, is amended to read as follows:

3. The commissioners of the state board of elections shall have no other public employment. The commissioners shall receive an annual salary of twenty-five thousand dollars, within the amounts made available therefor by appropriation. The board shall, for the purposes of sections seventy-three and seventy-four of the public officers law, be a "state agency", and such commissioners shall be "officers" of the state board of elections for the purposes of such sections. Within the amounts made available by appropriation therefor, the state board of elections shall appoint two co-executive directors, an enforcement counsel, [a special counsel,] a deputy enforcement counsel, who shall be a member of a different major political party than the enforcement counsel, A SPECIAL COUNSEL, a deputy special counsel, who shall be a member of a different major political party than the special counsel, A DIRECTOR OF ELECTION OPERATIONS, A DEPUTY DIRECTOR OF ELECTION OPERATIONS, WHO SHALL BE A MEMBER OF A DIFFERENT MAJOR POLITICAL PARTY THAN THE DIRECTOR OF ELECTION OPERATIONS, A DIRECTOR OF PUBLIC INFORMATION, A DEPUTY DIRECTOR OF PUBLIC INFORMATION, WHO SHALL BE A MEMBER OF A DIFFERENT MAJOR POLITICAL PARTY THAN THE DIRECTOR OF PUBLIC INFORMATION and such other staff members as are necessary in the exercise of its functions, and may fix their compensation. The commissioners or, in the case of a vacancy on the board, the commissioner, of each of the major political parties shall appoint one co-executive director. Each co-executive director shall serve a term of four years. The enforcement counsel and the special counsel shall each serve a term of four years and may only be removed for cause. Any time after the effective date of the chapter of the laws of two thousand ten which amended this subdivision, the commissioners[,] or, in the case of a vacancy on the board, the commissioner, of each of the same major political party as the incumbent enforcement [and special counsels shall appoint such counsel] COUNSEL, DEPUTY ENFORCEMENT COUNSEL, SPECIAL COUNSEL, DEPUTY SPECIAL COUNSEL, DIRECTOR OF ELECTION OPERATIONS, DEPUTY DIRECTOR OF ELECTION OPERATIONS, DIRECTOR OF PUBLIC INFORMATION AND DEPUTY DIRECTOR OF PUBLIC INFORMATION, SHALL APPOINT SUCH COUNSELS, DIRECTORS AND DEPUTIES. Any vacancy in the office of co-executive director, enforcement counsel [or], DEPUTY ENFORCEMENT COUNSEL, special counsel, DEPUTY SPECIAL COUNSEL, DIRECTOR OF ELECTION OPERATIONS, DEPUTY DIRECTOR OF ELECTION OPERATIONS, DIRECTOR OF PUBLIC INFORMATION AND DEPUTY DIRECTOR OF PUBLIC INFORMATION, shall be filled by the commissioners or, in the case of a vacancy on the board, the commissioner, of the same major political party as the vacating incumbent, for the remaining period of the term of such vacating incumbent.

S 8. Subdivisions 4, 5, 6, 7 and 9 of section 3-104 of the election law, as added by a chapter of the laws of 2010 amending the executive law and other laws relating to governmental ethics and compliance, as proposed in legislative bill numbers S.6457 and A.9544, are amended to read as follows:

4. Upon receipt of a complaint and supporting information OR AN INTERNAL REFERRAL FROM THE ENFORCEMENT UNIT alleging any other violation of article fourteen of this chapter, the enforcement counsel shall analyze the [complaint] FACTS AND THE LAW RELEVANT TO SUCH COMPLAINT OR REFERRAL to determine if an investigation should be undertaken. The

enforcement counsel shall, if necessary, request additional information from the complainant to assist such counsel in making this determination. Such analysis shall include the following: first, whether the allegations, if true, would constitute a violation of article fourteen of this chapter and, second, whether the allegations are supported by credible evidence.

5. If the enforcement counsel determines that the allegations CONTAINED IN A COMPLAINT, if true, would not constitute a violation of article fourteen of this chapter or that the allegations are not supported by credible evidence, he or she shall: (A) NOTIFY THE DEPUTY ENFORCEMENT COUNSEL OF SUCH DETERMINATION AND (B) PUBLICLY NOTIFY THE STATE BOARD OF ELECTIONS OF SUCH DETERMINATION. IF THE STATE BOARD OF ELECTIONS PUBLICLY DETERMINES, AS PROVIDED IN SUBDIVISION FOUR OF SECTION 3-100 OF THIS TITLE, THAT THE ALLEGATIONS, IF TRUE, WOULD CONSTITUTE A VIOLATION OF ARTICLE FOURTEEN OF THIS CHAPTER AND THAT THE ALLEGATIONS APPEAR TO BE SUPPORTED BY CREDIBLE EVIDENCE, IT SHALL DIRECT THAT THE ENFORCEMENT COUNSEL CONDUCT AN INVESTIGATION. LACKING SUCH A DETERMINATION, THE ENFORCEMENT COUNSEL SHALL issue a letter to the complainant dismissing the complaint.

6. If the enforcement counsel determines that the allegations, if true, would constitute a violation of article fourteen of this chapter and that the allegations appear to be supported by credible evidence, he or she shall: (A) notify the [state board of elections of (a)] DEPUTY ENFORCEMENT COUNSEL OF (I) his or her intent to resolve the matter extra-judicially due to the de minimus nature of the violation; or [(b)] (II) his or her intent to commence an investigation, AND (B) PUBLICLY NOTIFY THE STATE BOARD OF ELECTIONS OF SUCH INTENT no later than the board's next regularly scheduled meeting. Notification shall summarize the relevant facts and the applicable law and shall, to the extent possible, protect from public disclosure the identity of the complainant and the individual subject to the complaint. THE DEPUTY ENFORCEMENT COUNSEL SHALL HAVE THE OPPORTUNITY TO REVIEW THE ENTIRE FILE OF ANY PRELIMINARY INVESTIGATION CONDUCTED BY THE ENFORCEMENT COUNSEL A MINIMUM OF TEN DAYS PRIOR TO SAID REGULARLY SCHEDULED MEETING OF THE BOARD AND TO SUBMIT A PUBLIC, WRITTEN CONCURRENCE WITH OR DISSENT FROM THE ENFORCEMENT COUNSEL'S PROPOSAL.

7. If, upon considering the enforcement counsel's notice of intent to commence an investigation AND THE DEPUTY ENFORCEMENT COUNSEL'S RECOMMENDATION, the state board of elections believes that the allegations, if true, would not constitute a violation of article fourteen of this chapter, or the allegations are not supported by credible evidence or, that on balance, the equities favor a dismissal of the complaint, the board shall publicly direct that an investigation not be undertaken no later than sixty days after the receipt of notification from the enforcement counsel of his or her intent to commence an investigation. In determining whether the equities favor a dismissal of the complaint, the state board of elections shall consider the following factors: (a) whether the complaint alleges a de minimus violation of article fourteen of this chapter; (b) whether the subject of the complaint has made a good faith effort to correct the violation; and (c) whether the subject of the complaint has a history of similar violations. Determinations of the state board of elections to dismiss a complaint and not proceed with a formal investigation shall be voted upon as provided in subdivision four of section 3-100 of this title at an open meeting pursuant to article seven of the public officers law, and shall be made on a fair and equi-

table basis and without regard to the status of the subject of the complaint.

9. At the conclusion of its investigation, the enforcement counsel shall provide the DEPUTY ENFORCEMENT COUNSEL AND THE state board of elections with a written recommendation as to: (a) whether substantial reason exists to believe a violation of article fourteen of this chapter has occurred and, if so, the nature of the violation and any applicable penalty, as defined in section 14-126 of this chapter, based on the nature of the violation; (b) whether the matter should be resolved extra-judicially; (c) whether a special proceeding should be commenced in the supreme court to recover a civil penalty; and (d) whether a referral should be made to a district attorney pursuant to subdivision eleven of this section because reasonable cause exists to believe a violation warranting criminal prosecution has taken place. THE DEPUTY ENFORCEMENT COUNSEL SHALL HAVE THE OPPORTUNITY TO REVIEW THE ENTIRE FILE OF ANY INVESTIGATION CONDUCTED BY THE ENFORCEMENT COUNSEL A MINIMUM OF TEN DAYS PRIOR TO SAID REGULARLY SCHEDULED MEETING OF THE BOARD AND TO SUBMIT A PUBLIC, WRITTEN CONCURRENCE WITH OR DISSENT FROM THE ENFORCEMENT COUNSEL'S RECOMMENDATION.

S 9. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2010 amending the executive law and other laws relating to governmental ethics and compliance, as proposed in legislative bill numbers S.6457 and A.9544, takes effect.