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I N S E N A T E

April 23, 2010

Introduced by Sen. C. JOHNSON -- read twice and ordered printed, and
when printed to be committed to the Committee on Finance

AN ACT to amend the executive law, in relation to the investigation of
public corruption by the attorney-general

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

1 Section 1. The executive law is amended by adding a new article 5-A to
2 read as follows:

3 ARTICLE 5-A

4 INVESTIGATION OF PUBLIC CORRUPTION BY ATTORNEY-GENERAL

5 SECTION 80. DEFINITIONS.

6 81. INVESTIGATION BY ATTORNEY-GENERAL.

7 82. ACTION BY ATTORNEY-GENERAL.

8 83. EXAMINATION OF WITNESSES AND PRELIMINARY INJUNCTION.

9 84. PROCEDURE ON HEARING.

10 85. APPLICATION OF PROVISIONS OF CIVIL PRACTICE LAW AND RULES.

11 86. CRIMINAL PROSECUTION.

12 87. IMMUNITY.

13 88. APPOINTMENT OF DEPUTIES.

14 S 80. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING
15 TERMS SHALL HAVE THE FOLLOWING MEANINGS:

16 1. "PUBLIC OFFICIAL" SHALL HAVE THE SAME MEANING AS SET FORTH IN
17 SUBDIVISION (L) OF SECTION ONE-C OF THE LEGISLATIVE LAW; AND

18 2. "PUBLIC CORRUPTION" SHALL MEAN ANY ACT OF CORRUPTION, FRAUD OR
19 CRIMINAL ACTIVITY, OR ANY ACT CONSTITUTING A CONFLICT OF INTEREST MADE
20 BY A PUBLIC OFFICER.

21 S 81. INVESTIGATION BY ATTORNEY-GENERAL. 1. WHENEVER IT SHALL APPEAR
22 TO THE ATTORNEY-GENERAL, EITHER UPON COMPLAINT OR OTHERWISE, THAT A
23 PUBLIC OFFICIAL MAY BE ENGAGED IN CONDUCT CONSTITUTING PUBLIC CORRUPTION
24 OR HE OR SHE BELIEVES IT TO BE IN THE PUBLIC INTEREST THAT AN INVESTI-
25 GATION BE MADE, THE ATTORNEY-GENERAL MAY IN HIS OR HER DISCRETION EITHER
26 REQUIRE OR PERMIT SUCH PUBLIC OFFICIAL TO FILE WITH HIM A STATEMENT IN
27 WRITING UNDER OATH OR OTHERWISE AS TO ALL THE FACTS AND CIRCUMSTANCES
28 CONCERNING THE SUBJECT MATTER WHICH HE OR SHE BELIEVES IT IS TO THE

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

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1 PUBLIC INTEREST TO INVESTIGATE, AND FOR THAT PURPOSE MAY PRESCRIBE FORMS
2 UPON WHICH SUCH STATEMENTS SHALL BE MADE. THE ATTORNEY-GENERAL MAY ALSO
3 REQUIRE SUCH OTHER DATA AND INFORMATION AS HE OR SHE MAY DEEM RELEVANT
4 AND MAY MAKE SUCH SPECIAL AND INDEPENDENT INVESTIGATIONS AS HE OR SHE
5 MAY DEEM NECESSARY IN CONNECTION WITH THE MATTER.

6 2. THE ATTORNEY-GENERAL, HIS OR HER DEPUTY OR OTHER OFFICER DESIGNATED
7 BY HIM OR HER IS EMPOWERED TO SUBPOENA WITNESSES, COMPEL THEIR ATTEND-
8 ANCE, EXAMINE THEM UNDER OATH BEFORE HIM OR HER OR A MAGISTRATE, A COURT
9 OF RECORD OR A JUDGE OR JUSTICE THEREOF AND REQUIRE THE PRODUCTION OF
10 ANY BOOKS OR PAPERS WHICH HE OR SHE DEEMS RELEVANT OR MATERIAL TO THE
11 INQUIRY. SUCH POWER OF SUBPOENA AND EXAMINATION SHALL NOT ABATE OR
12 TERMINATE BY REASON OF ANY ACTION OR PROCEEDING BROUGHT BY THE ATTOR-
13 NEY-GENERAL UNDER THIS ARTICLE.

14 3. NO PERSON SHALL BE EXCUSED FROM ATTENDING SUCH INQUIRY IN PURSUANCE
15 TO THE MANDATES OF A SUBPOENA, OR FROM PRODUCING A PAPER OR BOOK, OR
16 FROM BEING EXAMINED OR REQUIRED TO ANSWER A QUESTION ON THE GROUND OF
17 FAILURE OF TENDER OR PAYMENT OF A WITNESS FEE AND/OR MILEAGE, UNLESS AT
18 THE TIME OF SUCH APPEARANCE OR PRODUCTION, AS THE CASE MAY BE, SUCH
19 WITNESS MAKES DEMAND FOR SUCH PAYMENT AS A CONDITION PRECEDENT TO THE
20 OFFERING OF TESTIMONY OR PRODUCTION REQUIRED BY THE SUBPOENA AND UNLESS
21 SUCH PAYMENT IS NOT THEREUPON MADE. THE PROVISIONS FOR PAYMENT OF
22 WITNESS FEE AND/OR MILEAGE DO NOT APPLY TO ANY PERSON IN THE EMPLOY OF
23 ANY PUBLIC OFFICIAL WHOSE CONDUCT OR PRACTICES IS BEING INVESTIGATED.

24 4. IF A PERSON SUBPOENAED TO ATTEND SUCH INQUIRY FAILS TO OBEY THE
25 COMMAND OF A SUBPOENA WITHOUT REASONABLE CAUSE, OR IF A PERSON IN
26 ATTENDANCE UPON SUCH INQUIRY SHALL WITHOUT REASONABLE CAUSE REFUSE TO BE
27 SWORN OR TO BE EXAMINED OR TO ANSWER A QUESTION OR TO PRODUCE A BOOK OR
28 PAPER WHEN ORDERED SO TO DO BY THE OFFICER CONDUCTING SUCH INQUIRY, OR
29 IF A PERSON, PARTNERSHIP, CORPORATION, COMPANY, TRUST OR ASSOCIATION
30 FAILS TO PERFORM ANY ACT REQUIRED HEREUNDER TO BE PERFORMED, HE OR SHE
31 SHALL BE GUILTY OF A MISDEMEANOR.

32 5. IT SHALL BE THE DUTY OF ALL PUBLIC OFFICERS, THEIR DEPUTIES,
33 ASSISTANTS, SUBORDINATES, CLERKS OR EMPLOYEES AND ALL OTHER PERSONS TO
34 RENDER AND FURNISH TO THE ATTORNEY-GENERAL, HIS OR HER DEPUTY OR OTHER
35 DESIGNATED OFFICER WHEN REQUESTED ALL INFORMATION AND ASSISTANCE IN
36 THEIR POSSESSION OR WITHIN THEIR POWER. ANY OFFICER PARTICIPATING IN
37 SUCH INQUIRY AND ANY PERSON EXAMINED AS A WITNESS UPON SUCH INQUIRY WHO
38 SHALL DISCLOSE TO ANY PERSON OTHER THAN THE ATTORNEY-GENERAL THE NAME OF
39 ANY WITNESS EXAMINED OR ANY OTHER INFORMATION OBTAINED UPON SUCH INQUIRY
40 EXCEPT AS DIRECTED BY THE ATTORNEY-GENERAL SHALL BE GUILTY OF A MISDE-
41 MEANOR.

42 S 82. ACTION BY ATTORNEY-GENERAL. 1. WHENEVER THE ATTORNEY-GENERAL
43 SHALL BELIEVE FROM EVIDENCE SATISFACTORY TO HIM OR HER THAT ANY PUBLIC
44 OFFICIAL HAS ENGAGED IN, IS ENGAGED OR IS ABOUT TO ENGAGE IN ANY OF THE
45 PRACTICES OR TRANSACTIONS REFERRED TO AS AND DECLARED TO CONSTITUTE
46 PUBLIC CORRUPTION, HE OR SHE MAY BRING AN ACTION IN THE NAME AND ON
47 BEHALF OF THE PEOPLE OF THE STATE OF NEW YORK AGAINST SUCH PUBLIC OFFI-
48 CIAL AND ANY OTHER PERSON OR PERSONS CONCERNED IN OR IN ANY WAY PARTIC-
49 IPATING IN OR ABOUT TO PARTICIPATE IN SUCH PUBLIC CORRUPTION, TO ENJOIN
50 SUCH PUBLIC OFFICIAL OR PERSON FROM CONTINUING SUCH PUBLIC CORRUPTION OR
51 ENGAGING THEREIN OR DOING ANY ACT OR ACTS IN FURTHERANCE THEREOF OR, IF
52 THE ATTORNEY-GENERAL SHOULD BELIEVE FROM SUCH EVIDENCE THAT SUCH PUBLIC
53 OFFICIAL OR PERSON ACTUALLY HAS OR IS ENGAGED IN ANY SUCH PUBLIC
54 CORRUPTION, HE OR SHE MAY INCLUDE IN SUCH ACTION AN APPLICATION TO
55 ENJOIN PERMANENTLY SUCH PUBLIC OFFICIAL OR PERSON WHO MAY HAVE BEEN OR
56 MAY BE CONCERNED WITH OR IN ANY WAY PARTICIPATING IN SUCH PUBLIC

1 CORRUPTION, FROM CONTINUING PARTICIPATION IN SUCH ACTIVITIES WHICH
2 CONSTITUTE SUCH PUBLIC CORRUPTION. IN SUCH ACTION AN ORDER OR A JUDGMENT
3 MAY BE ENTERED AWARDING THE RELIEF APPLIED FOR OR SO MUCH THEREOF AS THE
4 COURT MAY DEEM PROPER. UPON A SHOWING BY THE ATTORNEY-GENERAL IN HIS OR
5 HER APPLICATION FOR A PERMANENT INJUNCTION THAT THE DEFENDANT NAMED IN
6 THE ACTION HAS REFUSED TO BE SWORN OR TO BE EXAMINED OR TO ANSWER A
7 MATERIAL QUESTION OR TO PRODUCE A BOOK OR PAPER RELEVANT TO THE INQUIRY
8 WHEN DULY ORDERED SO TO DO BY THE OFFICER OR JUDGE DULY CONDUCTING AN
9 INQUIRY INTO THE SUBJECT MATTER FORMING THE BASIS OF THE APPLICATION FOR
10 SUCH INJUNCTION, SUCH REFUSAL SHALL BE PRIMA FACIE PROOF THAT SUCH
11 DEFENDANT IS OR HAS BEEN ENGAGED IN PUBLIC CORRUPTION AS SET FORTH IN
12 SUCH APPLICATION AND A PERMANENT INJUNCTION MAY ISSUE FROM THE SUPREME
13 COURT WITHOUT ANY FURTHER SHOWING BY THE ATTORNEY-GENERAL. IN SUCH AN
14 ACTION, THE COURT MAY AWARD TO THE PLAINTIFF A SUM NOT IN EXCESS OF TWO
15 THOUSAND DOLLARS AS AN ADDITIONAL ALLOWANCE.

16 2. UPON A SHOWING BY THE ATTORNEY-GENERAL IN AN APPLICATION FOR AN
17 INJUNCTION THAT ANY PUBLIC OFFICIAL ENGAGED IN PUBLIC CORRUPTION HAS
18 EVER BEEN CONVICTED BY A COURT OF COMPETENT JURISDICTION IN ANY STATE OR
19 COUNTRY OF ANY FELONY, OR OF ANY OTHER CRIMINAL OFFENSE BY ANY SUCH
20 COURT, WHETHER OR NOT CONSTITUTING A FELONY, INVOLVING PUBLIC
21 CORRUPTION, THE SUPREME COURT AFTER A HEARING MAY ISSUE A PERMANENT
22 INJUNCTION AWARDING THE RELIEF APPLIED FOR, OR SO MUCH THEREOF AS THE
23 COURT MAY DEEM PROPER, AGAINST SUCH PUBLIC OFFICIAL SHOWN TO HAVE BEEN
24 SO CONVICTED.

25 3. UPON A SHOWING BY THE ATTORNEY-GENERAL THAT PUBLIC CORRUPTION AS
26 DEFINED BY THIS ARTICLE HAS OCCURRED, HE OR SHE MAY INCLUDE IN AN ACTION
27 UNDER THIS ARTICLE AN APPLICATION TO DIRECT RESTITUTION OF ANY MONEYS OR
28 PROPERTY OBTAINED DIRECTLY OR INDIRECTLY BY ANY SUCH PUBLIC CORRUPTION.

29 S 83. EXAMINATION OF WITNESSES AND PRELIMINARY INJUNCTION. WHENEVER
30 THE ATTORNEY-GENERAL HAS DETERMINED TO COMMENCE AN ACTION UNDER THIS
31 ARTICLE, HE OR SHE MAY PRESENT TO ANY JUSTICE OF THE SUPREME COURT,
32 BEFORE BEGINNING SUCH ACTION, AN APPLICATION IN WRITING FOR AN ORDER
33 DIRECTING THE PERSON OR PERSONS MENTIONED IN THE APPLICATION TO APPEAR
34 BEFORE THE JUSTICE OF THE SUPREME COURT OR REFEREE DESIGNATED IN SUCH
35 ORDER AND ANSWER SUCH QUESTIONS AS MAY BE PUT TO THEM OR TO ANY OF THEM,
36 OR TO PRODUCE SUCH PAPERS, DOCUMENTS AND BOOKS CONCERNING THE ALLEGED
37 PUBLIC CORRUPTION TO WHICH THE ACTION WHICH HE OR SHE HAS DETERMINED TO
38 BRING RELATES, AND IT SHALL BE THE DUTY OF THE JUSTICE OF THE SUPREME
39 COURT TO WHOM SUCH APPLICATION FOR THE ORDER IS MADE TO GRANT SUCH
40 APPLICATION. THE APPLICATION FOR SUCH ORDER MADE BY THE ATTORNEY-GENERAL
41 MAY SIMPLY SHOW UPON HIS OR HER INFORMATION AND BELIEF THAT THE TESTIMO-
42 NY OF SUCH PERSON OR PERSONS IS MATERIAL AND NECESSARY. THE PROVISIONS
43 OF THE CIVIL PRACTICE LAW AND RULES, RELATING TO AN APPLICATION FOR AN
44 ORDER FOR THE EXAMINATION OF WITNESSES BEFORE THE COMMENCEMENT OF AN
45 ACTION AND THE METHOD OF PROCEEDING ON SUCH EXAMINATION, SHALL NOT APPLY
46 EXCEPT AS HEREIN PRESCRIBED. THE ORDER SHALL BE GRANTED BY THE JUSTICE
47 OF THE SUPREME COURT TO WHOM THE APPLICATION HAS BEEN MADE WITH SUCH
48 PRELIMINARY INJUNCTION OR STAY AS MAY APPEAR TO SUCH JUSTICE TO BE PROP-
49 ER AND EXPEDIENT AND SHALL SPECIFY THE TIME WHEN AND PLACE WHERE THE
50 WITNESSES ARE REQUIRED TO APPEAR. THE JUSTICE OR REFEREE MAY ADJOURN
51 SUCH EXAMINATION FROM TIME TO TIME AND WITNESSES MUST ATTEND ACCORDING-
52 LY. THE TESTIMONY OF EACH WITNESS MUST BE SUBSCRIBED BY HIM OR HER AND
53 ALL MUST BE FILED IN THE OFFICE OF THE CLERK OF THE COUNTY IN WHICH SUCH
54 ORDER FOR EXAMINATION IS FILED.

55 S 84. PROCEDURE ON HEARING. THE ORDER FOR SUCH EXAMINATION MUST BE
56 SIGNED BY THE JUSTICE MAKING IT AND SERVICE OF A COPY THEREOF WITH AN

1 ENDORSEMENT BY THE ATTORNEY-GENERAL SIGNED BY THE ATTORNEY-GENERAL OR
2 HIS OR HER DEPUTY, TO THE EFFECT THAT THE PERSON NAMED THEREIN IS
3 REQUIRED TO APPEAR AND BE EXAMINED AT THE TIME AND PLACE AND BEFORE THE
4 JUSTICE OR REFEREE SPECIFIED IN SUCH ENDORSEMENT, SHALL BE SUFFICIENT
5 NOTICE FOR THE ATTENDANCE OF WITNESSES. SUCH ENDORSEMENT MAY CONTAIN A
6 CLAUSE REQUIRING SUCH PERSON TO PRODUCE AT SUCH EXAMINATION ALL BOOKS,
7 PAPERS AND DOCUMENTS IN HIS OR HER POSSESSION OR UNDER HIS OR HER
8 CONTROL RELATING TO THE SUBJECT OF SUCH EXAMINATION. THE ORDER SHALL BE
9 SERVED UPON THE PERSON NAMED IN THE ENDORSEMENT BY DELIVERING TO AND
10 LEAVING WITH HIM OR HER A CERTIFIED COPY THEREOF, ENDORSED AS PROVIDED
11 IN THIS SECTION, SUBJECT TO THE PAYMENT OF WITNESS FEES AND MILEAGE AS
12 AND WHEN PROVIDED TO BE PAID BY SUBDIVISION THREE OF SECTION EIGHTY-TWO
13 OF THIS ARTICLE IN CONNECTION WITH ATTENDANCE PURSUANT TO SUBPOENAS
14 AUTHORIZED TO BE ISSUED UNDER SUCH ACTION.

15 S 85. APPLICATION OF PROVISIONS OF CIVIL PRACTICE LAW AND RULES. THE
16 PROVISIONS OF THE CIVIL PRACTICE LAW AND RULES SHALL APPLY TO ALL
17 ACTIONS BROUGHT UNDER THIS ARTICLE EXCEPT AS HEREIN OTHERWISE PROVIDED.

18 S 86. CRIMINAL PROSECUTION. THE ATTORNEY-GENERAL MAY PROSECUTE EVERY
19 PERSON CHARGED WITH THE COMMISSION OF A CRIMINAL OFFENSE IN VIOLATION OF
20 THE LAWS OF THIS STATE, APPLICABLE TO OR IN RESPECT OF THE PRACTICES OR
21 TRANSACTIONS WHICH IN THIS ARTICLE ARE REFERRED TO AS PUBLIC CORRUPTION.
22 IN ALL SUCH PROCEEDINGS, THE ATTORNEY-GENERAL MAY APPEAR IN PERSON OR BY
23 HIS OR HER DEPUTY BEFORE ANY COURT OF RECORD OR ANY GRAND JURY AND EXER-
24 CISE ALL THE POWERS AND PERFORM ALL THE DUTIES IN RESPECT OF SUCH
25 ACTIONS OR PROCEEDINGS WHICH THE DISTRICT ATTORNEY WOULD OTHERWISE BE
26 AUTHORIZED OR REQUIRED TO EXERCISE OR PERFORM; OR THE ATTORNEY-GENERAL
27 MAY IN HIS OR HER DISCRETION TRANSMIT EVIDENCE, PROOF AND INFORMATION AS
28 TO SUCH OFFENSE TO THE DISTRICT ATTORNEY OF THE COUNTY OR COUNTIES IN
29 WHICH THE ALLEGED VIOLATION HAS OCCURRED, AND EVERY DISTRICT ATTORNEY TO
30 WHOM SUCH EVIDENCE, PROOF AND INFORMATION IS SO TRANSMITTED SHALL FORTH-
31 WITH PROCEED TO PROSECUTE ANY PUBLIC OFFICIAL CHARGED WITH SUCH
32 VIOLATION. IN ANY SUCH PROCEEDING, WHEREIN THE ATTORNEY-GENERAL HAS
33 APPEARED EITHER IN PERSON OR BY DEPUTY, THE DISTRICT ATTORNEY SHALL ONLY
34 EXERCISE SUCH POWERS AND PERFORM SUCH DUTIES AS ARE REQUIRED OF HIM OR
35 HER BY THE ATTORNEY-GENERAL OR THE DEPUTY ATTORNEY-GENERAL SO APPEARING.

36 S 87. IMMUNITY. UPON ANY INVESTIGATION BEFORE THE ATTORNEY-GENERAL OR
37 HIS OR HER DEPUTY OR OTHER OFFICER DESIGNATED BY HIM OR HER, OR IN ANY
38 CRIMINAL PROCEEDING BEFORE ANY COURT OR GRAND JURY, PURSUANT TO OR FOR A
39 VIOLATION OF ANY OF THE PROVISIONS OF THIS ARTICLE, THE ATTORNEY-GENER-
40 AL, HIS OR HER DEPUTY OR OTHER OFFICER DESIGNATED BY HIM OR HER, OR THE
41 COURT OR GRAND JURY, MAY CONFER IMMUNITY IN ACCORDANCE WITH THE
42 PROVISIONS OF SECTION 50.20 OR 190.40 OF THE CRIMINAL PROCEDURE LAW.

43 S 88. APPOINTMENT OF DEPUTIES. FOR THE PURPOSES OF THIS ARTICLE, THE
44 ATTORNEY-GENERAL MAY IN HIS OR HER DISCRETION, AND WITHOUT CIVIL SERVICE
45 EXAMINATION, APPOINT AND EMPLOY, AND AT PLEASURE REMOVE, SUCH DEPUTIES,
46 OFFICERS AND OTHER PERSONS AS HE OR SHE DEEMS NECESSARY, AND DETERMINE
47 THEIR DUTIES AND FIX THEIR COMPENSATION.

48 S 2. This act shall take effect immediately.