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

8728

2009-2010 Regular Sessions

I N A S S E M B L Y

June 4, 2009

Introduced by M. of A. KAVANAGH -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, the public officers law, the civil service law, the legislative law and the election law, in relation to financial disclosure by public officers; and to repeal certain provisions of the public officers law relating thereto

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

Section 1. Paragraph (f) of subdivision 9 of section 94 of the executive law, as amended by chapter 14 of the laws of 2007, is amended to read as follows:

(f) Review financial disclosure statements in accordance with the provisions of this section AND SHALL 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, provided however, that the commission may delegate all or part of this review function to the executive director who shall be responsible for completing staff review of such statements in a manner consistent with the terms of the commission's delegation;

(I) THE COMMISSION SHALL RANDOMLY SELECT FINANCIAL DISCLOSURE FORMS REQUIRED TO BE FILED BY PUBLIC OFFICERS PURSUANT TO THIS ARTICLE FOR AUDIT. ANY SUCH SELECTION SHALL BE DONE IN A MANNER PURSUANT TO WHICH THE IDENTITY OF ANY PARTICULAR PUBLIC OFFICIAL WHOSE DISCLOSURE FORM IS SELECTED FOR AUDIT IS UNKNOWN TO THE COMMISSION, ITS STAFF OR ANY OF THEIR AGENTS PRIOR TO SELECTION.

(II) THE COMMISSION SHALL DEVELOP PROTOCOLS FOR THE CONDUCT OF SUCH RANDOM AUDITS. SUCH RANDOM AUDITS MAY REQUIRE THE PRODUCTION OF RECORDS RELEVANT AND MATERIAL TO THE PREPARATION OF THE FINANCIAL DISCLOSURE FORMS FOR EXAMINATION BY THE COMMISSION. ANY SUCH PROTOCOLS SHALL ENSURE THAT DISCLOSURE FORMS ARE AUDITED IN A UNIFORM MANNER.

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

LBD11571-06-9

(III) 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 SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH AND CERTIFIES THAT SUCH PROCESS COMPLIES WITH THE PROVISIONS OF SUCH SUBPARAGRAPHS.

(IV) UPON COMPLETION OF A RANDOM AUDIT CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF SUBPARAGRAPHS (I), (II) AND (III) OF THIS PARAGRAPH, 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 RECORDS, 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.

(V) IN THE EVENT THAT THE COMMISSION FAILS TO CONDUCT RANDOM AUDITS AS REQUIRED BY THIS SUBDIVISION, EACH MEMBER OF THE COMMISSION SHALL BE ASSESSED A CIVIL PENALTY OF FIVE HUNDRED DOLLARS;

S 2. Subdivision 11 of section 94 of the executive law, as amended by chapter 14 of the laws of 2007, is amended to read as follows:

11. If a person required to file a financial disclosure statement with the commission has failed to file a disclosure statement or has filed a deficient statement, the commission shall notify the reporting person in writing, state the failure to file or detail the deficiency, provide the person with a fifteen day period to cure the deficiency, and advise the person of the penalties for failure to comply with the reporting requirements. Such notice shall be confidential. If the person fails to make such filing or fails to cure the deficiency within the specified time period, the commission shall send a notice of delinquency: (a) to the reporting person; (b) in the case of a statewide elected official, to the temporary president of the senate [and], the speaker of the assembly AND THE GOVERNOR; [and] (c) in the case of a state officer or employee, to the appointing authority for such person; AND (D) IN THE CASE OF A LEGISLATOR OR LEGISLATIVE EMPLOYEE, TO THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY AND THE GOVERNOR. Such notice of delinquency may be sent at any time during the reporting person's service as a [statewide] STATE elected official, state officer or employee, political party chair or while a candidate for [statewide] STATE office, or within one year after termination of such service or candidacy. The jurisdiction of the commission, when acting pursuant to subdivision thirteen of this section with respect to financial disclosure, shall continue notwithstanding that the reporting person separates from state service, or ceases to hold office as a [statewide] STATE elected official or political party chair, or ceases to be a candidate, provided the commission notifies such person of the alleged failure to file or deficient filing pursuant to this subdivision. FAILURE TO RESPOND TO THIS SECOND NOTICE OF DEFICIENCY SHALL REQUIRE THE COMMISSION TO MAKE PUBLIC ITS FILE IN THIS MATTER WITHIN SIXTY DAYS OF THE DATE OF THE SECOND NOTICE AND SHALL BE DEEMED A KNOWING AND WILLFUL FAILURE TO DISCLOSE FOR WHICH A CIVIL PENALTY MUST BE ASSESSED IN ADDITION TO OTHER REMEDY.

S 3. Paragraphs (f) and (g) of subdivision 2 of section 73-a of the public officers law are REPEALED.

S 4. The third undesignated paragraph of paragraph 3 of subdivision 3 of section 73-a of the public officers law, as added by chapter 813 of the laws of 1987, is amended to read as follows:

Whenever a "value" or "amount" is required to be reported herein, such value or amount shall be reported as being within one of the following Categories: Category A - under $5,000; Category B - $5,000 to under $20,000; Category C - $20,000 to under $60,000; Category D - $60,000 to under $100,000; Category E - $100,000 to under $250,000; [and] Category F - $250,000 TO UNDER $1 MILLION; AND CATEGORY G - $1 MILLION or over. A reporting individual shall indicate the Category by letter only.

S 5. Subparagraph (a) of paragraph 5 of subdivision 3 of section 73-a of the public officers law, as amended by chapter 242 of the laws of 1989, is amended to read as follows:

(a) List the name, address and description of any occupation, employment (other than the employment listed under Item 2 above), trade, business or profession engaged in by the reporting individual. If such activity was licensed by any state or local agency, was regulated by any state regulatory agency or local agency, or, as a regular and significant part of the business or activity of said entity, did business with, or had matters other than ministerial matters before, any state or local agency, list the name of any such agency. IN ADDITION, LIST THE NAME AND ADDRESS OF EACH GOVERNMENTAL AGENCY, CORPORATION, PARTNERSHIP, JOINT VENTURE, SOLE PROPRIETORSHIP, ASSOCIATION, UNION, OR OTHER BUSINESS OR COMMERCIAL ENTITY FROM WHOM COMPENSATION HAS BEEN RECEIVED FOR ANY VALUE OF FIVE HUNDRED DOLLARS OR MORE; THE VALUE OF THE COMPENSATION; AND THE CONSIDERATION GIVEN OR PERFORMED IN EXCHANGE FOR THE COMPENSATION.

Position	Name & Address of Organization	Description	State or Local Agency

S 6. Subparagraph (a) of paragraph 8 of subdivision 3 of section 73-a of the public officers law, as added by chapter 813 of the laws of 1987, is amended to read as follows:

(a) If the reporting individual practices law, is licensed by the department of state as a real estate broker or agent or practices a profession licensed by the department of education, OR WORKS AS A MEMBER OR EMPLOYEE OF A FIRM REQUIRED TO REGISTER WITH THE COMMISSION AS REQUIRED UNDER SECTION ONE-E OF THE LEGISLATIVE LAW, give a general description of the principal subject areas of matters undertaken by such individual. Additionally, if such an individual practices with a firm or corporation and is a partner or shareholder of the firm or corporation, give a general description of principal subject areas of matters undertaken by such firm or corporation. Do not list the name of the individual clients, customers or patients PROVIDED, HOWEVER THAT THE REPORTING INDIVIDUAL MUST LIST THE NAME AND ADDRESS OF EACH GOVERNMENTAL AGENCY, CORPORATION, PARTNERSHIP, JOINT VENTURE, SOLE PROPRIETORSHIP, ASSOCIATION, UNION, OR OTHER BUSINESS OR COMMERCIAL ENTITY FROM WHOM COMPENSATION HAS BEEN RECEIVED FOR ANY VALUE OF FIVE HUNDRED DOLLARS OR MORE; THE VALUE OF THE COMPENSATION; AND THE CONSIDERATION GIVEN OR PERFORMED IN EXCHANGE FOR THE COMPENSATION.

S 7. Subdivision 4 of section 73-a of the public officers law, as amended by chapter 242 of the laws of 1989, is amended to read as follows:

4. A reporting individual who knowingly and [wilfully] WILLFULLY fails to file an annual statement of financial disclosure or who knowingly and [wilfully] WILLFULLY 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 this section shall be subject to a civil penalty in an amount not to BE LESS THAN FIVE HUNDRED DOLLARS AND NOT TO exceed ten thousand dollars. Assessment of a civil penalty hereunder shall be made by the [state ethics] commission ON PUBLIC INTEGRITY, or by the legislative ethics [committee] COMMISSION, as the case may be, with respect to persons subject to their respective jurisdictions. The [state ethics] commission ON PUBLIC INTEGRITY acting pursuant to subdivision thirteen of section ninety-four of the executive law, or the legislative ethics [committee] COMMISSION acting pursuant to subdivision twelve of section eighty of the legislative law, as the case may be, 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 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, except that the appointing authority may impose disciplinary action as otherwise provided by law.] The [state ethics] commission ON PUBLIC INTEGRITY, and the legislative ethics [committee] COMMISSION shall each 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 relating to the assessment of the civil penalties herein authorized. 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 such article three but such mechanisms need not be identical in terms or scope. Assessment of a civil penalty shall be final unless modified, suspended or vacated within thirty days of imposition and upon becoming final shall be subject to review at the instance of the affected reporting individual in a proceeding commenced against the [state ethics] commission ON PUBLIC INTEGRITY or legislative ethics [committee] COMMISSION, pursuant to article seventy-eight of the civil practice law and rules.

S 8. The public officers law is amended by adding a new section 74-b to read as follows:

S 74-B. REPORTS OF BUSINESS DEALINGS WITH LOBBYISTS. 1. ANY PUBLIC OFFICER WHO RETAINS, EMPLOYS, DESIGNATES OR OTHERWISE DOES BUSINESS WITH A LOBBYIST OR LOBBYISTS SHALL, WITHIN THIRTY DAYS OF THE DATE UPON WHICH SUCH BUSINESS DEALINGS COMMENCE, FILE WITH THE COMMISSION ON PUBLIC INTEGRITY CREATED BY SECTION NINETY-FOUR OF THE EXECUTIVE LAW, A REPORT OF SUCH BUSINESS DEALINGS.

2. SUCH REPORT SHALL BE FILED WITH THE COMMISSION ON PUBLIC INTEGRITY, ON FORMS SUPPLIED BY SUCH COMMISSION AND SHALL CONTAIN:

(A) THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE PUBLIC OFFICER;

(B) THE NAME, ADDRESS AND TELEPHONE NUMBER OF EACH LOBBYIST RETAINED, EMPLOYED OR DESIGNATED BY SUCH PUBLIC OFFICER OR WITH WHOM SUCH PUBLIC OFFICER DID BUSINESS;

(C) A DESCRIPTION OF THE GENERAL SUBJECT OR SUBJECTS OF THE TRANSACTIONS BETWEEN THE PUBLIC OFFICER AND THE LOBBYIST OR LOBBYISTS;

(D) THE COMPENSATION, INCLUDING EXPENSES, TO BE PAID BY VIRTUE OF THE BUSINESS DEALINGS.

3. (A) ALL SUCH REPORTS SHALL BE SUBJECT TO REVIEW BY THE COMMISSION ON PUBLIC INTEGRITY.

(B) SUCH REPORTS SHALL BE KEPT ON FILE FOR A PERIOD OF THREE YEARS AND SHALL BE OPEN TO PUBLIC INSPECTION DURING SUCH PERIOD.

(C) EACH REPORT FILED BY A PUBLIC OFFICER PURSUANT TO THIS SECTION SHALL BE ACCOMPANIED BY A FILING FEE OF FIFTY DOLLARS. IN ADDITION TO THE FILING FEES AUTHORIZED BY THIS ARTICLE, THE COMMISSION ON PUBLIC INTEGRITY MAY IMPOSE A FEE FOR LATE FILING OF A REPORT REQUIRED BY THIS SECTION NOT TO EXCEED TWENTY-FIVE DOLLARS FOR EACH DAY THAT THE REPORT REQUIRED TO BE FILED IS LATE, EXCEPT THAT IF THE PUBLIC OFFICER MAKING A LATE FILING HAS NOT PREVIOUSLY BEEN REQUIRED BY STATUTE TO FILE A REPORT, THE FEE FOR LATE FILING SHALL NOT EXCEED TEN DOLLARS FOR EACH DAY THAT THE REPORT REQUIRED TO BE FILED IS LATE.

S 9. 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] STATE 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.

S 10. Section 60 of the legislative law, as amended by chapter 416 of the laws of 1954, is amended to read as follows:

S 60. Testimony before legislative committees. 1. A legislative committee may require the attendance of witnesses in this state whom the committee may wish to examine, or may issue a commission for the examination of witnesses who are out of the state or unable to attend the committee or excused from attendance, which commission if directed by the house or legislature by which the committee is appointed may be executed during the recess of the legislature. A commission issued as provided by this section shall be in the form used in the courts of record of this state and shall be executed in like manner. Unless otherwise instructed by the committee appointing them the commissioners shall examine privately every witness attending before them and shall not make public the particulars of such examination. No committee of either house or a joint committee of both houses shall have the power to take testimony at a private hearing or at a public hearing unless at least two of its members are present at such hearing.

2. THE LEGISLATIVE COMMITTEES RESPONSIBLE FOR OVERSIGHT OF THE COMMISSION ON PUBLIC INTEGRITY CREATED PURSUANT TO SECTION NINETY-FOUR OF THE EXECUTIVE LAW SHALL HOLD HEARINGS REGARDING THE ANNUAL REPORT AND RECOMMENDATIONS OF SUCH COMMISSION WITHIN THIRTY DAYS OF THE PUBLIC RELEASE OF SUCH COMMISSION'S ANNUAL REPORT.

S 11. Paragraph h of subdivision 7 of section 80 of the legislative law, as amended by chapter 14 of the laws of 2007, is amended to read as follows:

h. Review financial disclosure statements in accordance with the provisions of this section, AND SHALL 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, provided however, that the commission may delegate all or part of the review function relating to financial disclosure statements filed by legislative employees pursuant to sections seventy-three and seventy-three-a of the public officers law to the executive director who shall be responsible for completing staff review of such statements in a manner consistent with the terms of the commission's delegation;

(I) THE COMMISSION SHALL RANDOMLY SELECT FINANCIAL DISCLOSURE FORMS REQUIRED TO BE FILED BY PUBLIC OFFICERS PURSUANT TO THIS ARTICLE FOR AUDIT. ANY SUCH SELECTION SHALL BE DONE IN A MANNER PURSUANT TO WHICH THE IDENTITY OF ANY PARTICULAR PUBLIC OFFICIAL WHOSE DISCLOSURE FORM IS SELECTED FOR AUDIT IS UNKNOWN TO THE COMMISSION, ITS STAFF OR ANY OF THEIR AGENTS PRIOR TO SELECTION.

(II) THE COMMISSION SHALL DEVELOP PROTOCOLS FOR THE CONDUCT OF SUCH RANDOM AUDITS. SUCH RANDOM AUDITS MAY REQUIRE THE PRODUCTION OF RECORDS RELEVANT AND MATERIAL TO THE PREPARATION OF THE FINANCIAL DISCLOSURE FORMS FOR EXAMINATION BY THE COMMISSION. ANY SUCH PROTOCOLS SHALL ENSURE THAT DISCLOSURE FORMS ARE AUDITED IN A UNIFORM MANNER.

(III) 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 SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH AND CERTIFIES THAT SUCH PROCESS COMPLIES WITH THE PROVISIONS OF SUCH SUBPARAGRAPHS.

(IV) UPON COMPLETION OF A RANDOM AUDIT CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF SUBPARAGRAPHS (I), (II) AND (III) OF THIS PARAGRAPH, 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 RECORDS, 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.

(V) IN THE EVENT THAT THE COMMISSION FAILS TO CONDUCT RANDOM AUDITS AS REQUIRED BY THIS SUBDIVISION, EACH MEMBER OF THE COMMISSION SHALL BE ASSESSED A CIVIL PENALTY OF FIVE HUNDRED DOLLARS;

S 12. Paragraph i of subdivision 7 of section 80 of the legislative law, as amended by chapter 14 of the laws of 2007, is amended to read as follows:

i. Permit any person required to file a financial disclosure statement to request the commission to delete from the copy thereof made available for public inspection and copying one or more items of information, which may be deleted by the commission upon a finding that the information which would otherwise be required to be disclosed will RESULT IN ECONOMIC OR PERSONAL HARDSHIP TO THE REPORTING PERSON AND WILL have no material bearing on the discharge of the reporting person's official duties;

S 13. Subdivision 1 of section 14-126 of the election law, as amended by chapter 128 of the laws of 1994, is amended to read as follows:

1. Any person who fails to file a statement required to be filed by this article shall be subject to a civil penalty, not [in excess of] LESS THAN five hundred dollars AND NOT TO EXCEED TEN THOUSAND DOLLARS, to be recoverable in a special proceeding or civil action to be brought by the state board of elections or other board of elections.

S 14. The provisions of this act shall apply to the commission on public integrity, the legislative ethics commission and to the state board of elections and to any successor body to any of such entities.

S 15. Separability clause. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

S 16. This act shall take effect January 1, 2010.