

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:

1 Section 1. Subdivision 1 and paragraph (c) of subdivision 16-b of
2 section 94 of the executive law, subdivision 1 as amended and paragraph
3 (c) of subdivision 16-b as added by a chapter of the laws of 2010 amend-
4 ing the executive law and other laws relating to governmental ethics and
5 compliance, as proposed in legislative bill numbers S.6457 and A.9544,
6 are amended to read as follows:
7 1. There is established within the department of state an executive
8 ethics and compliance commission which shall consist of six members and
9 shall have and exercise the powers and duties set forth in this section
10 only with respect to statewide elected officials, state officers and
11 employees, as defined in sections seventy-three and seventy-three-a of
12 the public officers law, candidates for statewide elected office, a
13 political party chairman as defined in paragraph (k) of subdivision one
14 of section seventy-three of the public officers law, [,] and individuals
15 who have formerly held such positions, or who have formerly been such
16 candidates EXCEPT AS PROVIDED IN PARAGRAPH (C) OF SUBDIVISION TWELVE OF
17 THIS SECTION. This section shall not revoke or rescind any regulations
18 or advisory opinions issued by the state ethics commission, the tempo-
19 rary lobbying commission and the commission on public integrity in
20 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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1 sand ten which amended this section to the extent that such regulations
2 or opinions are not inconsistent with any law of the state of New York,
3 but such regulations and opinions shall apply only to matters over which
4 such commissions had jurisdiction at the time such regulations and opin-
5 ions were promulgated or issued. The commission shall undertake a
6 comprehensive review of all such regulations and opinions, which will
7 address the consistency of such regulations and opinions among each
8 other and with the statutory language. The commission shall, before
9 April first, two thousand eleven, report to the governor and legislature
10 regarding such review and shall propose any regulatory changes and issue
11 any advisory opinions necessitated by such review.

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

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

22 (h) Structure of the commission:

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

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

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

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

35 (3) conduct a program of random audits subject to the terms and condi-
36 tions of this section. Any such program shall be carried out in the
37 following manner:

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

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

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

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

1 shall determine whether there is reasonable cause to believe that any
2 such statement or report is inaccurate or incomplete. Upon a determi-
3 nation that such reasonable cause exists, the commission may require the
4 production of further books, records or memoranda, subpoena witnesses,
5 compel their attendance and testimony and administer oaths or affirma-
6 tions, to the extent the commission determines such actions are neces-
7 sary to obtain information relevant and material to investigating such
8 inaccuracies or omissions;

9 [(3)] (4) conduct hearings pursuant to article seven of the public
10 officers law. Any hearing may be conducted as a video conference in
11 accordance with the provisions of subdivision four of section one
12 hundred four of the public officers law;

13 [(4)] (5) prepare uniform forms for the statements and reports
14 required by this article;

15 [(5)] (6) meet at least once during each bi-monthly reporting period
16 of the year as established by subdivision (a) of section one-h of this
17 article and may meet at such other times as the commission, or the chair
18 and vice-chair jointly, shall determine;

19 [(6)] (7) issue advisory opinions to those under its jurisdiction.
20 Such advisory opinions, which shall be published and made available to
21 the public, shall not be binding upon such commission except with
22 respect to the person to whom such opinion is rendered, provided, howev-
23 er, that a subsequent modification by such commission of such an advi-
24 sory opinion shall operate prospectively only; and

25 [(7)] (8) submit by the first day of March next following the year for
26 which such report is made to the governor and the members of the legis-
27 lature an annual report summarizing the commission's work, listing the
28 lobbyists and clients required to register pursuant to this article and
29 the expenses and compensation reported pursuant to this article and
30 making recommendations with respect to this article. The commission
31 shall make this report available free of charge to the public.

32 S 3. Clause (D) of subparagraph (iii) of paragraph (b) of subdivision
33 4 of section 80 of the legislative law, as added by a chapter of the
34 laws of 2010 amending the executive law and other laws relating to
35 governmental ethics and compliance, as proposed in legislative bill
36 numbers S.6457 and A.9544, is amended to read as follows:

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

43 S 4. Subparagraph (iii) of paragraph (a) of subdivision 7 of section
44 80 of the legislative law, as added by a chapter of the laws of 2010
45 amending the executive law and other laws relating to governmental
46 ethics and compliance, as proposed in legislative bill numbers S.6457
47 and A.9544, is amended to read as follows:

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

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

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

3 a. There is established a joint legislative commission on ethics
4 standards which shall consist of eight members and which shall be
5 responsible for training, education, and advice regarding sections
6 seventy-three, seventy-three-a and seventy-four of the public officers
7 law and review the enforcement of such sections. Four members shall be
8 members of the legislature and shall be appointed as follows: one by the
9 temporary president of the senate, one by the speaker of the assembly,
10 one by the minority leader of the senate and one by the minority leader
11 of the assembly. The remaining four members shall not be present or
12 former members of the legislature and shall not be and shall not have
13 been in the previous five years, candidates for member of the legisla-
14 ture, employees of the legislature, or persons who have been employees
15 of the legislature, political party chairmen as defined in paragraph (k)
16 of subdivision one of section seventy-three of the public officers law,
17 or lobbyists required to register in New York state or any other juris-
18 diction. The four members who are not legislators shall be appointed as
19 follows: one by the temporary president of the senate, one by the speak-
20 er of the assembly, one by the minority leader of the senate, and one by
21 the minority leader of the assembly. The commission shall serve as
22 described in this section and have and exercise the powers and duties
23 set forth in this section only with respect to members of the legisla-
24 ture, legislative employees as defined in section seventy-three of the
25 public officers law, candidates for member of the legislature and indi-
26 viduals who have formerly held such positions or who have formerly been
27 such candidates EXCEPT AS PROVIDED IN PARAGRAPH THREE OF SUBDIVISION J
28 OF THIS SECTION.

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

44 d. Any vacancy occurring on the commission shall be filled within
45 sixty days by the appointing authority, PROVIDED, HOWEVER THAT THIS
46 SUBDIVISION SHALL BE CONSTRUED TO ENSURE THAT EACH LEGISLATIVE CONFER-
47 ENCE HAS ONE APPOINTEE TO THE COMMISSION WHO IS A MEMBER OF THE LEGISLA-
48 TURE AND ONE APPOINTEE TO THE COMMISSION WHO IS NOT A MEMBER OF THE
49 LEGISLATURE.

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

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

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

6 3. The commissioners of the state board of elections shall have no
7 other public employment. The commissioners shall receive an annual sala-
8 ry of twenty-five thousand dollars, within the amounts made available
9 therefor by appropriation. The board shall, for the purposes of sections
10 seventy-three and seventy-four of the public officers law, be a "state
11 agency", and such commissioners shall be "officers" of the state board
12 of elections for the purposes of such sections. Within the amounts made
13 available by appropriation therefor, the state board of elections shall
14 appoint two co-executive directors, an enforcement counsel, [a special
15 counsel,] a deputy enforcement counsel, who shall be a member of a
16 different major political party than the enforcement counsel, A SPECIAL
17 COUNSEL, a deputy special counsel, who shall be a member of a different
18 major political party than the special counsel, A DIRECTOR OF ELECTION
19 OPERATIONS, A DEPUTY DIRECTOR OF ELECTION OPERATIONS, WHO SHALL BE A
20 MEMBER OF A DIFFERENT MAJOR POLITICAL PARTY THAN THE DIRECTOR OF
21 ELECTION OPERATIONS, A DIRECTOR OF PUBLIC INFORMATION, A DEPUTY DIRECTOR
22 OF PUBLIC INFORMATION, WHO SHALL BE A MEMBER OF A DIFFERENT MAJOR POLI-
23 TICAL PARTY THAN THE DIRECTOR OF PUBLIC INFORMATION and such other staff
24 members as are necessary in the exercise of its functions, and may fix
25 their compensation. The commissioners or, in the case of a vacancy on
26 the board, the commissioner, of each of the major political parties
27 shall appoint one co-executive director. Each co-executive director
28 shall serve a term of four years. The enforcement counsel and the
29 special counsel shall each serve a term of four years and may only be
30 removed for cause. Any time after the effective date of the chapter of
31 the laws of two thousand ten which amended this subdivision, the commis-
32 sioners[,] or, in the case of a vacancy on the board, the commissioner,
33 of each of the same major political party as the incumbent enforcement
34 [and special counsels shall appoint such counsel] COUNSEL, DEPUTY
35 ENFORCEMENT COUNSEL, SPECIAL COUNSEL, DEPUTY SPECIAL COUNSEL, DIRECTOR
36 OF ELECTION OPERATIONS, DEPUTY DIRECTOR OF ELECTION OPERATIONS, DIRECTOR
37 OF PUBLIC INFORMATION AND DEPUTY DIRECTOR OF PUBLIC INFORMATION, SHALL
38 APPOINT SUCH COUNSELS, DIRECTORS AND DEPUTIES. Any vacancy in the
39 office of co-executive director, enforcement counsel [or], DEPUTY
40 ENFORCEMENT COUNSEL, special counsel, DEPUTY SPECIAL COUNSEL, DIRECTOR
41 OF ELECTION OPERATIONS, DEPUTY DIRECTOR OF ELECTION OPERATIONS, DIREC-
42 TOR OF PUBLIC INFORMATION AND DEPUTY DIRECTOR OF PUBLIC INFORMATION,
43 shall be filled by the commissioners or, in the case of a vacancy on the
44 board, the commissioner, of the same major political party as the vacat-
45 ing incumbent, for the remaining period of the term of such vacating
46 incumbent.

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

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

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

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

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

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

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

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

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