

5905

2011-2012 Regular Sessions

I N A S S E M B L Y

March 2, 2011

Introduced by M. of A. KAVANAGH, GALEF, STEVENSON -- Multi-Sponsored by
-- M. of A. GOODELL -- 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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph (f) of subdivision 9 of section 94 of the execu-
2 tive law, as amended by chapter 14 of the laws of 2007, is amended to
3 read as follows:
4 (f) Review financial disclosure statements in accordance with the
5 provisions of this section AND SHALL CONDUCT A PROGRAM OF RANDOM AUDITS
6 SUBJECT TO THE TERMS AND CONDITIONS OF THIS SECTION. ANY SUCH PROGRAM
7 SHALL BE CARRIED OUT IN THE FOLLOWING MANNER, provided however, that the
8 commission may delegate all or part of this review function to the exec-
9 utive director who shall be responsible for completing staff review of
10 such statements in a manner consistent with the terms of the commis-
11 sion's delegation;
12 (I) THE COMMISSION SHALL RANDOMLY SELECT FINANCIAL DISCLOSURE FORMS
13 REQUIRED TO BE FILED BY PUBLIC OFFICERS PURSUANT TO THIS ARTICLE FOR
14 AUDIT. ANY SUCH SELECTION SHALL BE DONE IN A MANNER PURSUANT TO WHICH
15 THE IDENTITY OF ANY PARTICULAR PUBLIC OFFICIAL WHOSE DISCLOSURE FORM IS
16 SELECTED FOR AUDIT IS UNKNOWN TO THE COMMISSION, ITS STAFF OR ANY OF
17 THEIR AGENTS PRIOR TO SELECTION.
18 (II) THE COMMISSION SHALL DEVELOP PROTOCOLS FOR THE CONDUCT OF SUCH
19 RANDOM AUDITS. SUCH RANDOM AUDITS MAY REQUIRE THE PRODUCTION OF RECORDS
20 RELEVANT AND MATERIAL TO THE PREPARATION OF THE FINANCIAL DISCLOSURE
21 FORMS FOR EXAMINATION BY THE COMMISSION. ANY SUCH PROTOCOLS SHALL ENSURE
22 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.

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(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. Paragraph 3 of subdivision 3 of section 73-a of the public officers law, as added by chapter 813 of the laws of 1987, the third and

fourth undesignated paragraphs as amended by chapter 242 of the laws of 1989, is amended to read as follows:

3. (a) Marital Status _____. If married, please give spouse's full name including maiden name where applicable.

(b) List the names of all unemancipated children.

Answer each of the following questions completely, with respect to calendar year _____, unless another period or date is otherwise specified. If additional space is needed, attach additional pages.

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.

Whenever "income" is required to be reported herein, the term "income" shall mean the aggregate net income before taxes from the source identified.

The term "calendar year" shall mean the year ending the December 31st preceding the date of filing of the annual statement.

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

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

23 _____
24 _____
25 _____
26 _____
27 _____
28 S 7. Subdivision 4 of section 73-a of the public officers law, as
29 amended by chapter 242 of the laws of 1989, is amended to read as
30 follows:

31 4. A reporting individual who knowingly and [wilfully] WILLFULLY fails
32 to file an annual statement of financial disclosure or who knowingly and
33 [wilfully] WILLFULLY with intent to deceive makes a false statement or
34 gives information which such individual knows to be false on such state-
35 ment of financial disclosure filed pursuant to this section shall be
36 subject to a civil penalty in an amount not to BE LESS THAN FIVE HUNDRED
37 DOLLARS AND NOT TO exceed ten thousand dollars. Assessment of a civil
38 penalty hereunder shall be made by the [state ethics] commission ON
39 PUBLIC INTEGRITY, or by the legislative ethics [committee] COMMISSION,
40 as the case may be, with respect to persons subject to their respective
41 jurisdictions. The [state ethics] commission ON PUBLIC INTEGRITY acting
42 pursuant to subdivision thirteen of section ninety-four of the executive
43 law, or the legislative ethics [committee] COMMISSION acting pursuant to
44 subdivision twelve of section eighty of the legislative law, as the case
45 may be, may, in lieu of a civil penalty, refer a violation to the appro-
46 priate prosecutor and upon such conviction, but only after such refer-
47 ral, such violation shall be punishable as a class A misdemeanor. A
48 civil penalty for false filing may not be imposed hereunder in the event
49 a category of "value" or "amount" reported hereunder is incorrect unless
50 such reported information is falsely understated. [Notwithstanding any
51 other provision of law to the contrary, no other penalty, civil or crim-
52 inal may be imposed for a failure to file, or for a false filing, of
53 such statement, except that the appointing authority may impose disci-
54 plinary action as otherwise provided by law.] The [state ethics] commis-

1 sion ON PUBLIC INTEGRITY, and the legislative ethics [committee] COMMIS-
2 SION shall each be deemed to be an agency within the meaning of article
3 three of the state administrative procedure act and shall adopt rules
4 governing the conduct of adjudicatory proceedings and appeals relating
5 to the assessment of the civil penalties herein authorized. Such rules,
6 which shall not be subject to the approval requirements of the state
7 administrative procedure act, shall provide for due process procedural
8 mechanisms substantially similar to those set forth in such article
9 three but such mechanisms need not be identical in terms or scope.
10 Assessment of a civil penalty shall be final unless modified, suspended
11 or vacated within thirty days of imposition and upon becoming final
12 shall be subject to review at the instance of the affected reporting
13 individual in a proceeding commenced against the [state ethics] commis-
14 sion ON PUBLIC INTEGRITY or legislative ethics [committee] COMMISSION,
15 pursuant to article seventy-eight of the civil practice law and rules.

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

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

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

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

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

30 (C) A DESCRIPTION OF THE GENERAL SUBJECT OR SUBJECTS OF THE TRANS-
31 ACTIONS BETWEEN THE PUBLIC OFFICER AND THE LOBBYIST OR LOBBYISTS;

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

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

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

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

47 S 9. Subdivision 5 of section 107 of the civil service law, as amended
48 by chapter 14 of the laws of 2007, is amended to read as follows:

49 5. Violation of this section. Complaints alleging a violation of this
50 section by a [statewide] STATE elected official or a state officer or
51 employee, as defined in section seventy-three of the public officers
52 law, may be directed to the commission on public integrity.

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

55 S 60. Testimony before legislative committees. 1. A legislative
56 committee may require the attendance of witnesses in this state whom the

1 committee may wish to examine, or may issue a commission for the exam-
2 ination of witnesses who are out of the state or unable to attend the
3 committee or excused from attendance, which commission if directed by
4 the house or legislature by which the committee is appointed may be
5 executed during the recess of the legislature. A commission issued as
6 provided by this section shall be in the form used in the courts of
7 record of this state and shall be executed in like manner. Unless other-
8 wise instructed by the committee appointing them the commissioners shall
9 examine privately every witness attending before them and shall not make
10 public the particulars of such examination. No committee of either house
11 or a joint committee of both houses shall have the power to take testi-
12 mony at a private hearing or at a public hearing unless at least two of
13 its members are present at such hearing.

14 2. THE LEGISLATIVE COMMITTEES RESPONSIBLE FOR OVERSIGHT OF THE COMMIS-
15 SION ON PUBLIC INTEGRITY CREATED PURSUANT TO SECTION NINETY-FOUR OF THE
16 EXECUTIVE LAW SHALL HOLD HEARINGS REGARDING THE ANNUAL REPORT AND RECOM-
17 MENDATIONS OF SUCH COMMISSION WITHIN THIRTY DAYS OF THE PUBLIC RELEASE
18 OF SUCH COMMISSION'S ANNUAL REPORT.

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

22 h. Review financial disclosure statements in accordance with the
23 provisions of this section, AND SHALL CONDUCT A PROGRAM OF RANDOM AUDITS
24 SUBJECT TO THE TERMS AND CONDITIONS OF THIS SECTION. ANY SUCH PROGRAM
25 SHALL BE CARRIED OUT IN THE FOLLOWING MANNER, provided however, that the
26 commission may delegate all or part of the review function relating to
27 financial disclosure statements filed by legislative employees pursuant
28 to sections seventy-three and seventy-three-a of the public officers law
29 to the executive director who shall be responsible for completing staff
30 review of such statements in a manner consistent with the terms of the
31 commission's delegation;

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

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

43 (III) THE COMMISSION SHALL CONTRACT WITH AN OUTSIDE ACCOUNTING ENTITY,
44 WHICH SHALL MONITOR THE PROCESS PURSUANT TO WHICH THE COMMISSION SELECTS
45 STATEMENTS OR REPORTS FOR AUDIT AND CARRIES OUT THE PROVISIONS OF
46 SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH AND CERTIFIES THAT SUCH
47 PROCESS COMPLIES WITH THE PROVISIONS OF SUCH SUBPARAGRAPHS.

48 (IV) UPON COMPLETION OF A RANDOM AUDIT CONDUCTED IN ACCORDANCE WITH
49 THE PROVISIONS OF SUBPARAGRAPHS (I), (II) AND (III) OF THIS PARAGRAPH,
50 THE COMMISSION SHALL DETERMINE WHETHER THERE IS REASONABLE CAUSE TO
51 BELIEVE THAT ANY SUCH STATEMENT OR REPORT IS INACCURATE OR INCOMPLETE.
52 UPON A DETERMINATION THAT SUCH REASONABLE CAUSE EXISTS, THE COMMISSION
53 MAY REQUIRE THE PRODUCTION OF FURTHER RECORDS, SUBPOENA WITNESSES,
54 COMPEL THEIR ATTENDANCE AND TESTIMONY AND ADMINISTER OATHS OR AFFIRMA-
55 TIONS, TO THE EXTENT THE COMMISSION DETERMINES SUCH ACTIONS ARE NECES-

1 SARY TO OBTAIN INFORMATION RELEVANT AND MATERIAL TO INVESTIGATING SUCH
2 INACCURACIES OR OMISSIONS.

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

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

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

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

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

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

27 S 15. Separability clause. If any clause, sentence, paragraph, section
28 or part of this act shall be adjudged by any court of competent juris-
29 diction to be invalid, such judgment shall not affect, impair or invali-
30 date the remainder thereof, but shall be confined in its operation to
31 the clause, sentence, paragraph, section or part thereof directly
32 involved in the controversy in which such judgment shall have been
33 rendered.

34 S 16. This act shall take effect January 1, 2012.