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

8304--A

2011-2012 Regular Sessions

I N A S S E M B L Y

June 10, 2011

Introduced by M. of A. SILVER, O'DONNELL -- read once and referred to the Committee on Governmental Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend part A of a chapter of the laws of 2011, establishing the public integrity reform act of 2011, as proposed in legislative bills numbers S.5679 and A.8301, in relation to making technical corrections thereto; and to amend the executive law, in relation to the joint commission on public ethics and the legislative law, in relation to the legislative ethics commission and reports by lobbyists

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

Section 1. Part A of a chapter of the laws of 2011 establishing the public integrity reform act of 2011, as proposed in legislative bills numbers S.5679 and A.8301, is amended by adding a new section 3-a to read as follows:

S 3-A. PARAGRAPH (C) OF SUBDIVISION 6 OF SECTION 73 OF THE PUBLIC OFFICERS LAW IS RELETTERED PARAGRAPH (D) AND A NEW PARAGRAPH (C) IS ADDED TO READ AS FOLLOWS:

(C) EVERY LEGISLATIVE EMPLOYEE NOT SUBJECT TO THE PROVISIONS OF SECTION SEVENTY-THREE-A OF THIS ARTICLE SHALL FILE SUCH STATEMENT PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION WITH THE LEGISLATIVE ETHICS COMMISSION WHICH SHALL PROVIDE SUCH STATEMENT TO THE JOINT COMMISSION ON PUBLIC ETHICS FOR FILING ON OR BEFORE THE FIRST DAY OF MARCH.

S 2. The opening paragraph of paragraph (a) of subdivision 2 of section 73-a of the public officers law, as amended by section 5 of part A of a chapter of the laws of 2011 establishing the public integrity reform act of 2011, as proposed in legislative bills numbers S. 5679 and A. 8301, is amended to read as follows:

Every statewide elected official, state officer or employee, member of the legislature, legislative employee and political party chairman and

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

LBD13085-04-1

every candidate for statewide elected office or for member of the legislature shall file an annual statement of financial disclosure containing the information and in the form set forth in subdivision three of this section. On or before the fifteenth day of May with respect to the preceding calendar year: (1) every member of the legislature[, every candidate for member of the legislature] and legislative employee WHO IS SUBJECT TO THE PROVISIONS OF THIS SECTION, shall file such statement with the legislative ethics commission which shall provide such statement along with any requests for exemptions or deletions to the joint commission on public ethics for filing and rulings with respect to such requests for exemptions or deletions, on or before the thirtieth day of June; and (2) all other individuals required to file such statement shall file it with the joint commission on public ethics, except that:

S 3. Subparagraph (ix) of paragraph (a) of subdivision 2 of section 73-a of the public officers law, as added by section 5 of part A of a chapter of the laws of 2011 establishing the public integrity reform act of 2011, as proposed in legislative bills numbers S. 5679 and A. 8301, is amended to read as follows:

(ix) [with respect to all candidates for member of the legislature, the legislative ethics commission shall within five days of receipt provide the joint commission on public ethics the statement filed pursuant to subparagraphs (v), (vi), (vii) and (viii) of this paragraph] EVERY CANDIDATE FOR MEMBER OF THE LEGISLATURE WHO IS REQUIRED TO FILE SUCH STATEMENT PURSUANT TO SUBPARAGRAPHS (V), (VI), (VII) AND (VIII) OF THIS PARAGRAPH, SHALL FILE SUCH STATEMENT WITH THE LEGISLATIVE ETHICS COMMISSION WHICH SHALL PROVIDE SUCH STATEMENT ALONG WITH ANY REQUESTS FOR EXEMPTIONS OR DELETIONS TO THE JOINT COMMISSION ON PUBLIC ETHICS FOR FILING AND RULINGS WITH RESPECT TO SUCH REQUESTS FOR EXEMPTIONS OR DELETIONS WITHIN FIVE BUSINESS DAYS OF RECEIPT OF SUCH STATEMENT.

S 4. The second undesignated paragraph of subparagraph (b) of paragraph 8 of subdivision 3 of section 73-a of the public officers law, as added by section 5 of part A of a chapter of the laws of 2011 establishing the public integrity reform act of 2011, as proposed in legislative bills numbers S. 5679 and A. 8301, is amended to read as follows:

If the reporting individual personally provides services to any person or entity, or works as a member or employee of a partnership [or], corporation OR ENTITY that provides such services (referred to hereinafter as a "firm"), then identify each client or customer to whom the reporting individual personally provided services, or who was referred to the firm by the reporting individual, and from whom the reporting individual or his or her firm earned fees in excess of $10,000 during the reporting period for such services rendered in direct connection with:

S 5. Subdivision 14 of section 94 of the executive law, as amended by section 6 of part A of a chapter of the laws of 2011 establishing the public integrity reform act of 2011, as proposed in legislative bills numbers S. 5679 and A.8301, is amended to read as follows:

14. An individual subject to the jurisdiction of the commission who knowingly and intentionally violates the provisions of subdivisions two through five-a, seven, eight, twelve or fourteen through seventeen of section seventy-three of the public officers law, section one hundred seven of the civil service law, or a reporting individual who knowingly and wilfully fails to file an annual statement of financial disclosure or who knowingly and wilfully with intent to deceive makes a false statement or fraudulent omission or gives information which such individual knows to be false on such statement of financial disclosure filed

pursuant to section seventy-three-a of the public officers law shall be subject to a civil penalty in an amount not to exceed forty thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. An individual who knowingly and intentionally violates the provisions of paragraph a, b, c, d, e, g, or i of subdivision three of section seventy-four of the public officers law shall be subject to a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. An individual subject to the jurisdiction of the commission who knowingly and willfully violates article one-A of the legislative law shall be subject to civil penalty as provided for in that article. Except with respect to members of the legislature, CANDIDATES FOR MEMBER OF THE LEGISLATURE and legislative employees, assessment of a civil penalty hereunder shall be made by the commission with respect to persons subject to its jurisdiction. With respect to a violation of any law other than sections seventy-three, seventy-three-a, and seventy-four of the public officers law, where the commission finds sufficient cause by a vote held in the same manner as set forth in paragraph [(b)] (A) of subdivision thirteen of this section, it shall refer such matter to the appropriate prosecutor for further investigation. In assessing the amount of the civil penalties to be imposed, the commission shall consider the seriousness of the violation, the amount of gain to the individual and whether the individual previously had any civil or criminal penalties imposed pursuant to this section, and any other factors the commission deems appropriate. Except with respect to members of the legislature, CANDIDATES FOR MEMBER OF THE LEGISLATURE and legislative employees, for a violation of this subdivision, other than for conduct which constitutes a violation of section one hundred seven of the civil service law, subdivisions twelve or fourteen through seventeen of section seventy-three or section seventy-four of the public officers law or article one-A of the legislative law, the commission may, in lieu of or in addition to a civil penalty, refer a violation to the appropriate prosecutor and upon such conviction, 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, or a violation of subdivision six of section seventy-three of the public officers law, except that the appointing authority may impose disciplinary action as otherwise provided by law. The commission may refer violations of this subdivision to the appointing authority for disciplinary action as otherwise provided by law. The commission shall 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 taken pursuant to a proceeding commenced under article seventy-eight of the civil practice law and rules relating to the assessment of the civil penalties herein authorized and commission denials of requests for certain deletions or exemptions to be made from a financial disclosure statement as authorized in paragraph (h) or paragraph (i) of subdivision nine of this section. 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 article three of the state administrative procedure act but such

mechanisms need not be identical in terms or scope. Assessment of a civil penalty or commission denial of such a request shall be final unless modified, suspended or vacated within thirty days of imposition, with respect to the assessment of such penalty, or unless such denial of request is reversed within such time period, and upon becoming final shall be subject to review at the instance of the affected reporting individuals in a proceeding commenced against the commission, pursuant to article seventy-eight of the civil practice law and rules.

S 6. Paragraph 4 of subdivision (c) of section 1-h of the legislative law, as added by section 1 of part B of a chapter of the laws of 2011 establishing the public integrity reform act of 2011, as proposed in legislative bills numbers S. 5679 and A. 8301, is amended to read as follows:

(4) Any lobbyist registered pursuant to section one-e of this article whose lobbying activity is performed on its own behalf and not pursuant to retention by a client:

(i) that has spent over fifty thousand dollars for reportable compensation and expenses for lobbying either during the calendar year, or during the twelve-month period, prior to the date of this bi-monthly report, and

(ii) at least three percent of whose total expenditures during the same period were devoted to lobbying in New York,

shall report to the commission the names of each source of funding over five thousand dollars from a single source that were used to fund the lobbying activities reported and the amounts received from each identified source of funding.

This disclosure shall not require disclosure of the sources of funding whose disclosure, in the determination of the commission based upon a review of the relevant facts presented by the reporting lobbyist, may cause harm, threats, harassment, or reprisals to the source or to individuals or property affiliated with the source. The reporting lobbyist may appeal the commission's determination and such appeal shall be heard by a judicial hearing officer who is independent and not affiliated with or employed by the commission, pursuant to regulations promulgated by the commission. The reporting lobbyist shall not be required to disclose the sources of funding that are the subject of such appeal pending final judgment on appeal.

The disclosure shall not apply to:

(i) any [corporation] ENTITY registered pursuant to article seven-A of the executive law that is qualified as an exempt organization by the United States Department of the Treasury under I.R.C. S 501(c)(3);

(ii) any [corporation] ENTITY registered pursuant to article seven-A of the executive law that is qualified as an exempt organization by the United States Department of the Treasury under I.R.C. S 501(c)(4) and whose primary activities concern any area of public concern determined by the commission to create a substantial likelihood that application of this disclosure requirement would lead to harm, threats, harassment, or reprisals to a source of funding or to individuals or property affiliated with such source, including but not limited to the area of civil rights and civil liberties and any other area of public concern determined pursuant to regulations promulgated by the commission to form a proper basis for exemption on this basis from this disclosure requirement; or

(iii) any governmental entity.

The joint commission on public ethics shall promulgate regulations to implement these requirements.

S 7. Paragraph h of subdivision 7 of section 80 of the legislative law, as amended by section 9 of part A of a chapter of the laws of 2011 establishing the public integrity reform act of 2011, as proposed in legislative bills numbers S. 5679 and A. 8301, is amended to read as follows:

h. Review financial disclosure statements in accordance with the provisions of this section, provided however, that the commission may delegate all or part of the review function relating to financial disclosure statements filed by MEMBERS OF THE LEGISLATURE, CANDIDATES FOR MEMBER OF THE LEGISLATURE AND 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;

S 8. This act shall take effect immediately; provided that sections one, two, three, four, five and seven of this act shall take effect on the same date and in the same manner as part A and section six of this act shall take effect on the same date as part B of a chapter of the laws of 2011 establishing the public integrity reform act of 2011, as proposed in legislative bills numbers S. 5679 and A. 8301, take effect.