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2011-2012 Regular Sessions

I N   S E N A T E

April 8, 2011

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Introduced by Sens. VALESKY, CARLUCCI, KLEIN, SAVINO -- 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 ASSEMBLY, 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-

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

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1 GATION BE MADE, THE ATTORNEY-GENERAL MAY IN HIS OR HER DISCRETION EITHER  
2 REQUIRE OR PERMIT SUCH PUBLIC OFFICIAL TO FILE WITH HIM A STATEMENT IN  
3 WRITING UNDER OATH OR OTHERWISE AS TO ALL THE FACTS AND CIRCUMSTANCES  
4 CONCERNING THE SUBJECT MATTER WHICH HE OR SHE BELIEVES IT IS TO THE  
5 PUBLIC INTEREST TO INVESTIGATE, AND FOR THAT PURPOSE MAY PRESCRIBE FORMS  
6 UPON WHICH SUCH STATEMENTS SHALL BE MADE. THE ATTORNEY-GENERAL MAY ALSO  
7 REQUIRE SUCH OTHER DATA AND INFORMATION AS HE OR SHE MAY DEEM RELEVANT  
8 AND MAY MAKE SUCH SPECIAL AND INDEPENDENT INVESTIGATIONS AS HE OR SHE  
9 MAY DEEM NECESSARY IN CONNECTION WITH THE MATTER.

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

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

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

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

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

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

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

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

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

1 ALL MUST BE FILED IN THE OFFICE OF THE CLERK OF THE COUNTY IN WHICH SUCH  
2 ORDER FOR EXAMINATION IS FILED.

3 S 84. PROCEDURE ON HEARING. THE ORDER FOR SUCH EXAMINATION MUST BE  
4 SIGNED BY THE JUSTICE MAKING IT AND SERVICE OF A COPY THEREOF WITH AN  
5 ENDORSEMENT BY THE ATTORNEY-GENERAL SIGNED BY THE ATTORNEY-GENERAL OR  
6 HIS OR HER DEPUTY, TO THE EFFECT THAT THE PERSON NAMED THEREIN IS  
7 REQUIRED TO APPEAR AND BE EXAMINED AT THE TIME AND PLACE AND BEFORE THE  
8 JUSTICE OR REFEREE SPECIFIED IN SUCH ENDORSEMENT, SHALL BE SUFFICIENT  
9 NOTICE FOR THE ATTENDANCE OF WITNESSES. SUCH ENDORSEMENT MAY CONTAIN A  
10 CLAUSE REQUIRING SUCH PERSON TO PRODUCE AT SUCH EXAMINATION ALL BOOKS,  
11 PAPERS AND DOCUMENTS IN HIS OR HER POSSESSION OR UNDER HIS OR HER  
12 CONTROL RELATING TO THE SUBJECT OF SUCH EXAMINATION. THE ORDER SHALL BE  
13 SERVED UPON THE PERSON NAMED IN THE ENDORSEMENT BY DELIVERING TO AND  
14 LEAVING WITH HIM OR HER A CERTIFIED COPY THEREOF, ENDORSED AS PROVIDED  
15 IN THIS SECTION, SUBJECT TO THE PAYMENT OF WITNESS FEES AND MILEAGE AS  
16 AND WHEN PROVIDED TO BE PAID BY SUBDIVISION THREE OF SECTION EIGHTY-TWO  
17 OF THIS ARTICLE IN CONNECTION WITH ATTENDANCE PURSUANT TO SUBPOENAS  
18 AUTHORIZED TO BE ISSUED UNDER SUCH ACTION.

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

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

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

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

52 S 2. This act shall take effect immediately.