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

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2011-2012 Regular Sessions

I N S E N A T E

April 8, 2011

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:

Section 1. The executive law is amended by adding a new article 5-A to read as follows:

ARTICLE 5-A

INVESTIGATION OF PUBLIC CORRUPTION BY ATTORNEY-GENERAL

SECTION 80. DEFINITIONS.
81. INVESTIGATION BY ATTORNEY-GENERAL.
82. ACTION BY ATTORNEY-GENERAL.
83. EXAMINATION OF WITNESSES AND PRELIMINARY INJUNCTION.
84. PROCEDURE ON HEARING.
85. APPLICATION OF PROVISIONS OF CIVIL PRACTICE LAW AND RULES.
86. CRIMINAL PROSECUTION.
87. IMMUNITY.
88. APPOINTMENT OF DEPUTIES.

S 80. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "PUBLIC OFFICIAL" SHALL HAVE THE SAME MEANING AS SET FORTH IN SUBDIVISION (L) OF SECTION ONE-C OF THE LEGISLATIVE LAW; AND

2. "PUBLIC CORRUPTION" SHALL MEAN ANY ACT OF CORRUPTION, FRAUD OR CRIMINAL ACTIVITY, OR ANY ACT CONSTITUTING A CONFLICT OF INTEREST MADE BY A PUBLIC OFFICER.

S 81. INVESTIGATION BY ATTORNEY-GENERAL. 1. WHENEVER IT SHALL APPEAR TO THE ATTORNEY-GENERAL, EITHER UPON COMPLAINT OR OTHERWISE, THAT A PUBLIC OFFICIAL MAY BE ENGAGED IN CONDUCT CONSTITUTING PUBLIC CORRUPTION 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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GATION BE MADE, THE ATTORNEY-GENERAL MAY IN HIS OR HER DISCRETION EITHER REQUIRE OR PERMIT SUCH PUBLIC OFFICIAL TO FILE WITH HIM A STATEMENT IN WRITING UNDER OATH OR OTHERWISE AS TO ALL THE FACTS AND CIRCUMSTANCES CONCERNING THE SUBJECT MATTER WHICH HE OR SHE BELIEVES IT IS TO THE PUBLIC INTEREST TO INVESTIGATE, AND FOR THAT PURPOSE MAY PRESCRIBE FORMS UPON WHICH SUCH STATEMENTS SHALL BE MADE. THE ATTORNEY-GENERAL MAY ALSO REQUIRE SUCH OTHER DATA AND INFORMATION AS HE OR SHE MAY DEEM RELEVANT AND MAY MAKE SUCH SPECIAL AND INDEPENDENT INVESTIGATIONS AS HE OR SHE MAY DEEM NECESSARY IN CONNECTION WITH THE MATTER.

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

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

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

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

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

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

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

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

S 83. EXAMINATION OF WITNESSES AND PRELIMINARY INJUNCTION. WHENEVER THE ATTORNEY-GENERAL HAS DETERMINED TO COMMENCE AN ACTION UNDER THIS ARTICLE, HE OR SHE MAY PRESENT TO ANY JUSTICE OF THE SUPREME COURT, BEFORE BEGINNING SUCH ACTION, AN APPLICATION IN WRITING FOR AN ORDER DIRECTING THE PERSON OR PERSONS MENTIONED IN THE APPLICATION TO APPEAR BEFORE THE JUSTICE OF THE SUPREME COURT OR REFEREE DESIGNATED IN SUCH ORDER AND ANSWER SUCH QUESTIONS AS MAY BE PUT TO THEM OR TO ANY OF THEM, OR TO PRODUCE SUCH PAPERS, DOCUMENTS AND BOOKS CONCERNING THE ALLEGED PUBLIC CORRUPTION TO WHICH THE ACTION WHICH HE OR SHE HAS DETERMINED TO BRING RELATES, AND IT SHALL BE THE DUTY OF THE JUSTICE OF THE SUPREME COURT TO WHOM SUCH APPLICATION FOR THE ORDER IS MADE TO GRANT SUCH APPLICATION. THE APPLICATION FOR SUCH ORDER MADE BY THE ATTORNEY-GENERAL MAY SIMPLY SHOW UPON HIS OR HER INFORMATION AND BELIEF THAT THE TESTIMONY OF SUCH PERSON OR PERSONS IS MATERIAL AND NECESSARY. THE PROVISIONS OF THE CIVIL PRACTICE LAW AND RULES, RELATING TO AN APPLICATION FOR AN ORDER FOR THE EXAMINATION OF WITNESSES BEFORE THE COMMENCEMENT OF AN ACTION AND THE METHOD OF PROCEEDING ON SUCH EXAMINATION, SHALL NOT APPLY EXCEPT AS HEREIN PRESCRIBED. THE ORDER SHALL BE GRANTED BY THE JUSTICE OF THE SUPREME COURT TO WHOM THE APPLICATION HAS BEEN MADE WITH SUCH PRELIMINARY INJUNCTION OR STAY AS MAY APPEAR TO SUCH JUSTICE TO BE PROPER AND EXPEDIENT AND SHALL SPECIFY THE TIME WHEN AND PLACE WHERE THE WITNESSES ARE REQUIRED TO APPEAR. THE JUSTICE OR REFEREE MAY ADJOURN SUCH EXAMINATION FROM TIME TO TIME AND WITNESSES MUST ATTEND ACCORDINGLY. THE TESTIMONY OF EACH WITNESS MUST BE SUBSCRIBED BY HIM OR HER AND

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

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

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

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

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

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

S 2. This act shall take effect immediately.