STATE OF NEW YORK

1458

2017-2018 Regular Sessions

IN SENATE

January 9, 2017

Introduced by Sen. AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the legislative law, the executive law and the public officers law, in relation to doing away with the legislative ethics commission and transferring certain duties to the joint commission on public ethics; and to repeal article 5 of the legislative law, in relation to the legislative ethics commission

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article 5 of the legislative law is REPEALED.

§ 2. Section 94 of the executive law, as amended by section 6 of part A of chapter 399 of the laws of 2011, paragraph (a) of subdivision 13 as amended by section 1 and paragraph (b) of subdivision 13 as amended by section 2 of part J of chapter 286 of the laws of 2016, is amended to read as follows:

§ 94. Joint commission on public ethics; functions, powers and duties; review of financial disclosure statements; advisory opinions; investigation and enforcement.

1. There is established within the department of state a joint commission on public ethics which shall consist of [~~fourteen~~] *five* members and shall have and exercise the powers and duties set forth in this section with respect to statewide elected officials, members of the legislature and employees of the legislature, and state officers and employees, as defined in sections seventy-three and seventy-three-a of the public officers law, candidates for statewide elected office and for the senate or assembly, and the political party chairman as that term is defined in section seventy-three-a of the public officers law, lobbyists and the clients of lobbyists as such terms are defined in article one-A of the legislative law, and individuals who have formerly held such positions, were lobbyists or clients of lobbyists, as such terms are defined in

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

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article one-A of the legislative law, or who have formerly been such candidates. This section shall not be deemed to have revoked or rescinded any regulations or advisory opinions issued by the **former** legislative ethics commission, the **former** commission on public integrity, the state ethics commission and the temporary lobbying commission in effect upon the effective date of chapter fourteen of the laws of two thousand seven which amended this section to the extent that such regulations or opinions are not inconsistent with any law of the state of New York, but such regulations and opinions shall apply only to matters over which such commissions had jurisdiction at the time such regulations and opinions were promulgated or issued. The commission shall undertake a comprehensive review of all such regulations and opinions, which will address the consistency of such regulations and opinions among each other and with the new statutory language, and of the effectiveness of the existing laws, regulations, guidance and ethics enforcement structure to address the ethics of covered public officials and related parties. [~~Such review shall be conducted with the legislative ethics commission and, to the extent possible, the report's findings shall reflect the full input and deliberations of both commissions after joint consultation.~~] The commission shall, before February first, two thousand fifteen, report to the governor and legislature regarding such review and shall propose any regulatory or statutory changes and issue any advisory opinions necessitated by such review.

2. The members of the commission shall be appointed [~~as follows: three members shall be appointed by the temporary president of the senate, three members shall be appointed by the speaker of the assembly, one member shall be appointed by the minority leader of the senate, one member shall be appointed by the minority leader of the assembly, and six members shall be appointed~~] by the governor [~~and the lieutenant governor. In the event that a vacancy arises with respect to a member of the commission first appointed pursuant to the chapter of the laws of two thousand eleven which amended this subdivision by a legislative leader, the legislative leaders of the same political party in the same house shall appoint a member to fill such vacancy irrespective of whether that legislative leader's political party is in the majority or minority. Of the members appointed by the governor and the lieutenant governor, at least three members shall be and shall have been for at least three years enrolled members of the major political party in which the governor is not enrolled. In the event of a vacancy in a position previously appointed by the governor and lieutenant governor, the governor and lieutenant governor shall appoint a member of the same political party as the member that vacated that position. Prior to making their respective appointments, the governor and the lieutenant governor and the legislative leaders shall solicit and receive recommendations for appointees from the attorney general and the comptroller of the state of New York, which recommendations shall be fully and properly considered but shall not be binding~~] **with the advice and consent of the legislature, without regard to political affiliation, from the list provided by the nominating panel as described in subdivision two-a of this section**.

No individual shall be eligible for appointment as a member of the commission who currently or within the last three years:

(i) is or has been registered as a lobbyist in New York state;

(ii) is or has been a member of the New York state legislature or a statewide elected official or a commissioner of an executive agency appointed by the governor; or

(iii) is or has been a political party chairman, as defined in paragraph (k) of subdivision one of section seventy-three of [~~this article~~] **the public officers law**.

No individual shall be eligible for appointment as a member of the commission who currently or within the last year is or has been a state officer or employee or legislative employee as defined in section seventy-three of the public officers law.

2-a. The governor shall create a nominating panel composed of three members whose sole function shall be to nominate persons for consideration by the governor for appointment to the commission. Representation on the panel and the selection of such members shall be as follows: one member shall be the chief judge of the court of appeals or his or her designee; one member shall be the president of the New York state bar association or his or her designee; and one member shall be executive director of the not-for-profit organization, common cause, or his or her designee.

3. Members of the commission shall serve for terms of five years; provided, however, that of the members first appointed by the governor [~~and lieutenant governor~~], one shall serve for one year, one shall serve for two years, one shall serve for three years, and one shall serve for four years, as designated by the governor[~~; the members first appointed by the temporary president of the senate and by the speaker of the assembly shall serve for four years and the members first appointed by the minority leaders of the senate and the assembly shall serve for two years~~].

4. The governor shall designate the chairman of the commission from among the members thereof, who shall serve as chairman at the pleasure of the governor. The chairman or any [~~eight~~] **three** members of the commission may call a meeting.

5. Any vacancy occurring on the commission shall be filled within thirty days of its occurrence in the same manner as the member whose vacancy is being filled was appointed. A person appointed to fill a vacancy occurring other than by expiration of a term of office shall be appointed for the unexpired term of the member he or she succeeds.

6. [~~Eight~~] **Three** members of the commission shall constitute a quorum, and the commission shall have power to act by majority vote of the total number of members of the commission without vacancy except where the commission acts pursuant to subdivision thirteen, subdivision fourteen-a or subdivision fourteen-b of this section.

7. Members of the commission may be removed by the [~~appointing authority~~] **governor** solely for substantial neglect of duty, gross misconduct in office, violation of the confidentiality restrictions in subdivision nine-a of this section, inability to discharge the powers or duties of office or violation of this section, after written notice and opportunity for a reply.

8. The members of the [~~joint~~] commission shall receive a per diem allowance in the sum of three hundred dollars for each day actually spent in the performance of his or her duties under this article, and, in addition thereto, shall be reimbursed for all reasonable expenses actually and necessarily incurred by him or her in the performance of his or her duties under this article.

9. The commission shall:

(a) Appoint an executive director who shall act in accordance with the policies of the commission. The appointment and removal of the executive director shall be made solely by a vote of a majority of the commission[~~, which majority shall include at least one member appointed by the~~

~~governor from each of the two major political parties, and one member appointed by a legislative leader from each of the two major political parties~~]. The commission may delegate authority to the executive director to act in the name of the commission between meetings of the commission provided such delegation is in writing, the specific powers to be delegated are enumerated, and the commission shall not delegate any decisions specified in this section that require a vote of the commission. The executive director shall be appointed without regard to political affiliation and solely on the basis of fitness to perform the duties assigned by this article, and shall be a qualified, independent professional. The commission may remove the executive director for neglect of duty, misconduct in office, violation of the confidentiality restrictions in subdivision nine-a of this section, or inability or failure to discharge the powers or duties of office, including the failure to follow the lawful instructions of the commission;

(b) Appoint such other staff as are necessary to carry out its duties under this section;

(b-1) Review and approve a staffing plan provided and prepared by the executive director which shall contain, at a minimum, a list of the various units and divisions as well as the number of positions in each unit, titles and their duties, and salaries, as well as the various qualifications for each position including, but not limited to, education and prior experience for each position[~~.~~]**;**

(c) Adopt, amend, and rescind rules and regulations to govern procedures of the commission, which shall include, but not be limited to, the procedure whereby a person who is required to file an annual financial disclosure statement with the commission may request an additional period of time within which to file such statement, [~~other than members of the legislature, candidates for members of the legislature and legislative employees,~~] due to justifiable cause or undue hardship; such rules or regulations shall provide for a date beyond which in all cases of justifiable cause or undue hardship no further extension of time will be granted;

(d) Adopt, amend, and rescind rules and regulations to assist appointing authorities in determining which persons hold policy-making positions for purposes of section seventy-three-a of the public officers law **and may promulgate guidelines to assist firms, associations and corporations in separating affected persons from net revenues for purposes of subdivision ten of section seventy-three of the public officers law, and promulgate guidelines to assist any firm, association or corporation in which any present or former statewide elected official, state officer or employee, member of the legislature or legislative employee, or political party chairman is a member, associate, retired member of counsel or shareholder, in complying with the provisions of subdivision ten of section seventy-three of the public officers law with respect to the separation of such present or former statewide elected official, state officer or employee, member of the legislature or legislative employee, or political party chairman from the net revenues of the firm, association or corporation. Such firm, association or corporation shall not be required to adopt the procedures contained in the guidelines to establish compliance with subdivision ten of section seventy-three of the public officers law, but if such firm, association or corporation does adopt such procedures, it shall be deemed to be in compliance with such subdivision ten**;

(d-1) Adopt, amend and rescind rules and regulations defining the permissible use of and promoting the proper use of public service announcements;

(e) Make available forms for annual statements of financial disclosure required to be filed pursuant to **subdivision six of section seventy-three and** section seventy-three-a of the public officers law;

(f) Review financial disclosure statements in accordance with the provisions of this section, provided however, that the commission may delegate all or part of this review function 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;

(g) Receive complaints and referrals alleging violations of section seventy-three, seventy-three-a or seventy-four of the public officers law, article one-A of the legislative law or section one hundred seven of the civil service law;

(h) Permit any person who is required to file a financial disclosure statement with the [~~joint~~] commission [~~on public ethics~~] to request that the commission delete from the copy thereof made available for public inspection and copying one or more items of information which may be deleted by the commission upon a finding by the commission that the information which would otherwise be required to be made available for public inspection and copying will have no material bearing on the discharge of the reporting person's official duties. If such request for deletion is denied, the commission, in its notification of denial, shall inform the person of his or her right to appeal the commission's determination pursuant to its rules governing adjudicatory proceedings and appeals adopted pursuant to subdivision fourteen of this section;

(i) Permit any person who is required to file a financial disclosure statement with the [~~joint~~] commission [~~on public ethics~~] to request an exemption from any requirement to report one or more items of information which pertain to such person's spouse or unemancipated children which item or items may be exempted by the commission upon a finding by the commission that the reporting individual's spouse, on his or her own behalf or on behalf of an unemancipated child, objects to providing the information necessary to make such disclosure and that the information which would otherwise be required to be reported will have no material bearing on the discharge of the reporting person's official duties. If such request for exemption is denied, the commission, in its notification of denial, shall inform the person of his or her right to appeal the commission's determination pursuant to its rules governing adjudicatory proceedings and appeals adopted pursuant to subdivision fourteen of this section;

(i-1) Permit any person required to file a financial disclosure statement to request an exemption from any requirement to report the identity of a client pursuant to question 8(b) in such statement based upon an exemption set forth in that question. The reporting individual need not seek an exemption to refrain from disclosing the identity of any client with respect to any matter he or she or his or her firm provided legal representation to the client in connection with an investigation or prosecution by law enforcement authorities, bankruptcy, or domestic relations matters; in addition, clients or customers receiving medical or dental services, mental health services, residential real estate brokering services, or insurance brokering services need not be disclosed[~~.~~]**;**

(j) Advise and assist any state agency in establishing rules and regulations relating to possible conflicts between private interests and

official duties of present or former statewide elected officials and state officers and employees;

(k) Permit any person who has not been determined by his or her appointing authority to hold a policy-making position but who is otherwise required to file a financial disclosure statement to request an exemption from such requirement in accordance with rules and regulations governing such exemptions. Such rules and regulations shall provide for exemptions to be granted either on the application of an individual or on behalf of persons who share the same job title or employment classification which the commission deems to be comparable for purposes of this section. Such rules and regulations may permit the granting of an exemption where, in the discretion of the commission, the public interest does not require disclosure and the applicant's duties do not involve the negotiation, authorization or approval of:

(i) contracts, leases, franchises, revocable consents, concessions, variances, special permits, or licenses as defined in section seventy-three of the public officers law;

(ii) the purchase, sale, rental or lease of real property, goods or services, or a contract therefor;

(iii) the obtaining of grants of money or loans; or

(iv) the adoption or repeal of any rule or regulation having the force and effect of law;

(l) Prepare an annual report to the governor and legislature summarizing the activities of the commission during the previous year and recommending any changes in the laws governing the conduct of persons subject to the jurisdiction of the commission, or the rules, regulations and procedures governing the commission's conduct. Such report shall include: (i) a listing by assigned number of each complaint and referral received which alleged a possible violation within its jurisdiction, including the current status of each complaint, and (ii) where a matter has been resolved, the date and nature of the disposition and any sanction imposed, subject to the confidentiality requirements of this section, provided, however, that such annual report shall not contain any information for which disclosure is not permitted pursuant to subdivision nineteen of this section;

(m) Determine a question common to a class or defined category of persons or items of information required to be disclosed, where determination of the question will prevent undue repetition of requests for exemption or deletion or prevent undue complication in complying with the requirements of such section; and

(n) Promulgate guidelines for the commission to conduct a program of random reviews, to be carried out in the following manner: (i) annual statements of financial disclosure shall be selected for review in a manner pursuant to which the identity of any particular person whose statement is selected is unknown to the commission and its staff prior to its selection; (ii) such review shall include a preliminary examination of the selected statement for internal consistency, a comparison with other records maintained by the commission, including previously filed statements and requests for advisory opinions, and examination of relevant public information; (iii) upon completion of the preliminary examination, the commission shall determine whether further inquiry is warranted, whereupon it shall notify the reporting individual in writing that the statement is under review, advise the reporting individual of the specific areas of inquiry, and provide the reporting individual with the opportunity to provide any relevant information related to the specific areas of inquiry, and the opportunity to file amendments to the

selected statement on forms provided by the commission; and (iv) if thereafter sufficient cause exists, the commission shall take additional actions, as appropriate and consistent with law.

9-a. (a) When an individual becomes a commissioner or staff of the commission, that individual shall be required to sign a non-disclosure statement.

(b) Except as otherwise required or provided by law, testimony received or any other information obtained by a commissioner or staff of the commission shall not be disclosed by any such individual to any person or entity outside the commission during the pendency of any matter. Any confidential communication to any person or entity outside the commission related to the matters before the commission may occur only as authorized by the commission.

(c) The commission shall establish procedures necessary to prevent the unauthorized disclosure of any information received by any member of the commission or staff of the commission. Any breaches of confidentiality shall be investigated by the inspector general and appropriate action shall be taken. Any commissioner or person employed by the commission who intentionally and without authorization releases confidential information received by the commission shall be guilty of a class A misdemeanor.

9-b. During the period of his or her service as a commissioner of the commission, each commissioner shall refrain from making, or soliciting from other persons, any contributions to candidates for election to the offices of governor, lieutenant governor, member of the assembly or the senate, attorney general or state comptroller.

10. The commission shall prepare materials and design and administer an ethics training program for individuals subject to the financial disclosure requirements of section seventy-three-a of the public officers law with respect to the provisions of sections seventy-three, seventy-three-a, and seventy-four of the public officers law and any other law, administrative regulation, or internal policy that is of relevance to the ethical conduct of such individuals in public service, as follows:

(a) The commission shall develop and administer a comprehensive ethics training course and shall designate and train instructors to conduct such training. Such course shall be designed as a two-hour program and shall include practical application of the material covered and a question-and-answer participatory segment. Unless the commission grants an extension or waiver for good cause shown, all individuals subject to the financial disclosure requirements of section seventy-three-a of the public officers law shall complete such course within two years of the effective date of the chapter of the laws of two thousand eleven which amended this section, or for those individuals elected or appointed after the effective date of [~~the~~] **section six of part A of** chapter **three hundred ninety-nine** of the laws of two thousand eleven which amended this section, within two years of becoming subject to the financial disclosure requirements of section seventy-three-a of the public officers law.

(b) The commission shall develop and administer an online ethics orientation course and shall notify all individuals newly subject to the financial disclosure requirements of section seventy-three-a of the public officers law of such course, which shall be completed by such individuals within three months of becoming subject to such requirements, unless the commission grants an extension or waiver for good cause shown. Individuals who have completed the comprehensive ethics

training course shall not be required to complete the online ethics orientation course.

(c) The commission shall develop and administer an ethics seminar or ethics seminars for individuals who have previously completed the comprehensive ethics training course. Such seminars shall be designed as ninety-minute programs and shall include any changes in law, regulation, or policy or in the interpretation thereof, practical application of the material covered, and a question-and-answer segment. Unless the commission grants an extension or waiver for good cause shown, such individuals shall be scheduled to attend a seminar at least once every three years after having completed the comprehensive ethics training course. In lieu of attending an ethics seminar, such individuals may complete a subsequent comprehensive ethics training program.

(d) The provisions of this subdivision shall be applicable to the legislature except to the extent that an ethics training program is otherwise established by the assembly or senate for their respective members and employees and such program meets or exceeds each of the requirements set forth in this section.

(e) On an annual basis, the [~~joint~~] commission [~~in coordination with the legislative ethics commission~~] shall determine the status of compliance with these training requirements by each state agency and by the senate and the assembly. Such determination shall include aggregate statistics regarding participation in such training, and shall be reported to the governor and the legislature in writing.

10-a. The commission shall develop educational materials and training with regard to legislative ethics for members of the legislature and legislative employees including an online ethics orientation course for newly-hired employees and, as requested by the senate or the assembly, materials and training in relation to a comprehensive ethics training program.

11. The commission, or the executive director and staff of the commission if responsibility therefor has been delegated, shall inspect all financial disclosure statements filed with the commission to ascertain whether any person subject to the reporting requirements of section seventy-three-a of the public officers law has failed to file such a statement, has filed a deficient statement or has filed a statement which reveals a possible violation of section seventy-three, seventy-three-a or seventy-four of the public officers law.

12. 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, member of the legislature, or a legislative employee, to the temporary president of the senate and the speaker of the assembly; and (c) in the case of a state officer or employee, to the appointing authority for such person. Such notice of delinquency may be sent at any time during the reporting person's service as a statewide elected official, state officer or employee, member of the assembly or the senate, or a legislative employee or a political party chair or while a candidate for state-

wide office, or within one year after termination of such service or candidacy.

12-a. The jurisdiction of the commission, when acting pursuant to [~~subdivision fourteen of~~] this section [~~with respect to financial disclosure~~], shall continue notwithstanding that the [~~reporting~~] person separates from state service, or ceases to hold public or political party office, 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~~] **violation of law within one year from his or her separation from state service, the termination from his or her office or the termination of his or her candidacy**.

13. (a) Investigations. If the commission receives a sworn complaint alleging a violation of section seventy-three, seventy-three-a, or seventy-four of the public officers law, section one hundred seven of the civil service law or article one-A of the legislative law by a person or entity subject to the jurisdiction of the commission including members of the legislature and legislative employees and candidates for member of the legislature, or if a reporting individual has filed a statement which reveals a possible violation of these provisions, or if the commission determines on its own initiative to investigate a possible violation, the commission shall notify the individual in writing, describe the possible or alleged violation of such laws, provide a description of the allegations against him or her and the evidence, if any, supporting such allegations, provided however that the joint commission shall redact any information that might, in the judgment of the commission, be prejudicial to either the complainant or the investigation; the letter also shall set forth the sections of law alleged to have been violated and provide the person with a fifteen day period in which to submit a written response, including any evidence, statements, and proposed witnesses, setting forth information relating to the activities cited as a possible or alleged violation of law. The commission shall, within sixty calendar days after a complaint or a referral is received or an investigation is initiated on the commission's own initiative, vote on whether to commence a full investigation of the matter under consideration to determine whether a substantial basis exists to conclude that a violation of law has occurred. The staff of the joint commission shall provide to the members prior to such vote information regarding the likely scope and content of the investigation, and a subpoena plan, to the extent such information is available. Such investigation shall be conducted if at least [~~eight~~] **three** members of the commission vote to authorize it. [~~Where the subject of such investigation is a member of the legislature or a legislative employee or a candidate for member of the legislature, at least two of the eight or more members who so vote to authorize such an investigation must have been appointed by a legislative leader or leaders from the major political party in which the subject of the proposed investigation is enrolled if such person is enrolled in a major political party. Where the subject of such investigation is a state officer or state employee, at least two of the eight or more members who so vote to authorize such an investigation must have been appointed by the governor and lieutenant governor. Where the subject of such investigation is a statewide elected official or a direct appointee of such an official, at least two of the eight or more members who so vote to authorize such an investigation must have been appointed by the governor and lieutenant governor and be enrolled in the major political party in which the subject of the~~

~~proposed investigation is enrolled, if such person is enrolled in a major political party.~~]

(b) Substantial basis investigation. Upon the affirmative vote of not less than [~~eight~~] **three** commission members to commence a substantial basis investigation, written notice of the commission's decision shall be provided to the individual who is the subject of such substantial basis investigation. Such written notice shall include a copy of the commission's rules and procedures and shall also include notification of such individual's right to be heard within thirty calendar days of the date of the commission's written notice. If the commission votes to commence a substantial basis investigation, the commission shall provide to the individual a notice setting forth the alleged violations of law and the factual basis for those allegations. The commission shall provide to the individual any additional evidence supporting the allegations not set forth in the letter sent pursuant to paragraph (a) of this subdivision in sufficient detail to enable the individual to respond, at least seven days before the hearing. Such hearing shall afford the individual with a reasonable opportunity to appear in person, and by attorney, give sworn testimony and present evidence. Such hearing shall occur before the commission votes on whether or not to issue a substantial basis report. The commission shall also inform the individual of its rules regarding the conduct of adjudicatory proceedings and appeals and the other due process procedural mechanisms available to such individual. If the commission determines at any stage that there is no violation, that any potential violation has been rectified, or if the investigation is closed for any other reason, it shall so advise the individual and the complainant, if any in writing within fifteen days of such decision. All of the foregoing proceedings shall be confidential.

(c) The jurisdiction of the commission when acting pursuant to this section shall continue notwithstanding that a statewide elected official or a state officer or employee or member of the legislature or legislative employee separates from state service, or a political party chair ceases to hold such office, or a candidate ceases to be a candidate, or a lobbyist or client of a lobbyist ceases to act as such, provided that the commission notifies such individual or entity of the alleged violation of law pursuant to paragraph (a) of this subdivision within one year from his or her separation from state service or his or her termination of party service or candidacy, or from his, her or its last report filed pursuant to article one-A of the legislative law. Nothing in this section shall serve to limit the jurisdiction of the commission in enforcement of subdivision eight of section seventy-three of the public officers law.

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 subdivi-

sion 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 and legislative employees, assessment~~] **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) 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 and legislative employees, for~~] **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.

14-a. [~~The joint commission on public ethics shall have jurisdiction to investigate, but shall have no jurisdiction to impose penalties upon members of or candidates for member of the legislature or legislative employees for any violation of the public officers law.~~] If, after its substantial basis investigation, by a vote of at least [~~eight~~] **three** members, [~~two of whom are enrolled members of the investigated individual's political party if the individual is enrolled in a major political party and were appointed by a legislative leader of such political party,~~] the [~~joint~~] commission [~~on public ethics~~] has found a substantial basis to conclude that a member of the legislature or a legislative employee or candidate for member of the legislature has violated any provisions of such laws, it shall [~~present~~] **prepare** a written report [~~to the legislative ethics commission,~~] and deliver a copy of the report to the individual who is the subject of the report. Such written report shall include:

(a) the commission's findings of fact and any evidence addressed in such findings; conclusions of law and citations to any relevant law, rule, opinion, regulation or standard of conduct upon which it relied; and

(b) a determination that a substantial basis exists to conclude that a violation has occurred, and the reasons and basis for such determination.

[~~The joint commission shall also separately provide to the legislative ethics commission copies of additional documents or other evidence considered including evidence that may contradict the joint commission's findings, the names of and other information regarding any additional witnesses, and any other materials.~~] 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 joint commission finds sufficient cause by a vote held in the same manner as set forth in paragraph (b) of subdivision thirteen of this section, it shall refer such matter to the appropriate prosecutor.

14-b. [~~With respect to the investigation of any individual who is not a member of the legislature or a legislative employee or candidate for member of the legislature, if after its investigation the joint commission has found a substantial basis to conclude that the individual has violated the public officers law or the legislative law, the joint commission shall send a substantial basis investigation report containing its findings of fact and conclusions of law to the individual. With respect to an individual who is a statewide elected official or a direct appointee of such an official, no violation may be found unless the majority voting in support of such a finding includes at least two members appointed by the governor and lieutenant governor and enrolled in the individual's major political party, if he or she is enrolled in a major political party. Where the subject of such investigation is a state officer or employee who is not a direct appointee of a statewide elected official, at least two of the eight or more members who vote to issue a substantial basis investigation report must have been appointed by the governor and lieutenant governor. The commission shall release such report publicly within forty-five days of its issuance.~~

~~14-c. With respect to an investigation of a lobbyist, if after its investigation the joint commission has found a substantial basis to conclude that the lobbyist has violated the legislative law, the joint commission shall issue a substantial basis investigation report contain-~~

~~ing its findings of fact and conclusions of law to the lobbyist and shall make public such report within forty-five days of its issuance.~~] Not later than forty-five calendar days after preparation by the commission of a written substantial basis investigation report and any supporting documentation or other materials regarding a matter before the commission pursuant to this section, unless requested by a law enforcement agency to suspend the commission's action because of an ongoing criminal investigation, the commission shall make public such report in its entirety; provided, however, that the commission may withhold such information for not more than one additional period of the same duration and, if deemed necessary, conduct additional investigation, in which case the commission shall, upon the termination of such additional period or upon preparation of a new report after such additional investigation, make public the written report and publish it on the commission's website. The commission shall not conduct additional investigation more than once. If the commission conducts additional fact-finding, the commission's original report shall remain confidential.

14-c. The commission shall review the matter addressed in a written substantial basis investigation report. No later than ninety days after final preparation of such report, the commission shall dispose of the matter by making one or more of the following determinations:

a. whether the commission adopts the final content of such a report;

b. whether and which penalties have been assessed pursuant to applicable law or rule and the reasons therefor; and

c. whether further actions have been taken by the commission to punish or deter the misconduct at issue and the reasons therefor.

The commission's disposition shall be reported in writing and published on its website no later than ten days after such disposition unless requested by a law enforcement agency to suspend the commission's action because of an ongoing criminal investigation.

15. A copy of any notice of delinquency or substantial basis investigation report shall be included in the reporting person's file and be available for public inspection and copying pursuant to the provisions of this section.

16. Upon written request from any person who is subject to the jurisdiction of the commission and the requirements of sections seventy-three, seventy-three-a or seventy-four of the public officers law, [~~other than members of the legislature, candidates for member of the legislature and employees of the legislature,~~] the commission shall render written advisory opinions on the requirements of said provisions. An opinion rendered by the commission or by the former legislative ethics commission, until and unless amended or revoked, shall be binding on the commission in any subsequent proceeding concerning the person who requested the opinion and who acted in good faith, unless material facts were omitted or misstated by the person in the request for an opinion. Such opinion may also be relied upon by such person, and may be introduced and shall be a defense, in any criminal or civil action. Such requests shall be confidential but the commission may publish such opinions provided that the name of the requesting person and other identifying details shall not be included in the publication.

17. In addition to any other powers and duties specified by law, the commission shall have the power and duty to:

(a) Promulgate rules concerning restrictions on outside activities and limitations on the receipt of gifts and honoraria by persons subject to its jurisdiction, provided, however, a violation of such rules in and of

itself shall not be punishable pursuant to subdivision fourteen of this section unless the conduct constituting the violation would otherwise constitute a violation of this section; and

(b) Administer and enforce all the provisions of this section; and

(c) Conduct any investigation necessary to carry out the provisions of this section. Pursuant to this power and duty, the commission may administer oaths or affirmations, subpoena witnesses, compel their attendance and require the production of any books or records which it may deem relevant or material;

18. Within one hundred twenty days of the effective date of this subdivision, the commission shall create and thereafter maintain a publicly accessible website which shall set forth the procedure for filing a complaint with the commission, and which shall contain the documents identified in subdivision nineteen of this section, other than financial disclosure statements filed by state officers or employees or legislative employees, and any other records or information which the commission determines to be appropriate.

19. (a) Notwithstanding the provisions of article six of the public officers law, the only records of the commission which shall be available for public inspection and copying are:

(1) the information set forth in an annual statement of financial disclosure filed pursuant to section seventy-three-a of the public officers law except information deleted pursuant to paragraph (h) of subdivision nine of this section;

(2) notices of delinquency sent under subdivision twelve of this section;

(3) notices of civil assessments imposed under this section which shall include a description of the nature of the alleged wrongdoing, the procedural history of the complaint, the findings and determinations made by the commission, and any sanction imposed;

(4) the terms of any settlement or compromise of a complaint or referral which includes a fine, penalty or other remedy;

(5) those required to be held or maintained publicly available pursuant to article one-A of the legislative law; and

(6) substantial basis investigation reports issued by the commission pursuant to subdivision fourteen-a or fourteen-b of this section. [~~With respect to reports concerning members of the legislature or legislative employees or candidates for member of the legislature, the joint commission shall not publicly disclose or otherwise disseminate such reports except in conformance with the requirements of paragraph (b) of subdivision nine of section eighty of the legislative law.~~]

(b) Notwithstanding the provisions of article seven of the public officers law, no meeting or proceeding, including any such proceeding contemplated under paragraph (h) or (i) of subdivision nine of this section, of the commission shall be open to the public, except if expressly provided otherwise by the commission or as is required by article one-A of the legislative law.

(c) Pending any application for deletion or exemption to the commission, all information which is the subject or a part of the application shall remain confidential. Upon an adverse determination by the commission, the reporting individual may request, and upon such request the commission shall provide, that any information which is the subject or part of the application remain confidential for a period of thirty days following notice of such determination. In the event that the reporting individual resigns his office and holds no other office subject to the

jurisdiction of the commission, the information shall not be made public and shall be expunged in its entirety.

20. **The commission shall create and thereafter maintain a publicly accessible website which shall set forth the procedure for filing a complaint with the commission, and which shall contain any other records or information which the commission determines to be appropriate.**

21. If any part or provision of this section or the application thereof to any person or organization is adjudged by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such judgment shall not affect or impair any other part or provision or the application thereof to any other person or organization, but shall be confined in its operation to such part or provision.

§ 3. Subdivision 5 of section 12 of the legislative law, as added by chapter 141 of the laws of 1994, is amended to read as follows:

5. Notwithstanding any provision of law to the contrary, services and expenses of the legislative health service, legislative library, legislative messenger service, [~~legislative ethics committee~~] **joint commission on public ethics**, joint operations of the legislative task force on demographic research and reapportionment, and contributions to the national conference of state legislatures shall be payable after audit by and on the warrant of the comptroller upon vouchers certified by the temporary president of the senate or his or her designee and the speaker of the assembly or his or her designee.

§ 4. Paragraph (a) of subdivision 1, the opening paragraph of paragraph (a) and paragraph (c) of subdivision 6, paragraph (g) of subdivision 8, and subdivision 10 of section 73 of the public officers law, paragraph (a) of subdivision 1 as amended by section 1 of part A of chapter 399 of the laws of 2011, the opening paragraph of paragraph (a) and paragraph (c) of subdivision 6 as amended by section 3 of part K of chapter 286 of the laws of 2016, paragraph (g) of subdivision 8 as added by chapter 218 of the laws of 1998, and subdivision 10 as amended by section 5 of part K of chapter 286 of the laws of 2016, are amended to read as follows:

(a) The term "compensation" shall mean any money, thing of value or financial benefit conferred in return for services rendered or to be rendered. With regard to matters undertaken by a firm, corporation or association, compensation shall mean net revenues, as defined in accordance with generally accepted accounting principles as defined by the joint commission on public ethics [~~or legislative ethics commission~~] in relation to persons subject to [~~their respective jurisdictions~~] **the joint commission's jurisdiction**.

Every legislative employee not subject to the provisions of section seventy-three-a of this chapter shall, on and after December fifteenth and before the following January fifteenth, in each year, file with the joint commission on public ethics [~~and the legislative ethics commission~~] a financial disclosure statement of

(c) Any such legislative employee who knowingly and wilfully with intent to deceive makes a false statement or gives information which he or she knows to be false in any written statement required to be filed pursuant to this subdivision, shall be assessed a civil penalty in an amount not to exceed ten thousand dollars. Assessment of a civil penalty shall be made by the [~~legislative ethics commission~~] **joint commission on public ethics** in accordance with the provisions of subdivision [~~ten~~] **fourteen** of section [~~eighty~~] **ninety-four** of the [~~legislative~~] **executive** law. For a violation of this subdivision, the **joint** commission may, in lieu of a civil penalty, refer a violation to the appropriate prosecutor

and upon conviction, but only after such referral, such violation shall be punishable as a class A misdemeanor.

(g) Notwithstanding the provisions of subparagraphs (i) and (ii) of paragraph (a) of this subdivision, a former state officer or employee may contract individually, or as a member or employee of a firm, corporation or association, to render services to any state agency when the agency head certifies in writing to the [~~state ethics commission~~] **joint commission on public ethics** that the services of such former officer or employee are required in connection with the agency's efforts to address the state's year 2000 compliance problem.

10. Nothing contained in this section, the judiciary law, the education law or any other law or disciplinary rule shall be construed or applied to prohibit any firm, association or corporation, in which any present or former statewide elected official, state officer or employee, or political party chairman, member of the legislature or legislative employee is a member, associate, retired member, of counsel or shareholder, from appearing, practicing, communicating or otherwise rendering services in relation to any matter before, or transacting business with a state agency, or a city agency with respect to a political party chairman in a county wholly included in a city with a population of more than one million, otherwise proscribed by this section, the judiciary law, the education law or any other law or disciplinary rule with respect to such official, member of the legislature or officer or employee, or political party chairman, where such statewide elected official, state officer or employee, member of the legislature or legislative employee, or political party chairman does not share in the net revenues, as defined in accordance with generally accepted accounting principles by the joint commission on public ethics [~~or by the legislative ethics commission~~] in relation to persons subject to [~~their respective jurisdictions~~] **the joint commission's jurisdiction**, resulting therefrom, or, acting in good faith, reasonably believed that he or she would not share in the net revenues as so defined; nor shall anything contained in this section, the judiciary law, the education law or any other law or disciplinary rule be construed to prohibit any firm, association or corporation in which any present or former statewide elected official, member of the legislature, legislative employee, full-time salaried state officer or employee or state officer or employee who is subject to the provisions of section seventy-three-a of this article is a member, associate, retired member, of counsel or shareholder, from appearing, practicing, communicating or otherwise rendering services in relation to any matter before, or transacting business with, the court of claims, where such statewide elected official, member of the legislature, legislative employee, full-time salaried state officer or employee or state officer or employee who is subject to the provisions of section seventy-three-a of this article does not share in the net revenues, as defined in accordance with generally accepted accounting principles by the joint commission on public ethics [~~or by the legislative ethics commission~~] in relation to persons subject to [~~their respective jurisdictions~~] **the joint commission's jurisdiction**, resulting therefrom, or, acting in good faith, reasonably believed that he or she would not share in the net revenues as so defined.

§ 5. Paragraphs (d) and (d-1) of subdivision 1, the opening paragraph and subparagraphs (ii), (viii) and (ix) of paragraph (a) and paragraphs (c), (e), (f) and (g) of subdivision 2 and subdivision 4 of section 73-a of the public officers law, paragraph (d) of subdivision 1, the opening paragraph and subparagraphs (ii), (viii) and (ix) of paragraph (a) and

paragraphs (c), (e), (f) and (g) of subdivision 2 and subdivision 4 as amended and paragraph (d-1) of subdivision 1 as added by section 5 of part A of chapter 399 of the laws of 2011, are amended to read as follows:

(d) The term "legislative employee" shall mean any officer or employee of the legislature who receives annual compensation in excess of the filing rate established by paragraph (l) below or who is determined to hold a policy-making position by the appointing authority as set forth in a written instrument which shall be filed with the [~~legislative ethics commission and the~~] joint commission on public ethics.

(d-1) A financial disclosure statement required pursuant to section seventy-three of this article and this section shall be deemed "filed" with the joint commission on public ethics upon its filing, in accordance with this section, [~~with the legislative ethics commission~~] for all purposes including, but not limited to, subdivision fourteen of section ninety-four of the executive law[~~, subdivision nine of section eighty of the legislative law~~] and subdivision four of this section.

Every statewide elected official, state officer or employee, member of the legislature, legislative employee and political party chairman and 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 shall file such statement**, along with any requests for exemptions or deletions,** 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~~]**, which shall make** 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:

(ii) a person who is required to file an annual financial disclosure statement with the joint commission on public ethics, and who is granted an additional period of time within which to file such statement due to justifiable cause or undue hardship, in accordance with required rules and regulations on the subject adopted pursuant to paragraph c of subdivision nine of section ninety-four of the executive law shall file such statement within the additional period of time granted[~~; and the legislative ethics commission shall notify the joint commission on public ethics of any extension granted pursuant to this paragraph~~];

(viii) a candidate substituted for another candidate, who fills a vacancy in a party designation or in an independent nomination, caused by declination, shall file such statement within ten days after the last day allowed by law to file a certificate to fill a vacancy in such party designation or independent nomination[~~;~~

~~(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~~].

(c) If the reporting individual is a senator or member of assembly, candidate for the senate or member of assembly or a legislative employee, [~~such statement shall be filed with both the legislative ethics commission established by section eighty of the legislative law and the joint commission on public ethics in accordance with paragraph (d-1) of~~

~~subdivision one of this section. If the reporting individual is a~~] statewide elected official, candidate for statewide elected office, a state officer or employee or a political party chairman, such statement shall be filed with the joint commission on public ethics established by section ninety-four of the executive law.

(e) Any person required to file such statement who commences employment after May fifteenth of any year, members of the legislature, legislative employees, and political party chairman shall file such statement within thirty days after commencing employment or of taking the position of political party chairman, as the case may be. [~~In the case of members of the legislature and legislative employees, such statements shall be filed with the legislative ethics commission within thirty days after commencing employment, and the legislative ethics commission shall provide such statements to the joint commission on public ethics within forty-five days of receipt.~~]

(f) A person who may otherwise be required to file more than one annual financial disclosure statement [~~with both the joint commission on public ethics and the legislative ethics commission~~] in any one calendar year may satisfy such requirement by filing one such statement with [~~either body and by notifying the other body of such compliance~~] the joint commission on public ethics.

(g) A person who is employed in more than one employment capacity for one or more employers certain of whose officers and employees are subject to filing a financial disclosure statement [~~with the same ethics commission, as the case may be,~~] and who receives distinctly separate payments of compensation for such employment shall be subject to the filing requirements of this section if the aggregate annual compensation for all such employment capacities is in excess of the filing rate notwithstanding that such person would not otherwise be required to file with respect to any one particular employment capacity. [~~A person not otherwise required to file a financial disclosure statement hereunder who is employed by an employer certain of whose officers or employees are subject to filing a financial disclosure statement with the joint commission on public ethics and who is also employed by an employer certain of whose officers or employees are subject to filing a financial disclosure statement with the legislative ethics commission shall not be subject to filing such statement with either such commission on the basis that his aggregate annual compensation from all such employers is in excess of the filing rate.~~]

4. 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 gives information which such individual knows to be false on such statement of financial disclosure filed pursuant to this section shall be subject to a civil penalty in an amount not to exceed forty thousand dollars. Assessment of a civil penalty hereunder shall be made by the joint commission on public ethics [~~or by the legislative ethics commission, as the case may be, with respect to persons subject to their respective jurisdictions~~]. The joint commission on public ethics acting pursuant to subdivision fourteen of section ninety-four of the executive law [~~or the legislative ethics commission acting pursuant to subdivision eleven of section eighty of the legislative law, as the case may be,~~] may, in lieu of or in addition to a civil penalty, refer a violation to the appropriate prosecutor and upon such conviction, but only after such referral, 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, except that the appointing authority may impose disciplinary action as otherwise provided by law. The joint commission on public ethics [~~and the legislative ethics commission~~] shall [~~each~~] 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 relating to the assessment of the civil penalties herein authorized. 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 such article three but such mechanisms need not be identical in terms or scope. Assessment of a civil penalty shall be final unless modified, suspended or vacated within thirty days of imposition and upon becoming final shall be subject to review at the instance of the affected reporting individual in a proceeding commenced against the joint commission on public ethics [~~or the legislative ethics commission~~], pursuant to article seventy-eight of the civil practice law and rules.

§ 6. Transfer of records. The legislative ethics commission shall deliver to the joint commission on public ethics all books, papers, records, and property as requested by the joint commission.

§ 7. Continuity of authority. For the purpose of succession to all functions, powers, duties and obligations transferred and assigned to, devolved upon and assumed by it pursuant to this act, the joint commission on public ethics shall be deemed and held to constitute the continuation of the legislative ethics commission.

§ 8. Completion of unfinished business. Any business or other matter undertaken or commenced by the legislative ethics commission pertaining to or connected with the functions, powers, obligations and duties hereby transferred and assigned to the joint commission on public ethics, and pending on the effective date of this act may be conducted and completed by the joint commission on public ethics in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the former legislative ethics commission.

§ 9. Terms occurring in laws, contracts and other documents. Whenever the legislative ethics commission is referred to or designated in any law, contract or documents pertaining solely to those functions, powers, obligations and duties hereby transferred and assigned to the joint commission on public ethics, such reference or designation shall be deemed to refer to the joint commission on public ethics.

§ 10. Existing rights and remedies preserved. No existing right or remedy of any character shall be lost, impaired or affected by reason of this act.

§ 11. Pending actions and proceedings. No action or proceeding pending at the time when this act shall take effect, brought by or against the legislative ethics commission shall be affected by this act, but the same may be prosecuted or defended in the name of the joint commission on public ethics and upon application to the court, the joint commission on public ethics shall be substituted as a party.

§ 12. Notwithstanding any contrary provision of the state finance law, transfer of appropriations heretofore made to the legislative ethics commission, all appropriations or reappropriations for the functions herein transferred heretofore made to the legislative ethics commission,

or segregated pursuant to law, to the extent of remaining unexpended or unencumbered balances thereof, whether allocated or unallocated and whether obligated or unobligated, are hereby transferred to the joint commission on public ethics to the extent necessary to carry out its functions, powers and duties subject to the approval of the director of the budget for the same purposes for which originally appropriated or reappropriated and shall be payable on vouchers certified or approved by the joint commission on public ethics on audit and warrant of the comptroller.

§ 13. This act shall take effect January 1, 2018.