STATE OF NEW YORK

5896

2019-2020 Regular Sessions

IN SENATE

May 16, 2019

Introduced by Sen. BIAGGI -- read twice and ordered printed, and when printed to be committed to the Committee on Ethics and Internal Governance

AN ACT to amend the legislative law, in relation to creating the consulting act

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

Section 1. The legislative law is amended by adding a new article 1-B to read as follows:

ARTICLE 1-B
CONSULTING ACT

Section 1-aa. Short title.
1-bb. Definitions.
1-cc. Powers of the commission.
1-dd. Statement of registration.
1-ee. Monthly registration docket.
1-ff. Termination of retainer, employment or designation.
1-gg. Bi-monthly reports.
1-hh. Contingent retainer.
1-ii. Reports involving disbursement of public monies.
1-jj. Prohibition of gifts.
1-kk. Penalties.
1-ll. Enforcement.
1-mm. Record of appearances.
1-nn. Publication of statement on consultant disclosure regulations.
1-oo. Public access to records.
1-pp. Applicability of certain laws.
1-qq. Separability clause.

§ 1-aa. Short title. This article shall be known and may be cited as the "consulting act".

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

LBD10600-01-9

§ 1-bb. Definitions. As used in this article unless the context otherwise requires:

(a) The term "client" shall mean every person or organization who retains, employs or designates any person or organization to carry on consulting activities on behalf of such client.

(b) The term "organization" shall mean any corporation, company, foundation, association, college as defined by section two of the education law, labor organization, firm, partnership, society, joint stock company, state agency or public corporation.

(c) The term "state agency" shall mean any department, board, bureau, commission, division, office, council, committee or officer of the state, whether permanent or temporary, or a public benefit corporation or public authority at least one of whose members is appointed by the governor, authorized by law to make rules or to make final decisions in adjudicatory proceedings but shall not include the judicial branch or agencies created by interstate compact or international agreement.

(d) The term "commission" shall mean the joint commission on public ethics created by section ninety-four of the executive law.

(e) The term "expense" or "expenses" shall mean any expenditures incurred by or reimbursed to the consultant for consulting but shall not include contributions reportable pursuant to article fourteen of the election law.

(f) The term "compensation" shall mean any salary, fee, gift, payment, benefit, loan, advance or any other thing of value paid, owed, given or promised to the consultant by the client for consulting but shall not include contributions reportable pursuant to article fourteen of the election law.

(g) The term "public corporation" shall mean a municipal corporation, a district corporation, or a public benefit corporation as defined in section sixty-six of the general construction law.

(h) The term "gift" shall mean anything of more than nominal value given to a public official in any form including, but not limited to money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance, or promise, having a monetary value. The following are excluded from the definition of a gift:

(i) complimentary attendance, including food and beverage, at bona fide charitable or political events;

(ii) complimentary attendance, food and beverage offered by the sponsor of a widely attended event. The term "widely attended event" shall mean an event: (A) which at least twenty-five individuals other than members, officers, or employees from the governmental entity in which the public official serves attend or were, in good faith, invited to attend, and (B) which is related to the attendee's duties or responsibilities or which allows the public official to perform a ceremonial function appropriate to his or her position. For the purposes of this exclusion, a public official's duties or responsibilities shall include but not be limited to either (1) attending an event or a meeting at which a speaker or attendee addresses an issue of public interest or concern as a significant activity at such event or meeting; or (2) for elected public officials, or their staff attending with or on behalf of such elected officials, attending an event or a meeting at which more than one-half of the attendees, or persons invited in good faith to attend, are residents of the county, district or jurisdiction from which the elected public official was elected;

(iii) awards, plaques, and other ceremonial items which are publicly presented, or intended to be publicly presented, in recognition of

public service, provided that the item or items are of the type customarily bestowed at such or similar ceremonies and are otherwise reasonable under the circumstances, and further provided that the functionality of such items shall not determine whether such items are permitted under this paragraph;

(iv) an honorary degree bestowed upon a public official by a public or private college or university;

(v) promotional items having no substantial resale value such as pens, mugs, calendars, hats, and t-shirts which bear an organization's name, logo, or message in a manner which promotes the organization's cause;

(vi) goods and services, or discounts for goods and services, offered to the general public or a segment of the general public defined on a basis other than status as a public official and offered on the same terms and conditions as the goods or services are offered to the general public or segment thereof;

(vii) gifts from a family member, member of the same household, or person with a personal relationship with the public official, including invitations to attend personal or family social events, when the circumstances establish that it is the family, household, or personal relationship that is the primary motivating factor; in determining motivation, the following factors shall be among those considered: (A) the history and nature of the relationship between the donor and the recipient, including whether or not items have previously been exchanged; (B) whether the item was purchased by the donor; and (C) whether or not the donor at the same time gave similar items to other public officials; the transfer shall not be considered to be motivated by a family, household, or personal relationship if the donor seeks to charge or deduct the value of such item as a business expense or seeks reimbursement from a client;

(viii) contributions reportable under article fourteen of the election law, including contributions made in violation of that article of the election law;

(ix) travel reimbursement or payment for transportation, meals and accommodations for an attendee, panelist or speaker at an informational event or informational meeting when such reimbursement or payment is made by a governmental entity or by an in-state accredited public or private institution of higher education that hosts the event on its campus, provided, however, that the public official may only accept lodging from an institution of higher education: (A) at a location on or within close proximity to the host campus; and (B) for the night preceding and the nights of the days on which the attendee, panelist or speaker actually attends the event or meeting;

(x) provision of local transportation to inspect or tour facilities, operations or property located in New York state, provided, however, that such inspection or tour is related to the individual's official duties or responsibilities and that payment or reimbursement for expenses for lodging or travel expenses to and from the locality where such facilities, operations or property are located shall be considered to be gifts unless otherwise permitted under this subdivision;

(xi) meals or refreshments when participating in a professional or educational program and the meals or refreshments are provided to all participants; and

(xii) food or beverage valued at fifteen dollars or less.

(i) The term "municipality" shall mean any jurisdictional subdivision of the state, including but not limited to counties, cities, towns, villages, improvement districts and special districts, with a population

of more than five thousand, and industrial development agencies in jurisdictional subdivisions with a population of more than five thousand; and public authorities, and public corporations.

(j) The term "public official" shall mean:

(i) the governor, lieutenant governor, comptroller or attorney general;

(ii) members of the state legislature;

(iii) state officers and employees including:

(A) heads of state departments and their deputies and assistants other than members of the board of regents of the university of the state of New York who receive no compensation or are compensated on a per diem basis,

(B) officers and employees of statewide elected officials,

(C) officers and employees of state departments, boards, bureaus, divisions, commissions, councils or other state agencies,

(D) members or directors of public authorities, other than multi-state authorities, public benefit corporations and commissions at least one of whose members is appointed by the governor, and employees of such authorities, corporations and commissions;

(iv) officers and employees of the legislature; and

(v) municipal officers and employees including an officer or employee of a municipality, whether paid or unpaid, including members of any administrative board, commission or other agency thereof and in the case of a county, shall be deemed to also include any officer or employee paid from county funds. No person shall be deemed to be a municipal officer or employee solely by reason of being a volunteer firefighter or civil defense volunteer, except a fire chief or assistant fire chief.

(k) The term "restricted period" shall mean the period of time commencing with the earliest written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from offerers intending to result in a procurement contract with a state agency, either house of the state legislature, the unified court system, or a municipal agency, as that term is defined by paragraph (ii) of subdivision (q) of this section, and ending with the final contract award and approval by the state agency, either house of the state legislature, the unified court system, or a municipal agency, as that term is defined by paragraph (ii) of subdivision (q) of this section, and, where applicable, the state comptroller.

(l) The term "revenue contract" shall mean any written agreement between a state or municipal agency or a local legislative body and an offerer whereby the state or municipal agency or local legislative body gives or grants a concession or a franchise.

(m) The term "article of procurement" shall mean a commodity, service, technology, public work, construction, revenue contract, the purchase, sale or lease of real property or an acquisition or granting of other interest in real property, that is the subject of a governmental procurement.

(n) The term "governmental procurement" shall mean: (i) the public announcement, public notice, or public communication to any potential vendor of a determination of need for a procurement, which shall include, but not be limited to, the public notification of the specifications, bid documents, request for proposals, or evaluation criteria for a procurement contract, (ii) solicitation for a procurement contract, (iii) evaluation of a procurement contract, (iv) award, approval, denial or disapproval of a procurement contract, or (v)

approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the comptroller, as applicable), renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the offerer.

(o) The term "offerer" shall mean the individual or entity, or any employee, agent or consultant of such individual or entity, that contacts a state agency, either house of the state legislature, the unified court system, a municipal agency or local legislative body about a governmental procurement provided, however, that a governmental agency or its employees that communicate with the procuring agency regarding a governmental procurement in the exercise of its oversight duties shall not be considered an offerer.

(p) The term "procurement contract" shall mean any contract or other agreement, including an amendment, extension, renewal, or change order to an existing contract (other than amendments, extensions, renewals, or change orders that are authorized and payable under the terms of the contract as it was finally awarded or approved by the comptroller, as applicable), for an article of procurement involving an estimated annualized expenditure in excess of fifteen thousand dollars. Grants, article XI-B state finance law contracts, program contracts between not-for-profit organizations, as defined in article XI-B of the state finance law, and the unified court system, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders, contracts governing organ transplants, contracts allowing for state participation in trade shows, and eminent domain transactions shall not be deemed procurement contracts.

(q) The term "municipal agency" shall mean: (i) any department, board, bureau, commission, division, office, council, committee or officer of a municipality, whether permanent or temporary; or (ii) an industrial development agency, located in a jurisdictional subdivision of the state with a population of more than fifty thousand, or local public benefit corporation, as that term is defined in section sixty-six of the general construction law.

(r) The term "local legislative body" shall mean the board of supervisors, board of aldermen, common council, council, commission, town board, board of trustees or other elective governing board or body of a municipality now or hereafter vested by state statute, charter or other law with jurisdiction to initiate and adopt local laws, ordinances and budgets, whether or not such local laws, ordinances or budgets require approval of the elective chief executive officer or other official or body to become effective.

(s) The term "commission salesperson" shall mean any person the primary purpose of whose employment is to cause or promote the sale of, or to influence or induce another to make a purchase of an article of procurement, whether such person is an employee (as that term is defined for tax purposes) of or an independent contractor for a vendor, provided that an independent contractor shall have a written contract for a term of not less than six months or for an indefinite term, and which person shall be compensated, in whole or in part, by the payment of a percentage amount of all or a substantial part of the sales which such person has caused, promoted, influenced or induced, provided, however, that no person shall be considered a commission salesperson with respect to any sale to or purchase by a state agency, either house of the state legislature, the unified court system, a municipal agency or local legisla-

tive body if the percentage amount of any commission payable with respect to such sale or purchase is substantially in excess of any commission payable with respect to any comparable sale to a purchaser that is not a state agency, either house of the state legislature, the unified court system, a municipal agency or local legislative body; provided further, however, that any person that is required to file a statement or report pursuant to this article by virtue of engaging in consulting activities shall not be deemed to be a "commission salesperson" for purposes of this article.

(t) The term "unified court system" shall, for the purposes of this article only, mean the unified court system of the state of New York, or the office of court administration, where appropriate, other than town and village justice courts in jurisdictions with a population under fifty thousand, when it acts solely in an administrative capacity to engage in governmental procurements and shall not include the unified court system or any court of the state judiciary when it acts to hear and decide cases of original or appellate jurisdiction or otherwise acts in its judicial, as opposed to administrative, capacity.

(u) The term "reportable business relationship" shall mean a relationship in which compensation is paid by a consultant or by a client of a consultant, in exchange for any goods, services or anything of value, the total value of which is in excess of one thousand dollars annually, to be performed or provided by or intended to be performed or provided by (i) any statewide elected official, state officer, state employee, member of the legislature or legislative employee, or (ii) any entity in which the consultant or the client of a consultant knows or has reason to know the statewide elected official, state officer, state employee, member of the legislature or legislative employee is a proprietor, partner, director, officer or manager, or owns or controls ten percent or more of the stock of such entity (or one percent in the case of a corporation whose stock is regularly traded on an established securities exchange).

(v) The term "business dealings" shall mean (i) any contract, other than an emergency contract or a contract procured through publicly-advertised competitive sealed bidding, which is for the procurement of goods, services or construction that is entered into or in effect with the public corporation at or above five hundred thousand dollars, or an emergency contract, and shall include any contract for the underwriting of the debt of the public corporation and the retention of any bond counsel, disclosure counsel or underwriter's counsel in connection therewith; (ii) any acquisition or disposition of real property, other than a public auction or competitive sealed bid transaction or the acquisition of property pursuant to the department of environmental protection watershed land acquisition program, with the public corporation; (iii) any concession, other than a concession awarded through publicly-advertised competitive sealed bid, or any franchise from a public corporation which has an estimated annual value at or above the dollar value defined in paragraph (ii) of subdivision (w) of this section; or (iv) any contract for the investment of pension funds, including investments in a private equity firm and contracts with investment related consultants. For purposes of this article, all contracts, concessions, franchises and grants that are five thousand dollars or less in value shall be excluded from any calculation as to whether a contract, concession, franchise or grant is a business dealing with the public corporation.

(w) The term "contract" shall mean and include any agreement between a public corporation or elected official and a contractor, or any agree-

ment between such a contractor and a subcontractor, which (i) is for the provision of goods, services or construction and has a value that when aggregated with the values of all other such agreements with the same contractor or subcontractor and any franchises or concessions awarded to such contractor or subcontractor during the immediately preceding twelve-month period is valued at one hundred thousand dollars or more; (ii) is for the provision of goods, services or construction, is awarded to a sole source and is valued at ten thousand dollars or more; (iii) is a concession and has a value that when aggregated with the value of all other contracts held by the same concessionaire is valued at one hundred thousand dollars or more; or (iv) is a franchise.

§ 1-cc. Powers of the commission. In addition to any other powers and duties provided by section ninety-four of the executive law, the commission shall, with respect to its consultant-related functions only, have the power and duty to:

(a) administer and enforce all the provisions of this article;

(b) conduct a program of random audits subject to the terms and conditions of this section. Any such program shall be carried out in the following manner:

(i) The commission may randomly select reports or registration statements required to be filed by consultants or clients pursuant to this article for audit. Any such selection shall be done in a manner pursuant to which the identity of any particular consultant or client whose statement or report is selected for audit is unknown to the commission, its staff or any of their agents prior to selection.

(ii) The commission shall develop protocols for the conduct of such random audits. Such random audits may require the production of books, papers, records or memoranda relevant and material to the preparation of the selected statements or reports, for examination by the commission. Any such protocols shall ensure that similarly situated statements or reports are audited in a uniform manner.

(iii) The commission shall contract with an outside accounting entity, which shall monitor the process pursuant to which the commission selects statements or reports for audit and carries out the provisions of paragraphs (i) and (ii) of this subdivision and certifies that such process complies with the provisions of such paragraphs.

(iv) Upon completion of a random audit conducted in accordance with the provisions of paragraphs (i), (ii) and (iii) of this subdivision, the commission shall determine whether there is reasonable cause to believe that any such statement or report is inaccurate or incomplete. Upon a determination that such reasonable cause exists, the commission may require the production of further books, records or memoranda, subpoena witnesses, compel their attendance and testimony and administer oaths or affirmations, to the extent the commission determines such actions are necessary to obtain information relevant and material to investigating such inaccuracies or omissions;

(c) conduct hearings pursuant to article seven of the public officers law. Any hearing may be conducted as a video conference in accordance with the provisions of subdivision four of section one hundred four of the public officers law;

(d) prepare uniform forms for the statements and reports required by this article;

(e) meet at least once during each bi-monthly reporting period of the year as established by subdivision (a) of section one-gg of this article and may meet at such other times as the commission, or the chair and vice-chair jointly, shall determine;

(f) issue advisory opinions to those under its jurisdiction. Such advisory opinions, which shall be published and made available to the public, shall not be binding upon such commission except with respect to the person to whom such opinion is rendered, provided, however, that a subsequent modification by such commission of such an advisory opinion shall operate prospectively only; and

(g) submit by the first day of March next following the year for which such report is made to the governor and the members of the legislature an annual report summarizing the commission's work, listing the consultant's and clients required to register pursuant to this article and the expenses and compensation reported pursuant to this article and making recommendations with respect to this article. The commission shall make this report available free of charge to the public.

(h) provide an online ethics training course for individuals registered as consultants pursuant to section one-dd of this article. The curriculum for the course shall include, but not be limited to, explanations and discussions of the statutes and regulations of New York concerning ethics in the public officers law, the election law, the legislative law, summaries of advisory opinions, underlying purposes and principles of the relevant laws, and examples of practical application of these laws and principles. The commission shall prepare those methods and materials necessary to implement the curriculum. Each individual registered as a consultant pursuant to section one-dd of this article shall complete such training course at least once in any three-year period during which he or she is registered as a consultant.

§ 1-dd. Statement of registration. (a) (i) Every consultant shall annually file with the commission, on forms provided by the commission, a statement of registration for each calendar year; provided, however, that the filing of such statement of registration shall not be required of any consultant who (A) in any year does not expend, incur or receive an amount in excess of two thousand dollars for years prior to two thousand six and in excess of five thousand dollars in the year two thousand six and the years thereafter of reportable compensation and expenses, as provided in paragraph (v) of subdivision (b) of section one-gg of this article, for the purposes of consulting or (B) is an officer, director, trustee or employee of any public corporation, when acting in such official capacity; provided however, that nothing in this section shall be construed to relieve any public corporation of the obligation to file such statements and reports as required by this article. The amounts expended, incurred, or received of reportable compensation and expenses for consulting activities shall be computed cumulatively for all consulting activities when determining whether the thresholds set forth in this section have been met.

(ii) (A) Through calendar year two thousand twenty-four, such filing shall be completed on or before January first by those persons who have been retained, employed or designated as consultant on or before December fifteenth who reasonably anticipate that in the coming year they will expend, incur or receive combined reportable compensation and expenses in an amount in excess of two thousand dollars; for those consultants retained, employed or designated after December fifteenth, and for those consultants who subsequent to their retainer, employment or designation reasonably anticipate combined reportable compensation and expenses in excess of such amount, such filing must be completed within fifteen days thereafter, but in no event later than ten days after the actual incurring or receiving of such reportable compensation and expenses.

(B) For calendar year two thousand twenty-five, such filings shall be completed on or before January first by those persons who have been retained, employed or designated as consultant on or before December fifteenth, two thousand twenty-four who reasonably anticipate that in the coming year they will expend, incur or receive combined reportable compensation and expenses in an amount in excess of two thousand dollars; for those consultants retained, employed or designated after December fifteenth, two thousand twenty-four, and for those consultants who subsequent to their retainer, employment or designation reasonably anticipate combined reportable compensation and expenses in excess of such amount, such filing must be completed within fifteen days thereafter, but in no event later than ten days after the actual incurring or receiving of such reportable compensation and expenses.

(iii) Commencing calendar year two thousand twenty-six and thereafter every consultant shall biennially file with the commission, on forms provided by the commission, a statement of registration for each biennial period beginning with the first year of the biennial cycle commencing calendar year two thousand twenty-six and thereafter; provided, however, that the biennial filing of such statement of registration shall not be required of any consultant who (A) in any year prior to calendar year two thousand twenty-seven does not expend, incur or receive an amount in excess of two thousand dollars of reportable compensation and expenses, as provided in paragraph (v) of subdivision (b) of section one-gg of this article, for the purposes of consulting and commencing with calendar year two thousand twenty does not expend, incur or receive an amount in excess of five thousand dollars of reportable compensation, as provided in paragraph (v) of subdivision (b) of section one-gg of this article for the purposes of consulting or (B) is an officer, director, trustee or employee of any public corporation, when acting in such official capacity; provided however, that nothing in this section shall be construed to relieve any public corporation of the obligation to file such statements and reports as required by this article.

(iv) Such biennial filings shall be completed on or before January first of the first year of a biennial cycle commencing in calendar year two thousand twenty-six and thereafter, by those persons who have been retained, employed or designated as consultant on or before December fifteenth of the previous calendar year and who reasonably anticipate that in the coming year they will expend, incur or receive combined reportable compensation and expenses in an amount in excess of two thousand dollars in years prior to calendar year two thousand twenty-seven and five thousand dollars commencing in two thousand twenty-seven; for those consultants retained, employed or designated after the previous December fifteenth, and for those consultants who subsequent to their retainer, employment or designation reasonably anticipate combined reportable compensation and expenses in excess of such amount, such filing must be completed within fifteen days thereafter, but in no event later than ten days after the actual incurring or receiving of such reportable compensation and expenses.

(b) (i) Such statements of registration shall be kept on file for a period of three years for those filing periods where annual statements are required, and shall be open to public inspection during such period;

(ii) Biennial statements of registration shall be kept on file for a period of three biennial filing periods where biennial statements are required, and shall be open to public inspection during such period.

(c) Such statement of registration shall contain:

(i) the name, address and telephone number of the consultant, and if the consultant is an organization the names, addresses and telephone numbers of any officer or employee of such consultant who engages in any consulting activities or who is employed in an organization's division that engages in consulting activities of the organization;

(ii) the name, address and telephone number of the client by whom or on whose behalf the consultant is retained, employed or designated;

(iii) if such consultant is retained or employed pursuant to a written agreement of retainer or employment, a copy of such shall also be attached and if such retainer or employment is oral, a statement of the substance thereof; such written retainer, or if it is oral, a statement of the substance thereof, and any amendment thereto, shall be retained for a period of three years;

(iv) a written authorization from the client by whom the consultant is authorized to consult, unless such consultant has filed a written agreement of retainer or employment pursuant to paragraph three of this subdivision;

(v) the following information on which the consultant expects to consult: (A) a description of the general subject or subjects, (B) the legislative bill numbers of any bills, (C) the numbers or subject matter (if there are no numbers) of gubernatorial executive orders or executive orders issued by the chief executive officer of a municipality, (D) the subject matter of and tribes involved in tribal-state compacts, memoranda of understanding, or any other state-tribal agreements and any state actions related to class III gaming as provided in 25 U.S.C. § 2701, (E) the rule, regulation, and ratemaking numbers of any rules, regulations, rates, or municipal ordinances and resolutions, or proposed rules, regulations, or rates, or municipal ordinances and resolutions, and (F) the titles and any identifying numbers of any procurement contracts and other documents disseminated by a state agency, either house of the state legislature, the unified court system, municipal agency or local legislative body in connection with a governmental procurement;

(vi) the name of the person, organization, or legislative body before which the consultant is consulting or expects to consult;

(vii) if the consultant is retained, employed or designated by more than one client, a separate statement of registration shall be required for each such client;

(viii) (A) the name and public office address of any statewide elected official, state officer or employee, member of the legislature or legislative employee and entity with whom the consultant has a reportable business relationship;

(B) a description of the general subject or subjects of the transactions between the consultant or consultants and the statewide elected official, state officer or employee, member of the legislature or legislative employee and entity; and

(C) the compensation, including expenses, to be paid and paid by virtue of the business relationship.

(d) Any amendment to the information filed by the consultant in the original statement of registration shall be submitted to the commission on forms supplied by the commission within ten days after such amendment, however, this shall not require the consultant to amend the entire registration form.

(e) (i) The first statement of registration filed annually by each consultant for calendar years through two thousand twenty-four shall be accompanied by a registration fee of fifty dollars except that no registration fee shall be required of a public corporation. A fee of fifty

dollars shall be required for any subsequent statement of registration filed by a consultant during the same calendar year; (ii) The first statement of registration filed annually by each consultant for calendar year two thousand twenty-three shall be accompanied by a registration fee of one hundred dollars except that no registration fee shall be required from any consultant who in any year does not expend, incur or receive an amount in excess of five thousand dollars of reportable compensation and expenses, as provided in paragraph (v) of subdivision (b) of section one-gg of this article, for the purposes of consulting or of a public corporation. A fee of one hundred dollars shall be required for any subsequent statement of registration filed by a consultant during the same calendar year; (iii) The first statement of registration filed biennially by each consultant for the first biennial registration requirements for calendar years two thousand twenty-six and two thousand twenty-seven and thereafter, shall be accompanied by a registration fee of two hundred dollars except that no registration fee shall be required from any consultant who in any year does not expend, incur or receive an amount in excess of five thousand dollars of reportable compensation and expenses, as provided in paragraph (v) of subdivision (b) of section one-gg of this article, for the purposes of consulting or of a public corporation. A fee of two hundred dollars shall be required for any subsequent statement of registration filed by a consultant during the same biennial period; (iv) The statement of registration filed after the due date of a biennial registration shall be accompanied by a registration fee that is prorated to one hundred dollars for any registration filed after January first of the second calendar year covered by the biennial reporting requirement. In addition to the fees authorized by this section, the commission may impose a fee for late filing of a registration statement required by this section not to exceed twenty-five dollars for each day that the statement required to be filed is late, except that if the consultant making a late filing has not previously been required by statute to file such a statement, the fee for late filing shall not exceed ten dollars for each day that the statement required to be filed is late.

§ 1-ee. Monthly registration docket. It shall be the duty of the commission to compile a monthly docket of statements of registration containing all information required by section one-dd of this article. Each such monthly docket shall contain all statements of registration filed during such month and all amendments to previously filed statements of registration. Copies shall be made available for public inspection.

§ 1-ff. Termination of retainer, employment or designation. Upon the termination of a consultant's retainer, employment or designation, such consultant and the client on whose behalf such service has been rendered shall both give written notice to the commission within thirty days after the consultant ceases the activity that required such consultant to file a statement of registration; however, such consultant shall nevertheless comply with the bi-monthly reporting requirements up to the date such activity has ceased as required by this article. The commission shall enter notice of such termination in the appropriate monthly registration docket required by section one-ee of this article.

§ 1-gg. Bi-monthly reports. (a) Any consultant required to file a statement of registration pursuant to section one-dd of this article who in any consultant year reasonably anticipates that during the year such consultant will expend, incur or receive combined reportable compensation and expenses in an amount in excess of five thousand dollars, as

provided in paragraph (v) of subdivision (b) of this section, for the purpose of consulting, shall file with the commission a bi-monthly written report, on forms supplied by the commission, by the fifteenth day next succeeding the end of the reporting period in which the consultant was first required to file a statement of registration. Such reporting periods shall be the period of January first to the last day of February, March first to April thirtieth, May first to June thirtieth, July first to August thirty-first, September first to October thirty-first and November first to December thirty-first.

(b) Such bi-monthly report shall contain:

(i) the name, address and telephone number of the consultant;

(ii) the name, address and telephone number of the client by whom or on whose behalf the consultant is retained, employed or designated;

(iii) the following information on which the consultant has consulted: (A) a description of the general subject or subjects, (B) the legislative bill numbers of any bills, (C) the numbers or subject matter (if there are no numbers) of gubernatorial executive orders or executive orders issued by the chief executive officer of a municipality, (D) the subject matter of and tribes involved in tribal-state compacts, memoranda of understanding, or any other state-tribal agreements and any state actions related to class III gaming as provided in 25 U.S.C. § 2701, (E) the rule, regulation, and ratemaking or municipal ordinance or resolution numbers of any rules, regulations, or rates or ordinance or proposed rules, regulations, or rates or municipal ordinances or resolutions, and (F) the titles and any identifying numbers of any procurement contracts and other documents disseminated by a state agency, either house of the state legislature, the unified court system, municipal agency or local legislative body in connection with a governmental procurement;

(iv) the name of the person, organization, or legislative body before which the consultant has consulted;

(v) (A) the compensation paid or owed to the consultant, and any expenses expended, received or incurred by the consultant for the purpose of consulting.

(B) expenses required to be reported pursuant to subparagraph (A) of this paragraph shall be listed in the aggregate if seventy-five dollars or less and if more than seventy-five dollars such expenses shall be detailed as to amount, to whom paid, and for what purpose; and where such expense is more than seventy-five dollars on behalf of any one person, the name of such person shall be listed.

(C) for the purposes of this paragraph, expenses shall not include:

(1) personal sustenance, lodging and travel disbursements of such consultant;

(2) expenses, not in excess of five hundred dollars in any one calendar year, directly incurred for the printing or other means of reproduction or mailing of letters, memoranda or other written communications.

(D) expenses paid or incurred for salaries other than that of the consultant shall be listed in the aggregate.

(E) expenses of more than fifty dollars shall be paid by check or substantiated by receipts and such checks and receipts shall be kept on file by the consultant for a period of three years.

(c) (i) All such bi-monthly reports shall be subject to review by the commission.

(ii) Such bi-monthly reports shall be kept on file for three years and shall be open to public inspection during such time.

(iii) In addition to the filing fees authorized by this article, the commission may impose a fee for late filing of a bi-monthly report required by this section not to exceed twenty-five dollars for each day that the report required to be filed is late, except that if the consultant making a late filing has not previously been required by statute to file such a report, the fee for late filing shall not exceed ten dollars for each day that the report required to be filed is late.

(iv) Any consultant registered pursuant to section one-dd of this article whose consulting activity is performed on its own behalf and not pursuant to retention by a client:

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

(B) at least three percent of whose total expenditures during the same period were devoted to consulting in New York shall report to the commission the names of each source of funding over five thousand dollars from a single source that were used to fund the consulting activities reported and the amounts received from each identified source of funding.

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

The disclosure shall not apply to:

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

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

(iii) any governmental entity.

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

§ 1-hh. Contingent retainer. (a) No client shall retain or employ any consultant for compensation, the rate or amount of which compensation in whole or part is contingent or dependent upon:

(i) (A) the passage or defeat of any legislative bill or the approval or veto of any legislation by the governor, (B) the terms, issuance, modification or rescission of a gubernatorial executive order, (C) the

terms, approval or disapproval, or the implementation and administration of tribal-state compacts, memoranda of understanding, or any other tribal-state agreements and any state actions related to class III gaming as provided in 25 U.S.C. § 2701, or (D) the adoption or rejection of any code, rule or regulation having the force and effect of law or the outcome of any rate making proceeding by a state agency;

(ii)(A) the passage or defeat of any local law, ordinance, regulation or resolution by any municipality or subdivision thereof, (B) the terms, issuance, modification or rescission of an executive order issued by the chief executive officer of a municipality, or (C) the adoption, rejection or implementation of any rule, resolution or regulation having the force and effect of a local law, ordinance or regulation or any rate making proceeding by any municipality or subdivision thereof;

(iii) any determination by a state agency, either house of the state legislature, the unified court system, municipal agency or local legislative body with respect to a governmental procurement or a grant, loan or agreement involving the disbursement of public monies.

(b) No person shall accept such a retainer or employment. A violation of this section shall be a class A misdemeanor.

§ 1-ii. Reports involving disbursement of public monies. (a) Any consultant required to file a statement of registration pursuant to section one-dd of this article who in any consulting year reasonably anticipates that during the year they will expend, incur or receive combined reportable compensation and expenses in an amount in excess of five thousand dollars shall file with the commission, on forms supplied by the commission, a report of any attempts to influence a determination by a public official, or by a person or entity working in cooperation with a public official, with respect to the solicitation, award or administration of a grant, loan, or agreement involving the disbursement of public monies in excess of fifteen thousand dollars other than a governmental procurement as defined in section one-bb of this article.

(b) Such public monies consulting reports shall contain:

(i) the name, address and telephone number of the consultant and the individuals employed by the consultant engaged in such public monies consulting activities;

(ii) the name, address and telephone number of the client by whom or on whose behalf the consultant is retained, employed or designated on whose behalf the consultant has engaged in consulting reportable under this paragraph;

(iii) a description of the grant, loan, or agreement involving the disbursement of public monies on which the consultant has consulted;

(iv) the name of the person, organization, or legislative body before which the consultant has engaged in consulting reportable under this paragraph; and

(v) the compensation paid or owed to the consultant, and any expenses expended, received or incurred by the consultant for the purpose of consulting reportable under this paragraph.

(c) Public monies consulting reports required pursuant to this section shall be filed in accordance with the schedule applicable to the filing of bi-monthly reports pursuant to section one-gg of this article and shall be filed not later than the fifteenth day next succeeding the end of such reporting period.

(d) In addition to any other fees authorized by this section, the commission may impose a fee for late filing of a report required by this subdivision not to exceed twenty-five dollars for each day that the report required to be filed is late, except that if the consultant

making a late filing has not previously been required by statute to file such a report, the fee for late filing shall not exceed ten dollars for each day that the report required to be filed is late.

(e) All reports filed pursuant to this subdivision shall be subject to review by the commission. Such reports shall be kept in electronic form by the commission and shall be available for public inspection.

§ 1-jj. Prohibition of gifts. No individual or entity required to be listed on a statement of registration pursuant to this article shall offer or give a gift to any public official as defined within this article, unless under the circumstances it is not reasonable to infer that the gift was intended to influence such public official. No individual or entity required to be listed on a statement of registration pursuant to this article shall offer or give a gift to the spouse or unemancipated child of any public official as defined within this article under circumstances where it is reasonable to infer that the gift was intended to influence such public official. No spouse or unemancipated child of an individual required to be listed on a statement of registration pursuant to this article shall offer or give a gift to a public official under circumstances where it is reasonable to infer that the gift was intended to influence such public official. This section shall not apply to gifts to officers, members or directors of boards, commissions, councils, public authorities or public benefit corporations who receive no compensation or are compensated on a per diem basis, unless the person listed on the statement of registration appears or has matters pending before the board, commission or council on which the recipient sits.

§ 1-kk. Penalties. (a) (i) Any consultant, public corporation, or client who knowingly and wilfully fails to file timely a report or statement required by this section or knowingly and wilfully files false information or knowingly and wilfully violates section one-jj of this article shall be guilty of a class A misdemeanor; and

(ii) any consultant, public corporation, or client who knowingly and wilfully fails to file timely a report or statement required by this section or knowingly and wilfully files false information or knowingly and wilfully violates section one-jj of this article, after having previously been convicted in the preceding five years of the crime described in paragraph (i) of this subdivision, shall be guilty of a class E felony. Any consultant convicted of or pleading guilty to a felony under the provisions of this section may be barred from acting as a consultant for a period of one year from the date of the conviction. For the purposes of this subdivision, the chief administrative officer of any organization required to file a statement or report shall be the person responsible for making and filing such statement or report unless some other person prior to the due date thereof has been duly designated to make and file such statement or report.

(b)(i) A consultant, public corporation, or client who knowingly and wilfully fails to file a statement or report within the time required for the filing of such report or knowingly and wilfully violates section one-jj of this article shall be subject to a civil penalty for each such failure or violation, in an amount not to exceed the greater of twenty-five thousand dollars or three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received, to be assessed by the commission.

(ii) A consultant, public corporation, or client who knowingly and wilfully files a false statement or report shall be subject to a civil penalty, in an amount not to exceed the greater of fifty thousand

dollars or five times the amount the person failed to report properly, to be assessed by the commission.

(iii) Any consultant or client that knowingly and wilfully fails to file a statement or report within the time required for the filing of such report, knowingly and wilfully files a false statement or report, or knowingly and wilfully violates section one-jj of this article, after having been found by the commission to have knowing and wilfully committed such conduct or violation in the preceding five years, may be subject to a determination that the consultant or client is prohibited from engaging in consulting activities, for a period of one year.

(iv) Any consultant or client that knowingly and wilfully engages in consulting activities, during the period in which they are prohibited from engaging in consulting activities, may be subject to a determination that the consultant or client is prohibited from engaging in consulting activities, for a period of up to four years, and shall be subject to a civil penalty not to exceed fifty thousand dollars, plus a civil penalty in an amount equal to five times the value of any gift, compensation or benefit received as a result of the violation.

(v) A consultant, public corporation, or client who knowingly and wilfully fails to retain their records pursuant to paragraph (iii) of subdivision (c) of section one-dd of this article or subparagraph (E) of paragraph (v) of subdivision (b) of section one-gg of this article, shall be subject to a civil penalty in an amount of two thousand dollars per violation to be assessed by the commission.

(c)(i) Any assessment or order to debar shall be determined only after a hearing at which the party shall be entitled to appear, present evidence and be heard. Any assessment or order to debar pursuant to this section may only be imposed after the commission sends by certified and first-class mail written notice of intent to assess a penalty or order to debar and the basis for the penalty or order to debar. Any assessment may be recovered in an action brought by the attorney general.

(ii) In assessing any fine or penalty pursuant to this section, the commission shall consider: (A) as a mitigating factor that the consultant, public corporation or client has not previously been required to register, and (B) as an aggravating factor that the consultant, public corporation or client has had fines or penalties assessed against it in the past. The amount of compensation expended, incurred or received shall be a factor to consider in determining a proportionate penalty.

(iii) Any consultant, public corporation or client who receives a notice of intent to assess a penalty for knowingly and wilfully failing to file a report or statement pursuant to subdivision (b) of this section and who has never previously received a notice of intent to assess a penalty for failing to file a report or statement required under this section shall be granted fifteen days within which to file the statement of registration or report without being subject to the fine or penalty set forth in subdivision (b) of this section. Upon the failure of such consultant, public corporation or client to file within such fifteen day period, such consultant, public corporation or client shall be subject to a fine or penalty pursuant to subdivision (b) of this section.

(d) All moneys recovered by the attorney general or received by the commission from the assessment of civil penalties authorized by this section shall be deposited to the general fund.

§ 1-ll. Enforcement. (a) All statements and reports required under this article shall be subject to a declaration by the person making and filing such statement and report that the information is true, correct

and complete to the best knowledge and belief of the signer under the penalties of perjury.

(b) The commission shall be charged with the duty of reviewing all statements and reports required under this article for violations, and it shall be their duty, if they deem such to be wilful, to report such determination to the attorney general or other appropriate authority.

(c) Upon receipt of notice of such failure from the commission, the attorney general or other appropriate authority shall take such action as he deems appropriate to secure compliance with the provisions of this article.

§ 1-mm. Record of appearances. The commission shall promulgate all rules or regulations and any procedures, forms, or instructions necessary to implement the provisions of section one hundred sixty-six of the executive law relating to the quarterly filing of the record of appearances before regulatory agencies.

§ 1-nn. Publication of statement on consultant disclosure regulations. The commission shall publish a statement on consulting regulations setting forth the requirements of this article in a clear and brief manner. Such statement shall contain an explanation of the registration and filing requirements and the penalties for violation thereof, together with such other information as the commission shall determine, and copies thereof shall be made available to the public at convenient locations throughout the state.

§ 1-oo. Public access to records. The commission shall make information furnished by consultants and clients available to the public for inspection and copying in electronic and paper formats. Access to such information shall also be made available for remote computer users through the internet network.

§ 1-pp. Applicability of certain laws. The provisions of this article including, but not limited to, any proceeding or hearing conducted pursuant hereto, shall be subject to the applicable provisions of the state administrative procedure act and section seventy-three of the civil rights law.

§ 1-qq. Separability clause. If any part or provision of this article or the application thereof to any person or organization is adjudged by a court of competent jurisdiction to be unconstitutional, 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 the part, provision, person or organization directly involved in the controversy in which such judgment shall have been rendered.

§ 2. This act shall take effect immediately.