

STATE OF NEW YORK

6661--A

2021-2022 Regular Sessions

IN ASSEMBLY

March 23, 2021

Introduced by M. of A. GALEF, WOERNER -- Multi-Sponsored by -- M. of A. THIELE -- read once and referred to the Committee on Governmental Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend 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:

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

3 ARTICLE 1-B
4 CONSULTING ACT

5 Section 1-aa. Short title.

6 1-bb. Definitions.

7 1-cc. Powers of the commission.

8 1-dd. Statement of registration.

9 1-ee. Monthly registration docket.

10 1-ff. Termination of retainer, employment or designation.

11 1-gg. Bi-monthly reports.

12 1-hh. Contingent retainer.

13 1-ii. Reports involving disbursement of public monies.

14 1-jj. Prohibition of gifts.

15 1-kk. Penalties.

16 1-ll. Enforcement.

17 1-mm. Record of appearances.

18 1-nn. Publication of statement on consultant disclosure regu-
19 lations.

20 1-oo. Public access to records.

21 1-pp. Applicability of certain laws.

22 1-qq. Separability clause.

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

LBD02948-03-1

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

3 § 1-bb. Definitions. As used in this article unless the context other-
4 wise requires:

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

8 (b) The term "organization" shall mean any corporation, company, founda-
9 tion, association, college as defined by section two of the education
10 law, labor organization, firm, partnership, society, joint stock compa-
11 ny, state agency or public corporation.

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

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

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

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

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

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

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

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

1 (iii) awards, plaques, and other ceremonial items which are publicly
2 presented, or intended to be publicly presented, in recognition of
3 public service, provided that the item or items are of the type custom-
4 arily bestowed at such or similar ceremonies and are otherwise reason-
5 able under the circumstances, and further provided that the functionali-
6 ty of such items shall not determine whether such items are permitted
7 under this paragraph;

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

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

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

18 (vii) gifts from a family member, member of the same household, or
19 person with a personal relationship with the public official, including
20 invitations to attend personal or family social events, when the circum-
21 stances establish that it is the family, household, or personal
22 relationship that is the primary motivating factor; in determining moti-
23 vation, the following factors shall be among those considered: (A) the
24 history and nature of the relationship between the donor and the recipi-
25 ent, including whether or not items have previously been exchanged; (B)
26 whether the item was purchased by the donor; and (C) whether or not the
27 donor at the same time gave similar items to other public officials; the
28 transfer shall not be considered to be motivated by a family, household,
29 or personal relationship if the donor seeks to charge or deduct the
30 value of such item as a business expense or seeks reimbursement from a
31 client;

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

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

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

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

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

1 (i) The term "municipality" shall mean any jurisdictional subdivision
2 of the state, including but not limited to counties, cities, towns,
3 villages, improvement districts and special districts, with a population
4 of more than five thousand, and industrial development agencies in
5 jurisdictional subdivisions with a population of more than five thou-
6 sand; and public authorities, and public corporations.

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

8 (i) the governor, lieutenant governor, comptroller or attorney gener-
9 al;

10 (ii) members of the state legislature;

11 (iii) state officers and employees including:

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

16 (B) officers and employees of statewide elected officials,

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

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

23 (iv) officers and employees of the legislature; and

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

31 (k) The term "restricted period" shall mean the period of time
32 commencing with the earliest written notice, advertisement or sollicita-
33 tion of a request for proposal, invitation for bids, or solicitation of
34 proposals, or any other method for soliciting a response from offerers
35 intending to result in a procurement contract with a state agency,
36 either house of the state legislature, the unified court system, or a
37 municipal agency, as that term is defined by paragraph (ii) of subdivi-
38 sion (q) of this section, and ending with the final contract award and
39 approval by the state agency, either house of the state legislature, the
40 unified court system, or a municipal agency, as that term is defined by
41 paragraph (ii) of subdivision (q) of this section, and, where applica-
42 ble, the state comptroller.

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

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

52 (n) The term "governmental procurement" shall mean: (i) the public
53 announcement, public notice, or public communication to any potential
54 vendor of a determination of need for a procurement, which shall
55 include, but not be limited to, the public notification of the specifi-
56 cations, bid documents, request for proposals, or evaluation criteria

1 for a procurement contract, (ii) solicitation for a procurement
2 contract, (iii) evaluation of a procurement contract, (iv) award,
3 approval, denial or disapproval of a procurement contract, or (v)
4 approval or denial of an assignment, amendment (other than amendments
5 that are authorized and payable under the terms of the procurement
6 contract as it was finally awarded or approved by the comptroller, as
7 applicable), renewal or extension of a procurement contract, or any
8 other material change in the procurement contract resulting in a finan-
9 cial benefit to the offerer.

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

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

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

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

47 (s) The term "commission salesperson" shall mean any person the prima-
48 ry purpose of whose employment is to cause or promote the sale of, or to
49 influence or induce another to make a purchase of an article of procure-
50 ment, whether such person is an employee (as that term is defined for
51 tax purposes) of or an independent contractor for a vendor, provided
52 that an independent contractor shall have a written contract for a term
53 of not less than six months or for an indefinite term, and which person
54 shall be compensated, in whole or in part, by the payment of a percent-
55 age amount of all or a substantial part of the sales which such person
56 has caused, promoted, influenced or induced, provided, however, that no

1 person shall be considered a commission salesperson with respect to any
2 sale to or purchase by a state agency, either house of the state legis-
3 lature, the unified court system, a municipal agency or local legisla-
4 tive body if the percentage amount of any commission payable with
5 respect to such sale or purchase is substantially in excess of any
6 commission payable with respect to any comparable sale to a purchaser
7 that is not a state agency, either house of the state legislature, the
8 unified court system, a municipal agency or local legislative body;
9 provided further, however, that any person that is required to file a
10 statement or report pursuant to this article by virtue of engaging in
11 consulting activities shall not be deemed to be a "commission salesper-
12 son" for purposes of this article.

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

22 (u) The term "reportable business relationship" shall mean a relation-
23 ship in which compensation is paid by a consultant or by a client of a
24 consultant, in exchange for any goods, services or anything of value,
25 the total value of which is in excess of one thousand dollars annually,
26 to be performed or provided by or intended to be performed or provided
27 by (i) any statewide elected official, state officer, state employee,
28 member of the legislature or legislative employee, or (ii) any entity in
29 which the consultant or the client of a consultant knows or has reason
30 to know the statewide elected official, state officer, state employee,
31 member of the legislature or legislative employee is a proprietor, part-
32 ner, director, officer or manager, or owns or controls ten percent or
33 more of the stock of such entity (or one percent in the case of a corpo-
34 ration whose stock is regularly traded on an established securities
35 exchange).

36 (v) The term "business dealings" shall mean (i) any contract, other
37 than an emergency contract or a contract procured through publicly-ad-
38 vertised competitive sealed bidding, which is for the procurement of
39 goods, services or construction that is entered into or in effect with
40 the public corporation at or above five hundred thousand dollars, or an
41 emergency contract, and shall include any contract for the underwriting
42 of the debt of the public corporation and the retention of any bond
43 counsel, disclosure counsel or underwriter's counsel in connection ther-
44 ewith; (ii) any acquisition or disposition of real property, other than
45 a public auction or competitive sealed bid transaction or the acquisi-
46 tion of property pursuant to the department of environmental protection
47 watershed land acquisition program, with the public corporation; (iii)
48 any concession, other than a concession awarded through publicly-adver-
49 tised competitive sealed bid, or any franchise from a public corporation
50 which has an estimated annual value at or above the dollar value defined
51 in paragraph (ii) of subdivision (w) of this section; or (iv) any
52 contract for the investment of pension funds, including investments in a
53 private equity firm and contracts with investment related consultants.
54 For purposes of this article, all contracts, concessions, franchises and
55 grants that are five thousand dollars or less in value shall be excluded

1 from any calculation as to whether a contract, concession, franchise or
2 grant is a business dealing with the public corporation.

3 (w) The term "contract" shall mean and include any agreement between a
4 public corporation or elected official and a contractor, or any agree-
5 ment between such a contractor and a subcontractor, which (i) is for the
6 provision of goods, services or construction and has a value that when
7 aggregated with the values of all other such agreements with the same
8 contractor or subcontractor and any franchises or concessions awarded to
9 such contractor or subcontractor during the immediately preceding
10 twelve-month period is valued at one hundred thousand dollars or more;
11 (ii) is for the provision of goods, services or construction, is awarded
12 to a sole source and is valued at ten thousand dollars or more; (iii) is
13 a concession and has a value that when aggregated with the value of all
14 other contracts held by the same concessionaire is valued at one hundred
15 thousand dollars or more; or (iv) is a franchise.

16 § 1-cc. Powers of the commission. In addition to any other powers and
17 duties provided by section ninety-four of the executive law, the commis-
18 sion shall, with respect to its consultant-related functions only, have
19 the power and duty to:

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

21 (b) conduct a program of random audits subject to the terms and condi-
22 tions of this section. Any such program shall be carried out in the
23 following manner:

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

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

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

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

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

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

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

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

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

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

30 § 1-dd. Statement of registration. (a) (i) Every consultant shall
31 annually file with the commission, on forms provided by the commission,
32 a statement of registration for each calendar year; provided, however,
33 that the filing of such statement of registration shall not be required
34 of any consultant who (A) in any year does not expend, incur or receive
35 an amount in excess of two thousand dollars for years prior to two thou-
36 sand six and in excess of five thousand dollars in the year two thousand
37 six and the years thereafter of reportable compensation and expenses, as
38 provided in paragraph (v) of subdivision (b) of section one-gg of this
39 article, for the purposes of consulting or (B) is an officer, director,
40 trustee or employee of any public corporation, when acting in such offi-
41 cial capacity; provided however, that nothing in this section shall be
42 construed to relieve any public corporation of the obligation to file
43 such statements and reports as required by this article. The amounts
44 expended, incurred, or received of reportable compensation and expenses
45 for consulting activities shall be computed cumulatively for all
46 consulting activities when determining whether the thresholds set forth
47 in this section have been met.

48 (ii) (A) Through calendar year two thousand twenty-six, such filing
49 shall be completed on or before January first by those persons who have
50 been retained, employed or designated as consultant on or before Decem-
51 ber fifteenth who reasonably anticipate that in the coming year they
52 will expend, incur or receive combined reportable compensation and
53 expenses in an amount in excess of two thousand dollars; for those
54 consultants retained, employed or designated after December fifteenth,
55 and for those consultants who subsequent to their retainer, employment
56 or designation reasonably anticipate combined reportable compensation

1 and expenses in excess of such amount, such filing must be completed
2 within fifteen days thereafter, but in no event later than ten days
3 after the actual incurring or receiving of such reportable compensation
4 and expenses.

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

18 (iii) Commencing calendar year two thousand twenty-eight and thereaft-
19 er every consultant shall biennially file with the commission, on forms
20 provided by the commission, a statement of registration for each bienni-
21 al period beginning with the first year of the biennial cycle commencing
22 calendar year two thousand twenty-eight and thereafter; provided, howev-
23 er, that the biennial filing of such statement of registration shall not
24 be required of any consultant who (A) in any year prior to calendar year
25 two thousand twenty-nine does not expend, incur or receive an amount in
26 excess of two thousand dollars of reportable compensation and expenses,
27 as provided in paragraph (v) of subdivision (b) of section one-gg of
28 this article, for the purposes of consulting and commencing with calen-
29 dar year two thousand twenty-two does not expend, incur or receive an
30 amount in excess of five thousand dollars of reportable compensation, as
31 provided in paragraph (v) of subdivision (b) of section one-gg of this
32 article for the purposes of consulting or (B) is an officer, director,
33 trustee or employee of any public corporation, when acting in such offi-
34 cial capacity; provided however, that nothing in this section shall be
35 construed to relieve any public corporation of the obligation to file
36 such statements and reports as required by this article.

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

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

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

4 (c) Such statement of registration shall contain:

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

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

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

18 (iv) a written authorization from the client by whom the consultant is
19 authorized to consult, unless such consultant has filed a written agree-
20 ment of retainer or employment pursuant to paragraph three of this
21 subdivision;

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

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

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

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

46 (B) a description of the general subject or subjects of the trans-
47 actions between the consultant or consultants and the statewide elected
48 official, state officer or employee, member of the legislature or legis-
49 lative employee and entity; and

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

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

1 (e) (i) The first statement of registration filed annually by each
2 consultant for calendar years through two thousand twenty-six shall be
3 accompanied by a registration fee of fifty dollars except that no regis-
4 tration fee shall be required of a public corporation. A fee of fifty
5 dollars shall be required for any subsequent statement of registration
6 filed by a consultant during the same calendar year; (ii) The first
7 statement of registration filed annually by each consultant for calendar
8 year two thousand twenty-five shall be accompanied by a registration fee
9 of one hundred dollars except that no registration fee shall be required
10 from any consultant who in any year does not expend, incur or receive an
11 amount in excess of five thousand dollars of reportable compensation and
12 expenses, as provided in paragraph (v) of subdivision (b) of section
13 one-gg of this article, for the purposes of consulting or of a public
14 corporation. A fee of one hundred dollars shall be required for any
15 subsequent statement of registration filed by a consultant during the
16 same calendar year; (iii) The first statement of registration filed
17 biennially by each consultant for the first biennial registration
18 requirements for calendar years two thousand twenty-eight and two thou-
19 sand twenty-nine and thereafter, shall be accompanied by a registration
20 fee of two hundred dollars except that no registration fee shall be
21 required from any consultant who in any year does not expend, incur or
22 receive an amount in excess of five thousand dollars of reportable
23 compensation and expenses, as provided in paragraph (v) of subdivision
24 (b) of section one-gg of this article, for the purposes of consulting or
25 of a public corporation. A fee of two hundred dollars shall be required
26 for any subsequent statement of registration filed by a consultant
27 during the same biennial period; (iv) The statement of registration
28 filed after the due date of a biennial registration shall be accompanied
29 by a registration fee that is prorated to one hundred dollars for any
30 registration filed after January first of the second calendar year
31 covered by the biennial reporting requirement. In addition to the fees
32 authorized by this section, the commission may impose a fee for late
33 filing of a registration statement required by this section not to
34 exceed twenty-five dollars for each day that the statement required to
35 be filed is late, except that if the consultant making a late filing has
36 not previously been required by statute to file such a statement, the
37 fee for late filing shall not exceed ten dollars for each day that the
38 statement required to be filed is late.

39 § 1-ee. Monthly registration docket. It shall be the duty of the
40 commission to compile a monthly docket of statements of registration
41 containing all information required by section one-dd of this article.
42 Each such monthly docket shall contain all statements of registration
43 filed during such month and all amendments to previously filed state-
44 ments of registration. Copies shall be made available for public
45 inspection.

46 § 1-ff. Termination of retainer, employment or designation. Upon the
47 termination of a consultant's retainer, employment or designation, such
48 consultant and the client on whose behalf such service has been rendered
49 shall both give written notice to the commission within thirty days
50 after the consultant ceases the activity that required such consultant
51 to file a statement of registration; however, such consultant shall
52 nevertheless comply with the bi-monthly reporting requirements up to the
53 date such activity has ceased as required by this article. The commis-
54 sion shall enter notice of such termination in the appropriate monthly
55 registration docket required by section one-ee of this article.

1 § 1-gg. Bi-monthly reports. (a) Any consultant required to file a
2 statement of registration pursuant to section one-dd of this article who
3 in any consultant year reasonably anticipates that during the year such
4 consultant will expend, incur or receive combined reportable compen-
5 sation and expenses in an amount in excess of five thousand dollars, as
6 provided in paragraph (v) of subdivision (b) of this section, for the
7 purpose of consulting, shall file with the commission a bi-monthly writ-
8 ten report, on forms supplied by the commission, by the fifteenth day
9 next succeeding the end of the reporting period in which the consultant
10 was first required to file a statement of registration. Such reporting
11 periods shall be the period of January first to the last day of Febru-
12 ary, March first to April thirtieth, May first to June thirtieth, July
13 first to August thirty-first, September first to October thirty-first
14 and November first to December thirty-first.

15 (b) Such bi-monthly report shall contain:

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

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

19 (iii) the following information on which the consultant has consulted:

20 (A) a description of the general subject or subjects, (B) the legisla-
21 tive bill numbers of any bills, (C) the numbers or subject matter (if
22 there are no numbers) of gubernatorial executive orders or executive
23 orders issued by the chief executive officer of a municipality, (D) the
24 subject matter of and tribes involved in tribal-state compacts, memoran-
25 da of understanding, or any other state-tribal agreements and any state
26 actions related to class III gaming as provided in 25 U.S.C. § 2701, (E)
27 the rule, regulation, and ratemaking or municipal ordinance or resol-
28 ution numbers of any rules, regulations, or rates or ordinance or
29 proposed rules, regulations, or rates or municipal ordinances or resol-
30 utions, and (F) the titles and any identifying numbers of any procure-
31 ment contracts and other documents disseminated by a state agency,
32 either house of the state legislature, the unified court system, munici-
33 pal agency or local legislative body in connection with a governmental
34 procurement;

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

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

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

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

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

49 (2) expenses, not in excess of five hundred dollars in any one calen-
50 dar year, directly incurred for the printing or other means of reprod-
51 uction or mailing of letters, memoranda or other written communications.

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

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

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

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

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

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

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

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

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

36 The disclosure shall not apply to:

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

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

52 (iii) any governmental entity.

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

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

4 (i) (A) the passage or defeat of any legislative bill or the approval
5 or veto of any legislation by the governor, (B) the terms, issuance,
6 modification or rescission of a gubernatorial executive order, (C) the
7 terms, approval or disapproval, or the implementation and administration
8 of tribal-state compacts, memoranda of understanding, or any other
9 tribal-state agreements and any state actions related to class III
10 gaming as provided in 25 U.S.C. § 2701, or (D) the adoption or rejection
11 of any code, rule or regulation having the force and effect of law or
12 the outcome of any rate making proceeding by a state agency;

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

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

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

26 § 1-ii. Reports involving disbursement of public monies. (a) Any
27 consultant required to file a statement of registration pursuant to
28 section one-dd of this article who in any consulting year reasonably
29 anticipates that during the year they will expend, incur or receive
30 combined reportable compensation and expenses in an amount in excess of
31 five thousand dollars shall file with the commission, on forms supplied
32 by the commission, a report of any attempts to influence a determination
33 by a public official, or by a person or entity working in cooperation
34 with a public official, with respect to the solicitation, award or
35 administration of a grant, loan, or agreement involving the disbursement
36 of public monies in excess of fifteen thousand dollars other than a
37 governmental procurement as defined in section one-bb of this article.

38 (b) Such public monies consulting reports shall contain:

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

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

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

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

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

54 (c) Public monies consulting reports required pursuant to this section
55 shall be filed in accordance with the schedule applicable to the filing
56 of bi-monthly reports pursuant to section one-gg of this article and

1 shall be filed not later than the fifteenth day next succeeding the end
2 of such reporting period.

3 (d) In addition to any other fees authorized by this section, the
4 commission may impose a fee for late filing of a report required by this
5 subdivision not to exceed twenty-five dollars for each day that the
6 report required to be filed is late, except that if the consultant
7 making a late filing has not previously been required by statute to file
8 such a report, the fee for late filing shall not exceed ten dollars for
9 each day that the report required to be filed is late.

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

13 § 1-jj. Prohibition of gifts. No individual or entity required to be
14 listed on a statement of registration pursuant to this article shall
15 offer or give a gift to any public official as defined within this arti-
16 cle, unless under the circumstances it is not reasonable to infer that
17 the gift was intended to influence such public official. No individual
18 or entity required to be listed on a statement of registration pursuant
19 to this article shall offer or give a gift to the spouse or unemancipat-
20 ed child of any public official as defined within this article under
21 circumstances where it is reasonable to infer that the gift was intended
22 to influence such public official. No spouse or unemancipated child of
23 an individual required to be listed on a statement of registration
24 pursuant to this article shall offer or give a gift to a public official
25 under circumstances where it is reasonable to infer that the gift was
26 intended to influence such public official. This section shall not apply
27 to gifts to officers, members or directors of boards, commissions, coun-
28 cils, public authorities or public benefit corporations who receive no
29 compensation or are compensated on a per diem basis, unless the person
30 listed on the statement of registration appears or has matters pending
31 before the board, commission or council on which the recipient sits.

32 § 1-kk. Penalties. (a) (i) Any consultant, public corporation, or
33 client who knowingly and wilfully fails to file timely a report or
34 statement required by this section or knowingly and wilfully files false
35 information or knowingly and wilfully violates section one-jj of this
36 article shall be guilty of a class A misdemeanor; and

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

51 (b)(i) A consultant, public corporation, or client who knowingly and
52 wilfully fails to file a statement or report within the time required
53 for the filing of such report or knowingly and wilfully violates section
54 one-jj of this article shall be subject to a civil penalty for each such
55 failure or violation, in an amount not to exceed the greater of twenty-
56 five thousand dollars or three times the amount the person failed to

1 report properly or unlawfully contributed, expended, gave or received,
2 to be assessed by the commission.

3 (ii) A consultant, public corporation, or client who knowingly and
4 wilfully files a false statement or report shall be subject to a civil
5 penalty, in an amount not to exceed the greater of fifty thousand
6 dollars or five times the amount the person failed to report properly,
7 to be assessed by the commission.

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

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

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

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

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

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

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

4 § 1-ll. Enforcement. (a) All statements and reports required under
5 this article shall be subject to a declaration by the person making and
6 filing such statement and report that the information is true, correct
7 and complete to the best knowledge and belief of the signer under the
8 penalties of perjury.

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

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

17 § 1-mm. Record of appearances. The commission shall promulgate all
18 rules or regulations and any procedures, forms, or instructions neces-
19 sary to implement the provisions of section one hundred sixty-six of the
20 executive law relating to the quarterly filing of the record of appear-
21 ances before regulatory agencies.

22 § 1-nn. Publication of statement on consultant disclosure regulations.
23 The commission shall publish a statement on consulting regulations
24 setting forth the requirements of this article in a clear and brief
25 manner. Such statement shall contain an explanation of the registration
26 and filing requirements and the penalties for violation thereof, togeth-
27 er with such other information as the commission shall determine, and
28 copies thereof shall be made available to the public at convenient
29 locations throughout the state.

30 § 1-oo. Public access to records. The commission shall make informa-
31 tion furnished by consultants and clients available to the public for
32 inspection and copying in electronic and paper formats. Access to such
33 information shall also be made available for remote computer users
34 through the internet network.

35 § 1-pp. Applicability of certain laws. The provisions of this article
36 including, but not limited to, any proceeding or hearing conducted
37 pursuant hereto, shall be subject to the applicable provisions of the
38 state administrative procedure act and section seventy-three of the
39 civil rights law.

40 § 1-qq. Separability clause. If any part or provision of this article
41 or the application thereof to any person or organization is adjudged by
42 a court of competent jurisdiction to be unconstitutional, such judgment
43 shall not affect or impair any other part or provision or the applica-
44 tion thereof to any other person or organization, but shall be confined
45 in its operation to the part, provision, person or organization directly
46 involved in the controversy in which such judgment shall have been
47 rendered.

48 § 2. This act shall take effect immediately.