

# PROGRAM BILL # 216

## GOVERNOR'S PROGRAM BILL

2010

### MEMORANDUM

AN ACT to amend the public officers law and the executive law, in relation to establishing the executive ethics and compliance commission; to amend the legislative law, in relation to the creation of the New York state commission on lobbying ethics and compliance; to amend the legislative law, in relation to establishing the legislative commission on ethics and compliance and to repeal certain provisions of such law relating to ethics; and to amend the public officers law, in relation to ethics reports; to amend the legislative law and the public officers law, in relation to financial disclosure of public officers; to amend the election law, in relation to a state board of elections enforcement unit and counsel, personal use of campaign funds, filing requirements, political communication, independent expenditure reporting, enforcement proceeding and penalties for violations; to repeal certain provisions of the election law relating to filing of statements; to amend the civil service law, in relation to certain violations; to repeal certain provisions of the legislative law relating to prohibited activities of legislative employees; and providing for the repeal of certain provisions upon the expiration thereof

**Purpose:**

This bill would provide for comprehensive ethics, lobbying and campaign finance reforms.

## **Summary of Provisions:**

Section 1 would add a new Public Officers Law § 73-e to establish a 10-member State Government Ethics Designating Commission modeled on the Commission on Judicial Nomination. This successful merit selection model would be used to attract highly qualified candidates, eliminating direct appointments by elected officials. The Designating panel would: consider and evaluate the qualifications of candidates for appointment to the commissioners of both the Legislative and Executive Ethics and Compliance Commissions; make appointments by at least an affirmative, super-majority vote of the members of the Designating panel (7 out of 10); establishing outreach procedures to encourage the most qualified candidates to apply for commissioner positions; providing that all selection proceedings and records are confidential; providing for the filling of vacancies in the Designating Panel.

Section 2 would establish the "Executive Ethics and Compliance Commission" to oversee ethics compliance by the executive branch, to replace the current Commission on Public Integrity. The Commission would consist of five members, who could not have served as a public officer, legislator, or lobbyist for five years prior to their appointment; The Chair and Vice Chair would be elected by the majority of members of the Commission to serve a one year term and the chair and vice chair must be members of different political parties. Members of the Commission would establish procedures for both regular, real time as well as random audits of financial disclosure forms. An executive director would be appointed by a majority vote of the Commission and would serve at the pleasure of the Commissioners. The Commission would be authorized to make referrals of violations to the Legislative Ethics and Compliance Commission, the State Board of Elections, local law enforcement, or the Attorney General, as applicable. Commissioners and staff would be required to file non-disclosure statements.

Section 3 would cite the article as the Ethical standards in Lobbying Act of 2010.

Section 4 would add new language to clarify the definition of "widely attended event"; define "nominal food and beverage" to be of an amount worth less than ten dollars, and allow otherwise permissible transportation for local tours to be provided by an entity that does not own the facility being toured; and, define the term "reportable business relationship" to apply to inducements or payments to an agent on behalf of a client, including, but not limited to, bonus payments or success fees.

Section 5 would establish a "Legislative Commission on Ethics and Compliance" consisting of five members to replace the current Legislative Ethics Commission. The Commission would be responsible for advisory opinions,

financial disclosures, ethics training and education, and the imposition of penalties for violations of section 73, 73-a and 74 of the public officers law; it would also be responsible for assisting the Legislature to carry out its investigatory and enforcement responsibilities with regard to ethical standards. An executive director would be appointed by a majority vote of the Commission and would serve at the pleasure of the Commissioners. It would receive referrals of complaints for investigation and would conduct investigations pursuant to procedures and timelines set forth in the legislation.

Section 6 would authorize the commission to conduct random and real time audits of lobbyist reports.

Section 7 would increase disclosure by public officials regarding business and appearances before state agencies and consulting services, require lobbying disclosure regarding business relationships with state public officials.

Section 8 would expand financial disclosure to require the amount of income accrued as a result of this business relationship with state offices, including legislators.

Sections 9, 10, 11 and 12 require receipts to be maintained for a period of four years instead of three.

Section 13 would mandate the penalty for the knowing and willful failure to file any report would be a class A misdemeanor.

Section 14 would authorize the Commission to make referrals of violations to the Executive or Legislative Ethics and Compliance Commissions, the State Board of Elections, local law enforcement, or the Attorney General, as applicable.

Section 15 would authorize the Legislative Ethics and Compliance Commission to investigate violations through both random and real time audits.

Section 16 would require the Committee on Open Government to prepare an annual report summarizing the public actions of the Legislative Ethics and Compliance Commission, the Senate and Assembly Standing Committees on Ethics, and the Executive Ethics and Compliance Commission.

Section 17 would appropriate the funds necessary to carry out the provisions of this article.

Section 18 would prohibit state officers and state legislators from accessing any financial gain emanating from any state article of procurement.

Section 19 would require state officers and state legislators to report all business dealings with lobbyists, vendors, and contractors including listing referrals of business by such individuals and entities to all state officers and state legislators in their private business capacities.

Section 20 would maintain the right to make referrals to law enforcement or to the Attorney General for either civil or criminal prosecution.

Section 21 would prohibit legislative employees from using his or her position to influence the passage of legislation.

Section 22 is intentionally left blank.

Section 23 repeals Legislative Law § 66-a.

Section 24 would provide for conforming language.

Section 25 would provide for conforming language.

Section 26 would expand financial disclosure to make categories of value public, add an additional category of value; require state officers and state legislators to disclose all outside business activities, including consulting services; requiring state officers or legislators with outside professional practices to identify their income and clients on the annual financial disclosure statement; require state officers and legislators with outside law practices to identify their income and clients to the relevant commissions only, exceptions may occur upon review and approval by the respective commissions; require disclosure of business relationships with lobbyists.

Sections 27, 28, 29, 30, 31, 32 and 33 provide for the continuation of business during the transition to the new compliance method.

Section 33-a would expand the jurisdiction of the enforcement unit and the office of special counsel, the other legal unit at the SBOE, and codifies the requirement that the deputy in each unit be a member of the opposite political party than the counsel.

Section 34 would authorize the enforcement counsel unit to promote increased enforcement of campaign finance laws.

Section 35 would authorize an enforcement unit within the State Board of Elections (SBOE) and provide the enforcement counsel with significant powers.

Section 36 would appropriate requisite funds for the SBOE enforcement unit.

Section 37 would authorize the SBOE to provide guidance on what is and is not a permissible personal use of campaign expenditures.

Section 38 of the bill would clarify the types of contributions.

Section 39 and 40 would require each expenditure to be itemized; and provide for electronic filing and reporting.

Section 41 would clarify political communications to include broadcasts, cable or satellite scripts and schedules or statements reproduced for audiences greater than 500.

Section 42 provides for enhanced disclosure of campaign expenses emanating from outside the authorization of the candidate or campaign.

Section 43 clarifies the reporting of periodic filings.

Section 44 would expand the penalty for violations for failure to file campaign filing reports.

Sections 45, 46, 47 and 48 clarify enforcement proceedings.

Section 49 of the bill amends Election Law § 14-100 by including "political action committees" within the definition of "political committee;" providing for the definition of an "intermediary" related to bundling; eliminating "transfers" under the Election Law; and providing for the definition of "related limited liability company," "related limited liability partnership" and "single source" for purposes of applying the \$2,500 corporate contribution limit to such entities.

Section 50 repeals subdivision 10 of § 14-100 of the election law.

Section 51 of the bill amends Election Law § 14-112 to prohibit candidates from authorizing more than one political committee for any one election.

Section 52 of the bill amends Election Law § 14-114(1) to lower by half contribution limits for individuals or political action committees in state and local elections.

Section 53 of the bill amends Election Law § 14-114(8) to lower the annual individual aggregate contribution limit to all candidates, political parties and political committees from \$150,000 to \$75,000.

Section 54 of the bill amends Election Law § 14-114(10) to lower the annual aggregate contribution to political party committees from \$94,200 to \$47,100.

Section 55 of the bill amends Election Law § 14-116 to lower the current \$5,000 contribution limit to \$2,500, for all business entities, including limited liability companies (LLCs); closes the loophole for contributions from corporate subsidiaries; and bans bundling by intermediaries.

Section 56 of the bill amends Election Law § 14-118(1) to delete the reference to political action committees due to the new definition of such committees under Election Law § 14-100(1), and to require greater disclosure by political committees to clearly identify the economic or other special interests of contributors.

Section 57 of the bill amends Election Law § 14-120(2) to apply a \$2,500 contribution limit to partnerships.

Section 58 of the bill repeals Election Law § 14-124(3) to eliminate the ability to contribute unlimited sums to committee "housekeeping accounts."

Section 59 of the bill adds a new Election Law § 14-132 to provide a process for the disposition of campaign funds of disavowed political committees and defunct candidate committees.

Section 60, 61, 62 and 63 would provide for the continuation of the operation of ethics enforcement.

Section 64 would end the prospective ability of elected officials to receive a pension from the same office they currently hold.

**Existing Law:**

The public integrity commission is responsible for executive and lobby enforcement. The Legislative Ethics Commission is responsible for legislative ethics enforcement. The existing campaign finance laws are contained in Article 14 of the Election Law.

**Statement in Support:**

Last month, the Governor introduced the most significant and sweeping ethics reform package in decades. The Legislature acted on its own bill – a bill that did not go far enough to address the underlying issues that have caused the public to lose their faith in government. Numerous attempts to sit down and negotiate a stronger, more effective Albany reform package, in an effort to reach compromise, have been met with resistance.

This compromise legislation includes recommendations from many interested parties and despite significant compromises, the bill would maintain a

transparent approach with enhanced enforcement provisions. It is my hope that this legislation would serve as the basis for meaningful negotiations among Legislature.

This legislation would reform Legislative and Executive oversight, will alter the structure of the State Board of Elections to enhance campaign finance enforcement, and will reduce the influence of money in politics. The Governor's proposal includes a number of provisions designed to achieve compromise with members of both houses of the Legislature in increasing oversight and enhancing transparency.

Under the proposed legislation, two independent five-member ethics commissions would be created – one for the Executive Branch and one for the Legislature. Members of the commissions will be selected by a 10-member independent Designating Commission, similar to the judicial nominating commission.

The five-member Executive Ethics and Compliance Commission would oversee ethics compliance by the Executive branch, enforce both financial disclosure and lobby laws and replace the current Commission on Public Integrity. The five-member Legislative Ethics and Compliance Commission would oversee ethics compliance by the Legislative branch, including conducting investigations into financial disclosure or lobby violations, both on its own initiative or in reaction to complaints.

Both commissions would be responsible for enforcing the laws governing pay to play, including the disclosure of all outside business services for their respective branches of Government. State officers or legislators with outside legal practices would be required to disclose their income and clients to the relevant commission, which would determine any conflicts of interest.

In addition, this legislation would alter the structure of the State Board of Elections to provide for enhanced enforcement of campaign finance violations. It would bifurcate enforcement to eliminate one party dominance, would conduct investigations into alleged campaign finance violations and conduct audits of filed reports. The bill also would require a bipartisan review of all complaints.

These reforms would reduce the influence of money in politics by reducing all allowable contributions by 50 percent, limiting contributions to housekeeping accounts, banning the bundling of contributions, banning transfers among campaign committees and requiring the return of unused campaign funds upon leaving public office.

New York State's campaign finance laws are among the weakest in the United States, including having some of the highest individual contribution limits. Moreover, prodigious loopholes, coupled with inadequate enforcement, allow

these already weak laws to be subverted with ease. Enactment of meaningful campaign finance reform is critical to ensuring integrity in government by stemming the influence of wealthy special interests in elections and the legislative process.

This bill is the first step to usher in a new era in the way campaigns are conducted in New York by: (1) dramatically lowering individual contribution limits by half; (2) limiting contributions to housekeeping accounts; (3) banning bundled contributions; (4) banning transfers among campaign committees; and (5) requiring the return of unused campaign funds upon leaving public office.

Existing contribution limits in New York State are among the highest in the Nation. As a result, the public's perception is that government is controlled by special interests and wealthy donors. This proposal calls for dramatic across-the-board reductions by one-half in individual contributions to candidates and political committees. This legislation also applies the lower contribution limits established above to family members of a candidate. The aggregate current family member limits are derived from a formula based upon the number of enrolled/registered voters, and are approximately \$429,000 for statewide races, \$69,000 for Senate races and \$29,000 for Assembly races.

The bill also significantly lowers contribution limits in primaries and elections for local public offices such as mayor, county executive, city council, etc. (exempting New York City because the New York City Campaign Finance Act has comparable limits to this proposal that operate in an existing public financing framework). Under current law, a formula for local primaries provides  $\$0.05 \times$  enrolled voters in a candidate's party and district, with a floor of \$1,000 and a ceiling of \$50,000 (the general election formula is the same, using registered voters in the district). This bill utilizes the existing formula and a \$1,000 floor, but caps the maximum limit at \$25,000.

The proposal will lower the corporate contribution limit from \$5,000 to \$2,500 and will close the much abused subsidiary and LLC loopholes that allow these entities to circumvent campaign finance laws. No longer will a company with twenty subsidiaries sidestep the \$5,000 annual aggregate cap by giving through its subsidiaries (e.g. under current law, a corporation with twenty subsidiaries could give \$100,000 ( $20 \times \$5,000$ ), despite the \$5,000 cap). Likewise, LLCs, which have been interpreted by the State Board of Elections to be individuals rather than corporations under the Election Law, will no longer be able to contribute up to the individual limit of \$55,800 for a statewide candidate under this proposal.

#### **Budget Implications:**

This legislation will not have a significant impact on the budget.

**Effective Date:**

This act shall take effect 60 days after enactment, except that: (1) the new contribution limits established herein shall take effect January 1, 2011; (2) contributions legally received prior to the effective date of this act may be retained and expended for lawful purposes and shall not provide the basis for a violation of Article 14 of the Election Law; and (3) the State Board of Elections shall notify all candidates and political committees of the applicable provisions of this act within thirty days after this bill shall have become a law.

