

**2010-11 NEW YORK STATE EXECUTIVE BUDGET**

**ETHICS REFORM  
ARTICLE VII LEGISLATION**

**MEMORANDUM IN SUPPORT**

## MEMORANDUM IN SUPPORT

A BUDGET BILL submitted by the Governor in  
Accordance with Article VII of the Constitution

AN ACT to amend the public officers law, in relation to creating a state government ethics commission and a designating commission; to amend the executive law, in relation to the duties of the attorney general; and to repeal article 1-A of the legislative law relating to the lobbying act; to repeal article 5 of the legislative law relating to legislative ethics; to repeal section 94 of the executive law relating to the commission on public integrity (Part A); to amend the retirement and social security law, the state finance law and the public officers law, in relation to establishing the employee retirement system board of trustees to operate the New York state and local employees' retirement system and the New York state and local police and fire retirement system, and regulating investment firms doing business with the common retirement fund (Part B); to amend the election law, in relation to campaign finance reform; to amend the legislative law, in relation to participation in fundraisers during a legislative session; to amend the election law, in relation to public financing; and to repeal certain provisions of the election law relating to campaign financing; to repeal subdivisions 7 and 9-A of section 3-102 of the election law relating to the state board of elections' power to enforce campaign receipts and expenditures provisions (Part C); and to amend the retirement and social security law, in relation to forfeiture of pension rights or retirement benefits upon conviction of a felony related to public employment (Part D)

## Purpose:

This bill would implement ethics reform, and consolidate all ethics-related functions into a single State Government Ethics Commission chosen by a designating panel, thereby providing an independent, consistent framework for making decisions on ethical conduct and evaluating potential violations. The new State Government Ethics Commission would combine the oversight of both Executive and Legislative branch, as well as enforcement of the laws governing ethics, lobbying and campaign finance. The bill also makes substantive changes to enhance the ethics, financial disclosure, lobbying and campaign finance laws.

## Statement in Support, Summary of Provisions, Existing Law, and Prior Legislative History:

New York State must ensure both the reality and the perception of integrity in public service by preventing unethical conduct. This bill ("the Reform Albany Act") would institute sweeping reforms to fundamentally change the culture of Albany and instill in all public officials an improved understanding of what is and is not permissible. It would also require far greater disclosure of outside activities,,and bring to an end a culture of secrecy that allows public officials to shield from view the ultimate sources of their outside income.

The Reform Albany Act is not designed solely to address illegal actions, but also to uproot practices that are legal and rampant throughout the entire system of government. The corrosive effects of outside influence and inside decay have bred cynicism and scorn by the people of New York. This Act would restore the trust and faith that people expect and deserve. The Reform Albany Act would put the interests of the people of New York ahead of the lobbyists and special interest, with the ultimate goal of bringing fairness and openness to a government that has had little of either.

The Reform Albany Act would establish an independent State Government Ethics Commission composed of individuals who have no relationship with the state officers they oversee, to examine conduct and advise the executive and legislative branches of state government and ensure uniform enforcement so that one ethical standard would apply to everyone in state government.

The new Government Ethics Commission will be selected by a 10-member Designating Panel modeled on the Commission on Judicial Nomination. The Designating Panel members would be selected by state leaders in a way that no clear majority controls the designating board: four appointments by the Governor (with no more than two from the same political party and including one former judge); one appointment by the Attorney General; one appointment by the State Comptroller; one appointment by the Speaker of the Assembly; one appointment by the Temporary President of the Senate; one appointment by the Senate Minority Leader; and one appointment by the Assembly Minority Leader.. The Designating Panel would: consider and evaluate the qualifications of candidates for appointment to the Office of Commissioner of

Government Ethics; make appointments by at least an affirmative, super-majority vote of the members of the Designating panel (7 out of 10); establish outreach procedures to encourage the most qualified candidates to apply for commissioner positions; provide that all selection proceedings and records are confidential; and provide for the filling of vacancies in the State Government Ethics Commission. This selection model would eliminate direct appointments made by the same elected officials that the appointees would be mandated to oversee.

The single State Government Ethics Commission would include five members, replacing the thirteen-member Public Integrity Commission. It would oversee all branches of government, rather than only the executive branch, and would have both advisory and enforcement powers. A five-member commission would be more efficient and less prone to leaks. The Commissioners as well as all Commission staff would be required to sign non-disclosure agreements to help ensure that confidential information does not become public.

This single ethics entity would oversee, review, investigate and enforce: all financial disclosure statements for those subject to its jurisdiction; all complaints associated with violations of the ethics and lobbying laws in both the legislative and executive branches; all financial disclosure of public officers; violations of the Open Meetings Law by the State; and campaign finance laws.

The State Government Ethics Commission would promulgate, adopt, amend and rescind rules and regulations to: define state officers for the purposes of clarifying who is covered under the law, to make clear that legislators are included within its scope; provide for the availability and filing of financial disclosure statements; establish a protocol for the performance of regular reviews of annual statements of financial disclosure filed by persons under the Commission's jurisdiction; provide assistance to the Legislature, state agencies, public authorities, public benefit corporations and the public regarding possible conflicts of interest; provide ethics trainings for those subject to its jurisdiction; and enforce the laws under its jurisdiction.

The Reform Albany Act also makes fundamental changes to New York State government's culture of secrecy. These enhancements will help to eliminate the Pay-to-Play atmosphere that surrounds Albany by improving the reporting of outside business relationships, including increased oversight and enhanced reporting for both lobbyists and State officers and improving guidance to identify and prevent conflicts of interest. These provisions include:

- requiring state officers, including state legislators, to disclose all outside business activities, including consulting services;
- requiring state officers, including state legislators, to report all business dealings with lobbyists, vendors, contractors and contractees, including referrals of business by such individuals and entities to all state officers and state legislators in their private business capacities;

- requiring lobbyists to disclose all private business relationships with state public officials, including state legislators;
- prohibiting state officers, including state legislators, from benefiting from state contracts during their terms in office;
- requiring any state officers, including state legislators, with outside legal or other professional practices to identify their income and clients on the annual financial disclosure statement, with exceptions made after review and approval by the State Government Ethics Commission;
- requiring enhanced reporting of lobbyists to the Commission of all solicitations of public officers and all lobbying for grants, loans and other disbursements of public funds, as well as other inducements of agency or public authority actions beneficial to their clients or themselves;
- increasing lobbyists' disclosure regarding their business and appearances before state agencies, public authorities and other quasi-governmental entities;
- expanding the prohibition on contingent retainer agreements to apply to all inducements or payments to an agent on behalf of a client, including, but not limited to, bonus payments or success fees;
- establishing a Pay-to-Play ban regarding the New York State and New York City Comptrollers, including placement agents, consultants, financial advisors and lawyers who solicit these officials for investment of pension funds.

To enhance enforcement, the bill would provide the Commission with the right to make referrals of violations to local law enforcement and to the Attorney General for either civil or criminal prosecution. Often, the Attorney General is better equipped to investigate and prosecute referrals than local district attorneys, due to the scope and breadth of these types of violations.

The bill would also increase penalties to improve deterrence: the first criminal offense would be a class A misdemeanor; each subsequent offense within 5 years would be a class E felony' civil penalties would be increased from \$10,000 to up to \$25,000.

The new Commission would also enforce the State's campaign finance laws. A new public campaign finance system would drastically reduce the maximum campaign contributions allowable, ban corporate contributions and provide for a 4:1 public matching system with enhancements to encourage participation.

The enhancements to campaign finance laws would include: drastically reducing campaign contribution limits to \$1,000; limiting lobbyist contributions to a maximum of \$250; and phasing-in a public campaign finance system that matches a donor's

contribution up to the maximum of \$250, on a four-for-one (4:1) basis to boost the importance of small donors. For those candidates who opt-out of the public financing scheme, all individual contributions to their campaign would be limited to \$1000.

Due to the cost constraints currently faced by the State, a phase in period is the only way to implement the matching program. Phasing-in public campaign finance would begin with the state legislative races in 2012, followed by all statewide and state legislative races by 2014.

This bill would also ban corporate contributions, including contributions by limited liability companies and limited liability partnerships; ban the bundling of contributions; limit lobbyist contributions by providing no public match of campaign funds; ban transfers among campaign committees; and, impose limits on the presently unlimited contributions to campaign “housekeeping accounts.”

Other enhancements to campaign finance laws include: limiting the personal use of campaign funds; requiring the return of unused campaign funds upon leaving public service; facilitating compliance with reporting requirements, including random as well as routine audits, real time audits of campaign committees; and increasing penalties for violations

In addition, the Reform Albany Act would replace the State Comptroller as the “sole trustee” of the Common Retirement Fund (“Fund”) with a newly-established 5 member Employee Retirement System Board of Trustees (“Board”), utilizing a similar designating panel to that used to select the State Government Ethics Commission. The designating panel would select independent members of the Board based on merit, with no direct appointments by any elected official. It would establish that the Board owes a fiduciary duty to the Fund.

Finally, the Reform Albany Act would:

- enhance the scrutiny of not-for-profit corporations engaged in issue advocacy to prevent violations of the campaign finance and tax rules;
- close a 1995 loophole that permits member of the legislature to double-dip and collect a state pension simultaneously with their legislative salary;
- require the forfeiture of a public pension for individuals convicted of a felony crime involved with public service; and
- expand the current nepotism prohibition to include an official’s knowledge of a relative’s hiring.

It is clear that the status quo does not work. This bill would reform Albany by providing the stringent ethics and campaign finance rules necessary for fair government, and the independent mechanism required to enforce them properly.

Budget Implications:

The estimated cost of public financing of campaigns is reflected in the multi-year Financial Plan, including a projected cost of \$30 million in 2012-13. Appropriations for the Commission on Public Integrity, portions of the State Board of Elections, and the Legislative Ethics Commission will be combined to provide a consolidated budget for the new Government Ethics Commission, with costs for enhanced duties funded from savings achieved through the merger.

Effective Date:

This bill takes effect immediately; provided, however, that certain provisions concerning the campaign finance law begin phasing in after the 2010 election, and would be fully effective by 2014.