

ETHICS REFORM ACT OF 2009

Briefing Paper for Policy Makers

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"ETHICS REFORM ACT OF 2009"

Summary

New York State's governmental ethics laws are in need of major reform. Significant areas of governmental and special interest activities that threaten the performance and integrity of our public officials remain outside the reach of the current laws and enforcement powers. Behavior by public officials that is prohibited by existing criminal laws is at the same time invited by weak ethics laws and by the absence of meaningful and independent enforcement mechanisms.

If passed, the "Ethics Reform Act of 2009" would close numerous loopholes in the law, expand the reach of existing ethics rules without burdening public officials with needless paperwork, and strengthen ethics enforcement. This measure would reform New York's ethics laws in the most scandal-prone areas in order to improve both the quality of our government's decisions and public confidence in the state's elected officials. This bill would make New York State a national leader in holding its government to the highest ethical standards.

The Ethics Reform Act of 2009 would:

- 1. Establish an independent state ethics commission, known as the "Commission on Governmental Ethics."**
- 2. Create more stringent requirements for financial disclosure for public officers.**
- 3. Limit contributions from public contractors and lobbyists to end the "pay-to-play" practices of Albany.**
- 4. Strengthen the ban the personal use of campaign contributions.**

1. ESTABLISH AN INDEPENDENT ETHICS COMMISSION

“The Ethics Reform Act of 2009” establishes an independent state ethics commission, the *Commission on Governmental Ethics*, with jurisdiction over statewide elected officials, state officers and employees, state legislators, legislative employees, candidates for state elected office, chairs of political parties, lobbyists and the clients of lobbyists, and individuals who have formerly held positions as lobbyists or clients of lobbyists.

New York’s state ethics law is presently enforced by two agencies. The Commission on Public Integrity monitors the executive branch and the Legislative Ethics Commission monitors the legislative. Gubernatorial appointees dominate the Commission on Public Integrity’s membership with the governor picking seven of thirteen members and the State Comptroller, the Attorney General and the four legislative leaders each selecting one member.¹ The legislative branch is monitored by the Legislative Ethics Commission, which consists of nine members– the four legislative leaders each chose two members. The ninth member is appointed jointly by the Temporary President of the Senate and the Speaker of the Assembly. In both cases, therefore, the state’s elected officials essentially police their own behavior and that of their employees.

Ethics commissions in only five² states including New York provide external oversight of their state government officials through similarly divided systems. In these states, at least one commission provides oversight over a state’s executive branch and at least one commission provides oversight over a state’s legislative branch. Currently, twenty-nine³ states provide external

¹ New York State Executive Law § 94(2).

²“State Ethics Commission Jurisdiction.” National Conference of State Legislatures. http://www.ncsl.org/programs/ethics/ec_jurisdiction.htm (accessed January 30, 2009). “Ethics: Table of States Legislative Ethics Committees.” National Conference of State Legislatures. http://www.ncsl.org/programs/ethics/ethics_committees.htm#AL (accessed January 30, 2009). “State Ethics Commissions.” National Conference of State Legislatures. http://www.ncsl.org/programs/ethics/ethics_commissions.htm (accessed February 3, 2009). Other States Included: Illinois, Kentucky, New Jersey and Washington. This report is based on a 2006 report, *The State of State’s Ethics*, which was released by our organizations with the Brennan Center for Justice.

³ In ascertaining this number, and the number of furcated systems we found the NCSL to be generally reliable, though not entirely reliable. When we believed that certain information might be inaccurate, we relied upon the staff at the ethics commissions, or the website of the commissions that were in question, to sort out any inconsistencies we knew of or observed in the NCSL’s data. States Included: Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Kansas, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, West Virginia, Wisconsin. Note on Nebraska, which is included in this number but is the only state with a unicameral Legislature. “Nebraska

oversight of both branches of their state government officials through an ethics commission that has statutory authority and staffing that are independent of the rest of state government.⁴ Such unified approach, when residing in a truly independent body, not only ensures that the laws are interpreted in the same manner regardless of which type of public official is being considered, but also that the regulating commissioners do not look the other way to protect their colleagues at the expense of the public's interests.

This bill would abandon New York's bifurcated system of ethics enforcement and create an independent ethics commission with jurisdiction to monitor and enforce New York's ethics laws for both the executive and legislative branches. This new entity, the *Commission on Governmental Ethics*, would consist of nine individuals with three persons appointed by the governor and one person appointed by each of the following officials: the comptroller, the attorney general, speaker and minority leader of the assembly and the temporary president and minority leader of the senate. The executive director would be appointed by the joint agreement of the chair and the vice chair of the commission (both of whom must be of different political parties) without regard to political affiliation. No member of the commission would be allowed to hold public or political party offices or be employed as a lobbyist. This bill would also expressly require, rather than simply permit, the commission to refer a finding of a violation of the ethics laws to the attorney general or the appropriate local prosecutor for investigation and prosecution. Prosecution would occur after full consideration by the commission and an opportunity provided to the accused public official to make his or her case before the commission.

Legislature - History of the Unicameral." Nebraska Legislature - Home. http://www.nebraskalegislature.gov/about/history_unicameral.php (accessed February 2, 2009).

⁴ "Committees & Commissions: What's the Difference?." National Conference of State Legislatures. http://www.ncsl.org/programs/ethics/whats_the_difference.htm (accessed January 26, 2009).

2. CREATE MORE STRINGENT REQUIREMENTS FOR FINANCIAL DISCLOSURE

New York State's ethics financial disclosures are quite limited. According to New York State law, public officials only have to disclose the names of the businesses where they have employment or from which they receive income. They do not have to publicly report the amount of income they derive from these outside interests, nor do they have to disclose the names of clients or individuals they may be representing or providing consulting services to.⁵

As a result, when New Yorkers want to find out information about their public officials' personal business relationships, they are left in the dark. State elections are held every two years in New York for state legislators and every four years for statewide officers. During the election season, voters cannot examine potential conflicts that may exist for candidates. Moreover, during the legislative season, the public cannot obtain the information necessary to judge whether conflicts exist between public decision-making and personal gain.

Recent indictments of a former State Senator and a sitting State Assemblyman, underscore the potential for controversy without such disclosures. In both cases, prosecutors have alleged that these individuals used their outside consulting firms to illegally enrich their income. In both cases, the allegations are that each legislator used an outside consulting business to receive income from interest groups which then received legislative favors. Neither were required to report their clients, which may have drawn attention to their alleged schemes. Both lawmakers have denied such actions. Additional stories highlighting the shortcomings of New York's tax disclosure rules are not hard to come by, including, most recently:

- In March 2008, former Assemblyman Brian McLaughlin was indicted on a number of counts, including "secretly maintaining an interest in a company doing business with union employers and [McLaughlin] used his position as a union official to advance that company's, and thus his own, financial interests by pressuring contractors to buy certain products in order to perform City contracts."⁶

Many lawmakers make decisions on issues as wide-ranging as health care, education and the environment. These decisions often affect both their business relationships and the lives of millions of New Yorkers. By requiring disclosure of client information, public officers will enter business relationships

⁵ New York State Public Officers Law § 73-a

⁶ Former New York State Assemblyman and Labor Leader Brian McLaughlin Pleads Guilty to Racketeering, Dept. of Justice, United States Attorney, Southern District of New York, March 7, 2008.

with the knowledge that their business dealings will be subject to public scrutiny. With elections on the line, such scrutiny will help to ensure the transparency and accountability of our state government and to avoid possible and actual conflicts of interest.

Specifically, in order to increase disclosure requirements, the “Ethics Reform Act of 2009” requires public officers to publicly disclose their financial backgrounds, including the names of those with whom they have business and professional relationships and the amount of revenues generated from that relationship. If passed, this legislation would allow New York to join the growing number of states that are requiring their public officials to release client information.

3. LIMIT CONTRIBUTIONS FROM PUBLIC CONTRACTORS AND LOBBYISTS TO END THE "PAY-TO-PLAY" PRACTICES OF ALBANY

The infusion of large sums of money by businesses and unions with public contracts and lobbyists into the campaign coffers of our elected representatives has generated a widespread public belief that contributors are "paying" those officials for the opportunity to "play," i.e. receive favored treatment, from the government. The common Albany practice of holding political fundraisers that are attended by professional lobbyists exacerbates the public perception that lobbyists are "buying" access to elected officials. For example, in 2005 lawmakers were scheduled to be in Albany for 61 days, including 37 nights. During that time, 200 Albany-based fundraisers occurred.⁷ Albany's top lobbying firms donate hundreds of thousands of dollars every year to candidates. Unlike many states, moreover, New York does not limit state or local contractors from making large campaign contributions to the very officials who must determine to whom a contract should be awarded. The tales of "pay to play" abuses have become commonplace:

- In 2002 Bronx State Senator Guy Velella quit his post after being charged with conspiracy and bribe receiving. In a quid pro quo, the Senator used his influence to garner a contract for a bridge painting contractor that had paid Velella's father \$150,000.⁸ In a 2004 plea bargain, Velella pleaded guilty to a felony charge and was sentenced to one year in jail.⁹
- Under the Metropolitan Transit Authority (MTA)/Philip Morris "lease back" agreement, the MTA leased a maintenance facility to Philip Morris, and then the MTA leased it back. Because Philip Morris is a private company, it reaped a multi-million dollar tax benefit from the 22-year lease. The deal was completed as hundreds of thousands of dollars were donated to important state and federally-based Republican campaign committees.¹⁰

⁷ Liam Arbetman & Blair Horner et al., PAC-ING IT IN: POLITICAL ACTION COMMITTEE CONTRIBUTIONS IN NEW YORK STATE 2004 (2005),

<http://www.nypirg.org/goodgov/pacing%20it%20in%20FINAL.pdf>.

⁸ "New York County District Attorney's Office." New York County District Attorney's Office. <http://www3.manhattanda.org/whatsnew/press/2002-05-09.shtml> (accessed January 30, 2009).

⁹ Hicks, Jonathan P.. " Velella Admits Conspiring to Take Bribes In Plea Deal That Will Send Him to Prison - New York Times." The New York Times - Breaking News, World News & Multimedia. <http://query.nytimes.com/gst/fullpage.html?res=9D0DE7DA153FF93BA25756C0A9629C8B63&sec=&spon=&pagewanted=all> (accessed January 30, 2009).

¹⁰ A. Bernstein, *D'Amato and the MTA Inhale Tobacco Cash*. N.Y. OBSERVER, Mar. 10, 1997.

- In 1997, the Silverite Construction Company was on the verge of losing in a competitive bid for a \$100 million government contract to repair a tunnel in New York City. Silverite was able to revamp its bid and win the contract after it made campaign donations to key Republican campaign committees.¹¹
- The Vanderbilt Group won a state contract to build dormitories on SUNY's Old Westbury campus. As the result of a *Newsday* report and follow-up state investigation, the Dormitory Authority cancelled that \$27.9 million contract after it was revealed that the Vanderbilt Group had allegedly misled the state about its qualifications and had delivered poor quality work. *Newsday* reported that the Group's owners, Frank and Kenneth Stubbolo, had funneled hundreds of thousands of dollars in campaign contributions to important Republican political committees.¹²

Without rules prohibiting such "pay to play" arrangements, the risk of actual or perceived corruption in the process of choosing contractors is obvious. Assemblyman William Parment, a Democratic Assemblyman from Jamestown has concluded publicly that "[t]he procurement process is entirely too open to manipulation."¹³

Similarly, lobbyists in Albany curry favor with public officials not only with gifts, but also with large campaign contributions to their campaign committees and to the legislative leadership committees known as "housekeeping" accounts. Through such contributions, lobbyists create an uneven playing field that allows them or their clients to have greater access to officials than members of the public. The bill specifically:

- Sets reasonable limits on contributions to state, county, or municipal candidates and party housekeeping accounts from lobbyists and public contractors, owners and senior managers of such lobbyists and contractors and their immediate family members, and political committees controlled by any of these entities or persons;
- Requires lobbyists and public contractors, owners and senior managers of such lobbyists and contractors and their immediate family members, and political committees controlled by any of these entities or persons, to report contributions to candidates at the state, county, or municipal level and party housekeeping accounts within seven calendar days after the date of a contribution made within thirty-six days of an election.

¹¹ C. Levy, *GOP Donor Won New York Contract as His Gifts Soared*, N.Y.TIMES, Mar. 25, 1998.

¹² B. Donovan. et al, *Partners with clout; For Long Island businessmen, bad debts and good connections*, NEWSDAY, Aug. 31, 2000 and B. Donovan et al, *State Halts Dorm Construction; Contractors Pulled Over Work, Documents*, NEWSDAY, Dec.19, 2000.

¹³ Marc Humbert, *NY Government Operates Like a Criminal Enterprise*, ASSOCIATED PRESS, Jun. 6, 2004.

- Restricts the extent of personal business activities lobbyists and public contractors, owners and senior managers of such lobbyists and contractors and their immediate family members, can undertake with candidates;
- Prohibits lobbyists and public contractors, and owners and senior managers of such lobbyists and contractors and their immediate family members, from serving as officers of political committees that work with candidates; and
- Prohibits the state, its counties, and municipalities from entering into contracts with entities that have made political contributions that exceed the limits discussed above.

4. STRENGTHEN THE BAN ON THE PERSONAL USE OF CAMPAIGN CONTRIBUTIONS.

In recent years, reports of politicians using their campaign funds to cover arguably personal expenses have exposed the serious inadequacy of current legal restrictions on such behavior:

- After being federally indicted on 44 counts in 2006, former Queens Assemblyman Brian McLaughlin pled guilty to racketeering charges. The original charges ranged from racketeering and money laundering, to mail fraud, conspiracy, and theft totaling more than \$2 million.¹⁴ In Court, McLaughlin admitted to using tens of thousands of dollars from the Assembly campaign committee for personal use.¹⁵ McLaughlin faces six to eight years in prison.¹⁶
- Former Assemblyman Clarence Norman was found guilty of Attempted Grand Larceny in the 4th Degree because he deposited campaign contributions into his own personal savings account, one of the charges for which he began a prison term in June 2007.¹⁷
- In 2005, the *New York Times* reported that Howard D. Mills, who gave up his seat in the State Assembly to run against Senator Charles E. Schumer last year, allegedly used his Assembly campaign fund to pay for his monthly car payments, cell phone bills, and meals *after he lost*.¹⁸
- Ronald C. Tocci, a veteran assemblyman from New Rochelle who did not seek re-election last year, was nevertheless reported to have dipped into campaign funds to pay nearly \$7,000 in personal expenses in 2005.¹⁹
- Nancy Lorraine Hoffmann, a Syracuse-area State Senator who lost her seat in November 2004, reportedly continued to use her campaign

¹⁴ NY1 | 24 Hour Local News | Top Stories | "Brian McLaughlin Pleads Guilty To Racketeering Charges." NY1 | 24 Hour Local News | Top Stories. <http://www.ny1.com/Default.aspx?SecID=1000&ArID=79220> (accessed February 2, 2009).

¹⁵ Hartocollis, Anemona. "Ex-Labor Leader, Guilty of Racketeering, Recites a 45-Minute Catalog of Crimes - New York Times." The New York Times - Breaking News, World News & Multimedia. <http://www.nytimes.com/2008/03/08/nyregion/08plea.html?n=Top/Reference/Times%20Topics/Ssubjects/E/Embezzlement> (accessed February 2, 2009).

¹⁶ "Brian McLaughlin Pleads Guilty..."

¹⁷ Anemona Hartocollis, *Clarence Norman Is Guilty of Illegal Campaign Contributions*, NY Times, Sept. 27, 2005

¹⁸ Michael Cooper, *Some Ex-Candidates Still Use Campaign Funds to Pay Bills*, NY TIMES, Aug. 5, 2005.

¹⁹ *Id.*

account to pay cell phone bills and other expenses that year and to make the monthly payments on her car through May, 2005.²⁰

After former State Senator Guy Velella was indicted for accepting bribes, he used his campaign funds to pay his legal defense bills. Twenty of former Senator Velella's fellow senators also funneled him \$147,500 from their campaign funds.²¹

While current New York law forbids contributions for strictly personal use, the statute's language is too vague to provide any meaningful restraint.²² Contributions "may be expended for any lawful purpose" and cannot be used for "a personal use that is unrelated to a political campaign or the holding of a public office or party position."²³ Candidates thus may interpret, and have interpreted, this vague regulation to allow their use of campaign monies for a variety of purchases, including country club memberships, leased cars, and other purchases that are not directly related to campaigning or governing.

This bill would limit the use of campaign contributions to pay for costs related to promoting the nomination or election of a candidate. It would enact clear definition of "personal use," including specifically prohibiting the use of campaign funds for expenditures ranging from tuition payments, mortgage, rent, utility payments, and attorney's fees for defense against charges of violating state or federal law, to dues and fees at a country club.

²⁰ *Id.*

²¹ *Guy Velella's Crooked Gang*, DAILY NEWS, May 15, 2004.

²² N.Y. ELEC. LAW § 14-130.

²³ N.Y. ELEC. LAW § 14-130.