

2016-17 NEW YORK STATE EXECUTIVE BUDGET

**GOOD GOVERNMENT AND ETHICS REFORM
ARTICLE VII LEGISLATION**

MEMORANDUM IN SUPPORT

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MEMORANDUM IN SUPPORT

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

AN ACT to amend the election law, in relation to political contributions by limited liability companies (Part A); to amend the legislative law, in relation to prohibiting outside earned income by members of the legislature (Part B); to amend the election law, in relation to statements of campaign receipts, contributions, transfers and expenditures to and by political committees; to amend the election law, in relation to the filing of statements regarding campaign receipts and expenditures; to amend the election law, in relation to establishing a contribution limit for certain contributions to a party committee or constituted committee; to amend the election law, in relation to campaign finance reform; to amend the election law, in relation to public financing; to amend the state finance law, in relation to the New York state campaign finance fund; and to amend the tax law, in relation to the New York state campaign finance fund check-off (Part C); to amend the public officers law, the civil practice law and rules and the executive law, in relation to the freedom of information law; and to repeal certain provisions of the public officers law, the environmental conservation law and the county law relating to access to certain records (Part D); to amend the public officers law, the executive law and the legislative law, in relation to financial disclosure of certain public officers (Part E); to amend the election law, in relation to motor vehicle voter registration; and to repeal certain provisions of such law relating thereto (Part F); to direct the state comptroller, the attorney general, the chief information officer of the office of information technology services and the commissioner of general services to make recommendations on assigning a single identifying code to contractors, vendors and other payees (Part G); and to amend the legislative law and the election law, in relation to the regulation of political consultants; and repealing certain provisions of such law relating thereto (Part H)

PURPOSE: This bill contains provisions needed to enact into law major components of legislation relating to Good Government and Ethics Reform.

This memorandum describes Parts A through H of the bill which are described wholly within the parts listed below.

Part A - Close the “LLC loophole” by defining LLCs as corporations for the purpose of political donations

Purpose:

This bill would define Limited Liability Companies (LLCs) as corporations, closing the “LLC loophole” for the purpose of political donations. This action would result in lower contribution limits for LLCs and allow for a more transparent campaign finance system in the State.

Summary of Provisions and Statement in Support:

Under current law, individuals are permitted to donate up to a combined 65,100 for primary and general election campaigns for statewide office candidates; \$18,000 for State Senate candidates; and \$8,800 for Assembly candidates. LLCs are currently considered to be “individuals”, and as a result, they can donate large sums of funds, in some cases through multiple LLCs, with little transparency.

This bill would define LLCs as corporations, which would reduce political donation limits to an aggregate of \$5,000 in each calendar year. This bill would also establish additional requirements related to LLCs, including:

- Disclosing the identity of all direct and indirect owners of the membership interest in the LLC, and the proportion of members’ ownership interest in the LLC; and
- Requiring that all contributions made to a campaign or political committee by an LLC be attributed to each member of the LLC in proportion to the member’s ownership interest.

Finally, this bill would require the BOE to enact regulations that prevent the avoidance of the additional disclosure and attribution requirements, as outlined above.

Budget Implications:

Enactment of this bill is necessary to implement the 2016-17 Executive Budget.

Effective Date:

This bill would take effect immediately upon enactment.

Part B - Sets limits on outside income for members of the Legislature

Purpose:

This bill would set limits on the amount of outside income that members of the Legislature can earn.

Summary of Provisions and Statement in Support:

This bill would restrict outside earned income to 15 percent of a member of the Legislature's statutory salary. Compliance would be required as a condition of receipt of their salary and in order to vote in their capacity as a member of the Legislature.

This bill would also define "outside earned income" as wages, salaries, fees and other forms of compensation for services actually rendered. Such definition would not include: salary, benefits and allowances paid by the State; income and allowances attributable to military service; royalties from the sale of book, artistic performance or other intellectual property; and pension or other investment benefits from prior employment.

A member of the Legislature who willfully violates outside earned income limits would be subject to a civil penalty in an amount not to exceed \$50,000, which shall be assessed by the Joint Commission on Public Ethics or, in lieu of or in addition to the penalty, referred to the appropriate prosecutor. The penalty for willful violation of outside earned income requirements would be punishable as a Class A misdemeanor.

Budget Implications:

Enactment of this bill is necessary to implement the 2016-17 Executive Budget. While there is no immediate impact on State finances, enactment of this bill will deter the potential influence of outside activities on the public work of the New York State Legislature.

Effective Date:

This bill would take effect January 1, 2017.

Part C - Implement Campaign Finance Reform and Public Financing of Campaigns

Purpose:

This bill would reform the State's campaign finance system by requiring disclosure of certain campaign contributions, reducing campaign contribution limits, and enacting a voluntary public campaign finance system.

Summary of Provisions and Statement in Support:

This bill would improve the State's current campaign finance system and enhance transparency by:

- Requiring that statements filed by political committees include information about intermediaries or “bundlers”;
- Applying a \$25,000 contribution limit to so-called “housekeeping accounts”;
- Requiring campaigns to disclose, within sixty days of receipt, any contributions or loans in excess of \$1,000;
- Creating a new system for public financing of campaigns and establishing contribution limits, as follows:
 - Statewide candidates would have a contribution limit of \$12,000, or \$6,000 each for the primary and general election;
 - State Senate candidates would have a contribution limit of \$8,000, or \$4,000 each for the primary and general election;
 - State Assembly candidates would have a contribution limit of \$4,000, or \$2,000 each for the primary and general election; and
 - District Delegates and At-Large Delegates to a Constitutional Convention would have a contribution limit of \$2,000.
- For those candidates not participating in the public financing system, limits would be amended as follows:
 - Statewide candidates would have a contribution limit of \$25,000, or \$10,000 for the primary and \$15,000 for the general election;
 - State Senate candidates would have a contribution limit of \$10,000, or \$5,000 each for the primary and general election;
 - State Assembly candidates would have a contribution limit of \$6,000, or \$3,000 each for the primary and the general election; and
 - Candidates for District Delegates and At-Large Delegates to a Constitutional Convention would have a contribution limit of \$3,000.
- Establishing system requirements for public financing of campaigns including: comprehensive reporting and disclosure requirements to ensure maximum transparency and accountability; eligibility criteria; limits on the total amounts of

public funds that may be provided to participating candidates in any election cycle; procedures for the calculation and payment of public matching funds; allowable uses for public matching funds; requirements for audits of payments to candidates; and the repayment of any excess matching funds a candidate has received; and civil and criminal penalties for violations; and

- Establishing the “New York State Campaign Finance Fund” and allowing for certain transfers from the Abandoned Property Fund to the New York State Campaign Finance Fund. This bill would further allow individuals to designate a portion of their tax liability for deposit into the New York State Campaign Finance Fund.

Budget Implications:

Public financing of campaigns will be financed, in part, by allowing resident taxpayers to make a donation to the new Campaign Finance Fund through a check-off box on their State income tax return, beginning with the 2016 tax year. Fiscal impacts will be dependent upon candidate participation in the program.

Effective Date:

The bill would take effect immediately; provided, however, all candidates will be eligible to participate in voluntary public financing beginning with the 2018 primary election.

Part D - Comprehensive FOIL Reform

Purpose:

This bill would comprehensively reform the State’s Freedom of Information Law.

Summary of Provisions and Statement in Support:

Section 1 of the bill would amend section 86 of the public officers law to clarify the definition of state legislature and add a definition of “respective house of the state legislature.”

Section 2 of the bill would amend section 87 of the public officers law to incorporate the state legislature into the provisions of FOIL; make proposed terms of a collective bargaining agreement available to the public; clarify that access to records may be denied where disclosure could endanger critical infrastructure; and codify proactive disclosure.

Section 3 of the bill would repeal section 88 of the public officers law.

Section 4 of the bill would amend section 89 of the public officers law to incorporate the state legislature into the provisions of FOIL; include personal communications between

a legislator and a constituent in the definition of an unwarranted invasion of personal privacy; amend the attorneys' fees provision; expedite FOIL appeals; require commercial entities to renew requests for trademark protection; and outline the process to handle suits by commercial entities to block disclosure.

Section 5 of the bill would amend section 105 of the CPLR to define state legislature.

Section 6 of the bill would amend section 7802 of the CPLR to include the state legislature within the definition of "body or officer."

Section 7 of the bill would amend section 713 of the executive law to make reference to article six of the public officers law, instead of section eighty-eight.

Section 8 of the bill would repeal section 70-0113 of the environmental conservation law.

Section 9 of the bill would repeal section 308 of the county law.

Section 10 of the bill would set forth the effective date.

Budget Implications:

Enactment of this bill is necessary to implement the 2016-17 Executive Budget.

Effective Date:

This bill would take effect immediately; provided however that the amendments to paragraphs (j), (k), (l), (m), (n), and (o) of subdivision 2 of section 87 of the public officers law made by section two of this act shall not affect the repeal of such paragraphs and shall be deemed repealed therewith.

Part E - Enact Public Officers law Reform

Purpose:

This bill would strengthen disclosure requirements for public officials.

Summary of Provisions and Statement in Support:

This bill would build upon the Public Integrity Reform Act of 2011(PIRA), which reformed the oversight and regulation of ethics and lobbying in New York State and created the Joint Commission on Public Ethics (JCOPE). This bill would amend the Public Offices Law, the Executive Law, and the Legislative Law to strengthen disclosure requirements and associated penalties to empower JCOPE and enhance their enforcement abilities.

This bill would do the following:

- Require that filers unable to produce documents during an audit attest that such documents are unavailable or do not exist;
- Expand JCOPE's civil penalty jurisdiction to include individuals who aid in the violation of the State's ethics laws;
- Clarify the public availability of certain Commission records;
- Provide that the Commission may conduct meetings from multiple locations, one of which must be open to the public;
- Establish that any lobbyist who is guilty of accepting a contingent retainer or employment will be subject to a civil penalty of no more than \$10,000 or the value of the contingent fee. Such violations are reclassified from a class A misdemeanor to an E felony;
- Require electronic submission of lobbying reports and registrations beginning in 2017;
- Institute a civil penalty not to exceed \$10,000 for lobbyists or clients who fail to fully cooperate during audits; and
- Establish a new \$40,000 civil penalty for failure to cooperate with JCOPE financial statement reviews (Section 73-a).

Budget Implications:

Enactment of this bill is necessary to implement the 2017 Executive Budget to ensure that taxpayer dollars are used in a responsible and efficient manner.

Effective Date:

This bill would take effect immediately, however several sections take effect on January 1, 2017.

Part F - Enhancing Voter Opportunities

Purpose:

This bill would provide for a system of opt-out voter registration for qualified Department of Motor Vehicles (DMV) customers; and early voting in all special, primary, and general elections.

Summary of Provisions and Statement in Support:

Sections one through four of this bill would provide for a system of opt-out voter registration for qualified persons applying for a motor vehicle driver's license, a driver's license renewal, or an identification card issued by the DMV. Current law allows qualified DMV customers to apply to register to vote when conducting certain DMV transactions. This bill would automatically forward voter registration applications for any qualified persons to local boards of elections, unless the DMV customer explicitly opts out of registration.

Sections five through 11 of this bill would authorize early voting in all special, primary, and general elections. This bill would:

- Require early voting polling sites to be open for a period of 12 days prior to special, primary, and general elections;
- Require that the number of early voting polling sites be based on the number of registered voters in each county, and that each county offer at least one site; and
- Provide that any registered voter in a county can vote at any early voting polling place within their county, subject to certain limitations.

Budget Implications:

Enactment of this bill is necessary to implement the 2016-17 Executive Budget.

Effective Date:

Sections five through 11 of this bill would take effect on the first of January after enactment and would apply to any election held one hundred twenty days or more after the effective date, except that subsections one through four of this bill would be effective April 1, 2017.

Part G - Improve transparency and oversight related to vendors and for-profit businesses

Purpose:

This bill would explore the feasibility of implementing a single identifying code for contractors, vendors and other State payees to improve the State's oversight and monitoring of business activities.

Summary of Provisions and Statement in Support:

This bill would require the State Comptroller, the Attorney General, the Chief Information Officer of Office of Technology Services, and the Commissioner of Office of General Services to conduct a study concerning the feasibility of assigning a single identifying code to contractors, vendors, and other payees to track such entities and expenditures. The group would be required to submit its findings and recommendations to the Governor and Legislature on or before January 1, 2017.

Budget Implications:

Enactment of this bill is necessary to implement the 2016-17 Executive Budget, as it would improve transparency and oversight of entities receiving State funding.

Effective Date:

This bill would take effect immediately.

Part H - Enact Lobbying Reform

Purpose:

This bill would extend the reporting and compliance requirements of Section 1-A of Legislative Law (i.e. the Lobbying Act) to cover political consultants.

Summary of Provisions and Statement in Support:

This bill would require that political consultants adhere to the same provisions as lobbyists with respect to registration, reporting and oversight by the Joint Commission on Public Ethics (JCOPE).

Currently, lobbyists must register with JCOPE, complete ethics training, and regularly disclose activities and finances. This bill would extend such requirements to political consultants, who are defined as someone who is paid to provide advice, services, or assistance in securing future State or local public office for any elected State or local public official.

Specific new provisions which would apply to political consulting include:

- Semi-annual disclosure filings; and
- Civil and criminal penalties and fines for knowingly and willingly failing to file and for filing false information, among other violations.

This bill would also amend Election Law to require that treasurers of political committees furnish statements which include a list of all persons and organizations

which provide consulting services, and the fair market value and actual amount paid for such services.

Finally, this bill would expand the advisory council on procurement lobby to include political consulting.

Budget Implications:

Enactment of this bill is necessary to implement the 2016-17 Executive Budget because it strengthens State ethics laws by increasing the transparency of political consulting activity.

Effective Date:

This bill would take effect 30 days from enactment.

The provisions of this act shall take effect immediately, provided, however, that the applicable effective date of each part of this act shall be as specifically set forth in the last section of such part.