

FY 2018 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 public officers law and the legislative law, in relation to outside employment and income (Part A); to amend the election law, in relation to political contributions by limited liability companies or other corporate entities (Part B); to amend the executive law and the general municipal law, in relation to requiring the financial disclosures of certain local officials (Part C); to amend the election law, in relation to establishing contribution limits and a public campaign financing system; to amend the state finance law, in relation to establishing the New York state campaign finance fund; and to amend the tax law, in relation to establishing a New York state campaign finance fund check-off (Part D); 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 section 88 of the public officers law, section 70-0113 of the environmental conservation law and subdivision 4 of section 308 of the county law relating thereto (Part E); to amend the executive law, in relation to including certain not-for-profit organizations and foundations within the jurisdiction of the state inspector general (Part F); to amend the executive law, in relation to giving the inspector general jurisdiction over state procurement (Part G); to amend the education law, in relation to the implementation and enforcement of SUNY and CUNY financial control policies, including the policies of affiliated nonprofit organizations and foundations (Part H); to amend the public officers law and the criminal procedure law, in relation to the establishment of the New York port authority inspector general (Part I); to amend the education law, in relation to the establishment of a state education department inspector general (Part J); to amend the executive law, the state finance law and the public authorities law, in relation to the appointment of a chief procurement officer (Part K); to amend the election law, in relation to government

vendor contributions (Part L); to direct the preparation of a report on the feasibility of single identifying codes or numbers (Part M); and to amend the election law, in relation to motor vehicle registration and to establish early voting; and to repeal section 5-212 of the election law relating thereto (Part N)

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 N of the bill which are described wholly within the parts listed below.

Part A - Requires an advisory opinion for outside income for the Legislature

Purpose:

This bill would require members of the Legislature to solicit a formal advisory opinion from the Legislative Ethics Commission regarding whether outside employment presents any conflicts of interest in order to provide elected members with support and guidance in abiding by public officer's law.

Summary of Provisions and Statement in Support:

By examining employment from non-state activities on a case by case basis, this measure would help guide our elected representatives, prevent conflicts of interest, and increase the public's trust in all their elected officials. To further support deliberations and discussions regarding outside employment and conflicts of interest, as well as reinforce the public's trust in the process, a designee from the Office of Court Administration would serve on the Commission for the purpose of reviewing applications for approval of outside employment.

Effective Date:

This bill would take effect January 1, 2018.

Part B - Close the "LLC loophole" by defining Limited Liability Companies as corporations for the purpose of political donations

Purpose:

This bill would explicitly include Limited Liability Companies (LLCs), and any other corporate entity, as subject to campaign finance limits already articulated in law thereby, closing the "LLC loophole". This action would result in LLCs and any other corporate

entity being subject to the same campaign finance limits imposed on corporations and joint stock associations and would allow for a more transparent campaign finance system.

Summary of Provisions and Statement in Support:

As a result of widely criticized case law, the Board of Elections presently treats LLCs treated as “individuals”. As a result a single individual owning multiple LLCs is free to legally donate sums of money well in excess of either the corporate or individual campaign donation limits to elected officials. There is little transparency attached to these donations.

This bill would explicitly include Limited Liability Companies (LLCs), and any other corporate entity, as subject to campaign finance limits already articulated in law thereby, closing the “LLC loophole”. This would subject LLCs to a campaign donation limit of \$5,000 per calendar year (just like corporations and joint stock associations) and 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 for purposes of attribution of the LLC donation to that individual and for purposes of transparency behind political donations; 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.

Effective Date:

This bill would take effect immediately upon enactment.

Part C - Financial Disclosure requirements for Local elected officials

Purpose:

This bill would establish financial disclosure requirements for certain local elected officials to promote transparency in local government, and decrease conflicts of interest at the local government level.

Summary of Provisions and Statement in Support:

This bill would require all County Executives, County Managers, Chairs of County Boards of Supervisors, as well as all other local elected officials who earn an annual government salary of more than \$50,000, to file annual statements of financial disclosure with the Joint Commission on Public Ethics (JCOPE). The Commission would be responsible for review and disclosure of improprieties to authorities.

Effective Date:

This bill would take effect January 1, 2018.

Part D - 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 60 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.
- Amending contribution limits for candidates not participating in the public financing system, 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; and

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

Effective Date:

This bill would take effect immediately upon enactment, however affected candidates would be eligible to participate in voluntary public financing beginning with the 2019 primary election.

Part E – 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 part 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 part 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 part would repeal section 88 of the public officers’ law.

Section 4 of the part 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; 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 part would amend section 105 of the CPLR to define state legislature. Section 6 of the part would amend section 7802 of the CPLR to include the state legislature within the definition of “body or officer.”

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

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

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

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

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 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; provided, further, however that the amendments to paragraph (d) of subdivision 4 of section 89 of the public officers law made by section four of this act shall take effect on the same date and the same manner as chapter 487 of the laws of 2016, takes effect.

Part F - Expand State Inspector General Jurisdiction to Include Affiliate Organizations of SUNY and CUNY

Purpose:

This bill would expand oversight by the State Inspector General to include nonprofit organizations and foundations affiliated with SUNY and CUNY.

Summary of Provisions and Statement in Support:

New York's State Inspector General is charged with ensuring that state government, its employees, and all who partner with the state meet the highest standards of integrity and accountability. Recent investigations have shown financial abuses within the nonprofit organizations and foundations affiliated with SUNY and CUNY. These affiliates manage significant funds used to perform functions on behalf of SUNY and CUNY.

The State Inspector General currently has authority to investigate allegations of corruption, fraud, criminal activity, conflicts of interest, or abuse within SUNY and CUNY. However, their affiliated nonprofit organizations and foundations remain without oversight. It only makes sense to expand the State Inspector General's jurisdiction to include investigation of these affiliated entities, which supplement government function, but are currently unaccountable.

This bill would enhance state oversight by expanding the definition of a "covered agency" under the State Inspector General's jurisdiction to include the affiliated nonprofit organizations and foundations of SUNY and CUNY. This would grant the State Inspector General authority to investigate complaints of corruption, fraud, criminal

activity, conflicts of interest, or abuse within each university and its affiliates, and to refer potential criminal findings within these entities for prosecution.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget.

Effective Date:

This bill would take effect sixty days after becoming law.

Part G - Clarify State Inspector General's Authority over State Procurements

Purpose:

This bill would clarify authority of the State Inspector General in oversight of state procurements.

Summary of Provisions and Statement in Support:

The State Inspector General currently has the authority to investigate allegations of corruption, fraud, criminal activity, conflicts of interest, or abuse within all state agencies and authorities, including those allegations related to state procurements. However, the State Inspector General's current authority is limited to officers and employees of the state.

This proposal would define where the State Inspector General is able to investigate contracted parties with the state in such procurements. It would establish the State Inspector General's authority to investigate complaints of corruption, fraud, criminal activity, conflicts of interest, or abuse within these entities related to state procurements, and to refer potential criminal findings for prosecution.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget.

Effective Date:

This bill would take effect sixty days after becoming law.

Part H - Establish SUNY and CUNY Foundation Financial Controls

Purpose:

This bill would require the adoption of financial control policies by the nonprofit organizations and foundations affiliated with SUNY and CUNY.

Summary of Provisions and Statement in Support:

An Interim Report released the by the State Inspector General last year into an investigation of corruption within CUNY found that the foundations and nonprofit organizations established to supplement functions of the University were severely prone to financial mismanagement. One of the most significant factors to this mismanagement noted in the Interim Report was the lack of financial control policies within these foundations and organizations and lack of financial policy oversight by CUNY.

This proposal would require the adoption of significant written financial control policies by the affiliated nonprofit organizations and foundations of SUNY and CUNY in order to create internal accountability and minimize the potential for corruption, fraud, criminal activity, conflicts of interest or abuse within these organizations. The adoption of policies to prevent financial mismanagement within these organizations would be overseen by the State Inspector General.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget.

Effective Date:

This bill would take effect one hundred eighty days after becoming law.

Part I - Creates an Inspector General for the New York Port Authority

Purpose:

This bill would create the Office of the New York Port Authority Inspector General

Summary of Provisions and Statement in Support:

This bill would establish the New York Port Authority Inspector General, to be appointed by the Governor. The Port Authority Inspector General would be responsible for:

- Investigating complaints concerning allegations of corruption, fraud, criminal activity, conflicts of interest or abuse for any New York-related Port Authority conduct;
- Reviewing policies and procedures of the Port Authority for the purpose of making recommendations to prevent unethical or illegal conduct; and
- Establishing training programs for Port Authority employees in relation to both ethical and legal obligations.

Effective Date:

This bill would take effect immediately upon enactment.

Part J - Create State Education Department Inspector General

Purpose:

This bill would create a new Inspector General specifically dedicated to oversight of the State Education Department.

Summary of Provisions and Statement in Support:

The State Education Department is one of the largest agencies in State government. It manages billions of taxpayer dollars and creates significant state policies. However, unlike other state agencies, the State Education Department is not currently overseen by any investigative entity.

This proposal would establish an independent State Education Department Inspector General to investigate allegations of corruption, fraud, criminal activity, conflicts of interest, or abuse within the State Education Department. The State Education Department Inspector General would have investigatory powers similar to those held by the State Inspector General over other agencies, as enumerated by statute, and would be appointed to serve a five year term by mutual agreement between the Senate and Assembly.

The State Education Department Inspector General would also have the power to refer potential criminal findings within the Agency for prosecution.

Budget Implications:

Enactment of this bill is necessary to implement the FY 2018 Executive Budget.

Effective Date:

This bill would take effect immediately, however a provision requiring officers and employees to report allegations to the State Education Department Inspector General would take effect one hundred eighty days after becoming law, in order to allow for the training of Department officers and employees regarding their rights and responsibilities under the law.

Part K - Appointment of a Chief Procurement Officer

Purpose:

This bill would create a Chief Procurement Officer to oversee State procurements

Summary of Provisions and Statement in Support:

This bill would authorize the creation of a Chief Procurement Officer who shall serve as the principal officer tasked with oversight of state procurements. The Chief Procurement Officers' duties would include:

- Oversight of the integrity and uniformity of procurement practices across the State;
- Disclosing reportable matters to the State Inspector General;
- Ensuring state procurement staff are prepared and positioned to conduct effective and ethical procurements, and
- Serving as a member of the Procurement Council.

Public authorities will also be required to provide the Chief procurement officers with reports on procurements as required pursuant to Public Authorities Law § 2879.

Effective Date:

This bill would take effect on the sixtieth day after enactment

Part L - Amendment of government vendor contributions

Purpose:

This bill would prohibit campaign contributions by parties involved in State procurements.

Summary of Provisions and Statement in Support:

This bill would prohibit campaign contributions by persons or entities that are actively bidding for government procurement contracts. The prohibition would apply to contributions to office-holders and candidates associated with the governmental entity requesting the procurement, and the prohibition would extend until the close of the bidding period, or until six months after the final contract award for the winner.

Effective Date:

This bill would take effect on the one hundred eightieth day after enactment.

Part M - Report on the feasibility of single identifying codes or numbers

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:

In order to improve the oversight and monitoring of State business, this bill would require 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 September 1, 2017.

Effective Date:

This bill would take effect immediately.

Part N - Early Voting and Automatic Voter Registration

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:

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.

This bill would also authorize early voting in all special, primary, and general elections. Specifically, it 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 FY 2018 Executive Budget.

Effective Date:

Sections five through 11 would take effect on the first of January after enactment and would apply to any election held 120 days or more after the effective date, except that subsections one through four would be effective April 1, 2018.

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.