

**STRENGTHENING ETHICS
IN NEW YORK:
THE ETHICS IN GOVERNMENT ACT OF 2006**

Endorsed by:

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Common Cause/NY
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“ETHICS IN GOVERNMENT ACT OF 2006”

Executive 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 public officials remain outside the reach of existing laws and enforcement powers. Even 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 in Government Act of 2006” would close numerous current loopholes, 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 our elected officials. This bill would make New York State a national leader in holding its government to the highest ethical and substantive standards.

The Ethics in Government Act of 2006 would:

- 1. Establish an independent state ethics commission.**
- 2. Limit contributions from public contractors and lobbyists to end the “pay-to-play” practices of Albany.**
- 3. Ban gifts.**
- 4. Ban honoraria.**
- 5. Strengthen ban on use of campaign contributions for personal use.**
- 6. Strengthen “revolving door” bans.**
- 7. Create more stringent requirements for financial disclosure for public officers.**
- 8. Require ethics training for lobbyists and public officials, including the governor, legislators, legislative employees, and state agency employees.**

1. ESTABLISH AN INDEPENDENT STATE ETHICS COMMISSION

“The Ethics in Government Act of 2006” establishes an independent state ethics commission with jurisdiction over statewide elected officials, state officers and employees, state legislators, and legislative employees.

New York’s state ethics law is presently enforced by two agencies. The State Ethics Commission monitors the executive branch and the Legislative Ethics Committees monitors the legislative. The State Ethics Commission’s membership is dominated by gubernatorial appointees (the Governor picks three of five and the other two are chosen by the State Comptroller and the Attorney General).¹ The legislative branch is monitored by the Legislative Ethics Committee, which consists of eight members, appointed by the temporary President of the Senate, the Speaker of the Assembly, the minority leader of the Senator and the Majority Leader of the Senate.² In both cases, therefore, elected officials essentially police their own behavior and that of their employees.

Currently, 39 states provide external oversight of their state government officials through an independent ethics commission that has statutory authority and staffing that are independent of the rest of state government.³ Ethics commissions in only six states including New York do not have jurisdiction over state legislators.⁴ Such unified authority 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 officials 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 in both the executive and legislative branches. The state ethics commission would consist of 17 individuals with two persons 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, and five persons appointed by the governor. The executive director would be appointed by the commission, 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, after full consideration by the commission and an opportunity by the accused public official to make his case before the commission, to the attorney general or the appropriate local prosecutor for investigation and prosecution.

¹ N.Y. EXEC. LAW § 94(2).

² N.Y. LEG. LAW § 80.

³ THE STATE OF STATE LEGISLATIVE ETHICS 11 (Nat’l Conference of State Legislatures 2002).

⁴ Those states are Illinois, Indiana, Michigan, North Carolina, and Ohio. *Id* at 13.

2. 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 elected representatives has generated a widespread public belief that contributors are “paying” those officials for the opportunity to “play” with 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. In a typical session, lawmakers are scheduled to be in Albany for 60 days, including 40 nights. During that time, as many as 200 Albany-based fundraisers can occur.⁵ Albany’s top lobbying firm, Wilson, Elser, spent \$253,525 on contributions to candidates in the 2004 election.⁶ Unlike many states, moreover, New York does not limit state or local contractors from making campaign large 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 2003, Bronx Assemblywoman Gloria Davis was forced to resign after allegedly being caught taking \$24,000 as part of a deal to fix a nearly \$900,000 contract in her district. Davis also allegedly accepted free rides between Albany and New York City from Correctional Services Corp., a Florida company that operates two New York City halfway houses and has received millions of dollars in state contracts in recent years.⁷
- The law firm, Schiavetti, Geilser, Corgan, Soscia, DeViteo, Gabriele & Nicholson donated approximately \$22,000 to former New York City Mayor Rudy Giuliani’s 1997 re-election campaign and about \$30,000 to his 1993 campaign. In late 1994, 10 months after Giuliani took office, his administration award the firm a \$1.8 million, two-year contract to defend the municipal hospital agency against medical malpractice.⁸
- 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.⁹

⁵ 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>.

⁶ *Id.*

⁷ *The Stench of Corruption Will Continue to Be Strong*, DAILY STAR ONLINE, January 25, 2003.

⁸ Clifford Levy, *The 1997 Elections: Contributions; Firm Got Pact After It Aided Mayor in Race*, N.Y. TIMES, October 24, 1997.

⁹ 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.¹⁰
- 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.¹¹

Without rules prohibiting such “pay to play” arrangements, the risk of actual or apparent corruption in the process of choosing contractors are obvious. Assemblyman William Parment, a Democratic Assemblyman from Jamestown has concluded publicly that “[t]he procurement process is entirely too open to manipulation.”¹² In a speech last year before the Rockefeller Institute of Government, the Attorney General highlighted the need to “reduce the undue influence of special interests” and called for an end to “pay-to-play” culture that exists in Albany.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.

With passage of this bill, New York would join a growing number of states and localities with “pay to play” restrictions on lobbyists and public contractors, which include Connecticut, South Carolina, New Jersey, Ohio, Kentucky, and West Virginia. The bill:

- Sets reasonable limits on contributions to 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 persons¹⁴;
- Requires lobbyists and public contractors, owners and senior managers of such lobbyists and contractors and their immediate family members, and political committees controlled

¹⁰ C. Levy, *GOP Donor Won New York Contract as His Gifts Soared*, N.Y.TIMES, Mar. 25, 1998.

¹¹ 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.

¹² Marc Humbert, *NY Government Operates Like a Criminal Enterprise*, ASSOCIATED PRESS, Jun. 6, 2004.

¹³ Attorney General Eliot Spitzer’s speech at the Rockefeller Institute of Government (Nov. 21, 2005).

¹⁴ These limits on contributions would apply during the two years prior to a contractor’s bid or proposal to the relevant agency or contracting authority and either two years after completion of the applicable contract, or upon completion of the applicable candidate’s term in office, whichever is longer.

by any of these entities or persons, to report contributions to candidates and party housekeeping accounts made within 36 days of an election no later than 48 hours after the contribution is made;

- 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.

3. BAN GIFTS

The “Ethics in Government Act of 2006” bans gifts to elected officials, state officers or employees, and candidates for those offices, with limited exceptions for *de minimis* items.

It is widely agreed – at least behind closed doors – that allowing lobbyists to offer gifts to lawmakers both corrupts the legislative process and provides unequal public access to government decision-makers. In a democratic society, public policy decisions should not be influenced by the number of baseball game tickets or dinners an official receives from an individual or business with a particular interest. Even without actual corruption, allowing officials to accept gifts of any significant value erodes the public’s confidence in the integrity of our government. For many years, the significance of such gifts in distorting the legislative process have been clear:

- In 1995, New York’s beer and soda industry was able to score a \$42 million tax cut in that year’s state budget, during a year when the state faced a \$5 billion shortfall. At the height of the effort to pass tax cut legislation, the industry met privately with top policy makers over dinner. Pepsi lobbyists treated Senate Majority Leader Joseph Bruno, state Republican Party Chairman William Powers, and other party leaders to a \$1,397 dinner at the New York City restaurant *Lutece*. Democratic legislators were also taken to *The Four Seasons* restaurant, where the tab was \$2,354.¹⁵
- In 1996, Philip Morris spent tens of thousands of dollars on gifts to Albany lawmakers, including meals at fine restaurants, seats at the men’s final of the US Open, hotel reservations and tickets to the Indianapolis 500, as well as Yankees and Mets baseball games. The chief lobbyist for Philip Morris in Albany treated 60 lawmakers and their aides to more than \$12,000 in meals in the first half of 1996 alone.¹⁶

New York’s ethics law currently allows gifts with a value of up to seventy-five dollars.¹⁷ Unfortunately, the statute itself does not clarify whether this limit refers to individual gifts of that value, or to an aggregate annual value. The law also contains a loophole in that it only bars gifts that are given “under circumstances in which it could reasonably be inferred that the gift was intended to influence [the recipient].”¹⁸ Such ambiguities have resulted in vastly different interpretations of this statute by three different governmental entities.

The State Ethics Commission, which is housed in the Secretary of State’s office and enforces the law in the executive branch, has interpreted the \$75 limit on gifts as an annual limit. Still, the Commission has allowed state agencies to develop their own guidelines to enforce this limit and has granted clearance for the receipt of gifts in excess of \$75.¹⁹ Similarly, the

¹⁵ K. Sack, *How Albany Works, Lesson No.1: Lobbying*, N.Y. TIMES, Jun. 12, 1995.

¹⁶ C. Levy, *Tobacco Giant Spends Heavily Around Albany*, N.Y. TIMES, Jul. 27, 1999.

¹⁷ N.Y. LEG. LAW §1-m.

¹⁸ N.Y. PUB. OFF. LAW. § 73 (5).

¹⁹ N.Y. STATE ETHICS COMMISSION, ADVISORY OPINION 94-16, <http://www.nysl.nysed.gov/edocs/ethics/94-16.htm>.

Lobbying Commission recently interpreted this restriction on lobbyists' gifts to be a \$75 aggregate annual limit.²⁰ The Legislative Ethics Committee, however, has adopted an *ad hoc* approach and considers the legality of each gift individually.²¹ In practice, this has meant that legislators have been allowed to receive an unlimited number of gifts, as long as each gift has a value of no more than \$75. Legislators are currently only required to disclose gifts worth more than \$1,000 to the committee.²² Furthermore, the Legislative Ethics Committee holds its deliberations in private, thus weakening the capacity of the public to assess the nature or extent of any abuses that result from this interpretation.

Three states – Massachusetts, South Carolina, and Wisconsin – currently have “zero-tolerance” bans on gifts from lobbyists to legislators.²³ Eight other states – Alaska, Iowa, Kentucky, Louisiana, Minnesota, New Jersey, Tennessee, and Washington -- also ban gifts but make exceptions for food and drinks in limited circumstances.²⁴

This bill, based largely on Minnesota’s statute, would ban all gifts except for certain enumerated *de minimis* items, including food or beverages served at an event where a public official gives a speech or answers questions, for all public officials, in both the legislative and executive branches. The provision also grants the newly created independent state ethics commission to identify additional items of limited value that should be exempted from the gift ban in the future.

²⁰ N.Y. TEMPORARY STATE COMMISSION ON LOBBYING, GUIDELINES TO THE LOBBYING ACT, OPINION No.61 (05-06), <http://www.nylobby.state.ny.us/opino/opinio61.html>.

²¹ State Capital Law Firm Group, LOBBYING, PACS, AND CAMPAIGN FINANCE, 50 STATE HANDBOOK § 34.32 (Peter C. Christianson et al., eds.) (2005).

²² N.Y. PUB. OFF. LAW 73-a (9).

²³ THE STATE OF STATE LEGISLATIVE ETHICS at 52.

²⁴ *Id.* at 56-58.

4. BAN HONORARIA

The “Ethics in Government Act of 2006” bans honoraria paid to public officials, except those paid for private professional services at the rate generally charged by specialists in the relevant field.

Giving speeches and participating in public policy discussions are important parts of a public official’s job. To allow groups to offer state lawmakers honoraria for performing these duties, however, creates a real or apparent conflict of interest for public officials. At the same time, public officials have the right to be compensated for their services in the private sector that are unrelated to their official duties. A legislator who happens to be an expert on 19th century architecture should be able to be compensated for a speech in that subject since it bears no relationship to his or her official duty as a public official.

Current New York law does not prohibit honoraria in any form for state legislators, and it only requires that such payments be disclosed if their value exceeds \$1000.²⁵ At least 23 states prohibit honoraria in some manner if they are offered in connection with a legislator’s official duties.²⁶ This bill’s ban is based in significant part on the statutes of Alaska and Nevada, which ban honoraria obtained in connection with a legislator’s official duties, and would prohibit such honoraria from being received by legislative employees and state agency officers and employees as well.²⁷ Honoraria for services performed in connection with the official’s private profession would still be allowed, but only if such compensation does exceed the value of fees charged by specialists in the relevant professional field.

²⁵ N.Y. PUB. OFF. LAW § 73-a.

²⁶ THE STATE OF STATE LEGISLATIVE ETHICS at 47.

²⁷ NEV. REV. STAT. 281.553; ALASKA STAT. § 24-60-030, § 24-60-085.

5. STRENGTHEN BAN ON USE OF CAMPAIGN CONTRIBUTIONS FOR PERSONAL USE

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

- 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*.²⁸
- 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 2005.²⁹
- Nancy Lorraine Hoffmann, a Syracuse-area State Senator who lost her seat in November, reportedly continued to use her campaign account to pay cell phone bills and other expenses this year and to make the monthly payments on her car through May.³⁰
- After former State Senator Guy Velella was indicted of accepting bribes, he used his campaign funds to pay his legal defense bills. Twenty of Senator Velella's fellow senators also funneled him \$147,500 from their campaign funds.³¹

While current NY law forbids contributions for strictly personal use, the statute's language is too vague to provide any meaningful restraint.³² 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."³³ 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 expressly limit the use of campaign contributions to pay for costs directly related to promoting the nomination or election of the candidate. It would enact clear definitions of "personal use" and specifically prohibit the use of funds on 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. The prohibitions in this bill are based in large part on existing statutes in Connecticut, Minnesota, Missouri, Ohio, Rhode Island, Texas, and Idaho.

²⁸ Michael Cooper, *Some Ex-Candidates Still Use Campaign Funds to Pay Bills*, NY TIMES, Aug. 5, 2005.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Guy Velella's Crooked Gang*, DAILY NEWS, May 15, 2004.

³² N.Y. ELEC. LAW § 14-130.

³³ N.Y. ELEC. LAW § 14-130.

6. STRENGTHEN “REVOLVING DOOR” BANS

The “Ethics in Government Act of 2006” strengthens the state’s revolving door ban by extending them to political party officials and lengthening the period of prohibition for lobbying by legislative employees.

It is common in Albany for legislative and executive branch employees to leave office, and then, when allowed to do so, to use their old connections as a powerful lobbying tool. Public confidence in the state government depends upon equal public access to government officials and the elimination of real or perceived distortions of public decision-making that is created when former officials lobby their former colleagues after leaving office. Bans on such “revolving door” lobbying seek to restrain former state government and party officials from using their government connections to benefit themselves, their clients or their business interests after they leave office.

New York already has a “revolving door” ban for certain public officials. New York is one of six states that impose a two-year ban on legislators and state agency officers and employees. New York’s ban does not apply, however, to political party officials and imposes a ban on lobbying by legislative employees that lasts only until the end of the legislative session during which the individual was employed. Accordingly, a legislative employee could leave at the end of a session and begin lobbying immediately thereafter.

This bill would apply a two-year lobbying ban upon political party chairpersons and would ban former legislative employees from lobbying during “the term of office of the legislature in which he was so employed or within one year after he ceased legislative employment, whichever is longer.”

7. CREATE MORE STRINGENT REQUIREMENTS FOR FINANCIAL DISCLOSURE

8. REQUIRE ETHICS FOR LOBBYISTS AND FOR OFFICIALS IN THE LEGISLATIVE AND EXECUTIVE BRANCHES

7. Create more stringent requirements for financial disclosure for public officers.

Requiring disclosure helps to ensure the transparency and accountability of our state government and to avoid possible conflicts of interest. This bill would enhance the requirements for disclosure of financial information by state employees in various ways.

8. Require ethics training for lobbyists and for the governor, legislators, legislative employees, state agency officers, and state agency employees.

Once good laws are on the books, the best way to prevent ethics violations is through education. Nine states have continuing education requirements for ethics and conflict of interest laws for various categories of state officials.³⁴ This bill would expressly require ethics training for all state officials, including the governor, and legislators, as well as continuing education in these areas provided by the state ethics commission.

While it is essential for lobbyists to understand the ethics laws that regulate their practice, and especially the new “pay-to-play” restrictions that this bill would enact, currently New York does not require any training of lobbyists. Instead, New York provides training for lobbyists only upon request. With this bill, the New York Temporary State Commission on Lobbying would be responsible for online ethics training of lobbyists at least semiannually, and all registered lobbyists would be required to complete such training.

³⁴THE STATE OF STATE LEGISLATIVE ETHICS at 27.

These states are California, Florida, Hawaii, Kentucky, Massachusetts, Minnesota, New Hampshire, North Carolina, and North Dakota.