



Summary & Positions on the Ten Ethics Proposals in the Executive Budget FY2019-2020

Governor Cuomo's FY2019-2020 Executive Budget includes a freestanding [Good Government and Ethics](#) bill containing 24 different ethics (primarily lobbying-related reforms), campaign finance and voting proposals. He also proposed in other budget bills, funds for clean contracting reforms and making the legislature follow the Freedom of Information Law (FOIL).

Reinvent Albany's priorities for the budget are:

- 1) Codifying the agreements reached between the Governor and Comptroller DiNapoli restoring the Comptroller's authority to pre-audit contracts before they are executed;
- 2) Establishing a Database of Deals revealing all business subsidies received from the state by companies and jobs produced in return; and
- 3) Establishing a public financing system of elections akin to New York City's.

Governor Cuomo has said he will not complete a budget without addressing ethics.

The Governor's budget puts forth 10 proposals that change ethics laws. Reinvent Albany has read the Governor's bill language and evaluated all 10 ethics proposals. While these proposals are worthy of consideration, we believe any substantial reform of ethics laws should overhaul the Joint Commission on Public Ethics (JCOPE) including the composition of the board and appointing authorities, change the voting procedures, and increase transparency on the adjudication of complaints.

Reinvent Albany supports 7 of the 10 ethics proposals introduced by the Governor. Of the 7 we support generally, 3 we will only support with amendments and 4 others we support and recommend amendments for. Three proposals we oppose the measure or the bill language is problematic. Among the proposals put forth by the Governor, we think the most significant is banning lobbyists from lobbying while also doing political

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consulting, but only if it is amended to be apply to firms and not just individuals. We also think enhancing disclosure of municipal financial disclosure is worthwhile.

Below is an index of every ethics proposal, and the page number in this document where Reinvent Albany has summarized the proposal, stated its position on the reform, and recommended changes to the bill.

Reinvent Albany will separately publish its evaluation of campaign finance and voting measures in the Good Government and Ethics bill.

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Part A. Disclosure of Tax Returns by Candidates for Public Office

Summary

This bill requires candidates for office to provide their tax returns to the Board of Elections. Statewide candidates must provide 10 years of returns while state legislative candidates must provide 5 years of returns. The Board must make the tax returns available to the public 60 days before a general election. Candidates may request redactions which the Board of Elections may make in consultation with the Department of Taxation and Finance.

Reinvent Albany Position - Support Only With Amendments

Reinvent Albany only supports disclosure of tax returns by candidates for statewide office and statewide officials. We believe this disclosure measure should begin with statewide officials who have the most power and where outside income is most likely to cause conflicts of interest. Later legislation could be extended to legislative leaders.

We are not certain of the added value of requiring public officials to release their tax returns when they already are required as candidates and officeholders to release annually financial information to the Joint Commission on Public Ethics (JCOPE). This

financial information already required to be reported includes not only income for the previous year but assets for public servants and their immediate family. Outside income to lawmakers has also been limited, albeit is being legally challenged, diminishing the importance of disclosing tax returns. We are also concerned it may deter state legislative candidates from running if they have to disclose the income of their family. Lastly, if this was to be immediately implemented for the statewide electeds, state lawmakers and candidates, the Board of Elections would have to establish systems for receipt of hundreds of taxpayer forms. We'd rather see a phase in which would allow for designing a system to best disclose the information. The Board of Elections has been stalled for years in revamping its antiquated online campaign finance disclosure system.

Reinvent Albany Recommendations

- **Limit disclosure of tax returns to 5 years for statewide candidates.**
- **Require candidates provide tax returns to the Board of Elections when ballots are finalized.** Under the current proposal with a consolidated primary in June, tax returns would not be available for public review during a primary election.
- **Require the Board of Elections disclose commonly reported tax information like Adjusted Gross Income and commonly used deductions and credits in a machine readable format** along with PDF copies of the tax returns on its website.
- **Require the Board of Elections in conjunction with the Department of Tax and Finance promulgate rules to identify broad areas of tax returns that would and would not qualify for an exemption from public reporting.**
- **Enable the Joint Commission on Public Ethics (JCOPE) to access tax returns to review financial disclosure filings by state electeds.**

Part M. Lobbyist Loans to Candidates

Summary

This bill bans lobbyists, political action committees (PACs), labor unions, and independent expenditure committees from making loans to candidates or political committees. Lobbyists may still make loans to themselves if they run for office.

Under current law, any person or entity can make a loan to a candidate or political committee and, except for constituted committees (state or county or local committees),

if the loan is not paid back before the next election it is considered a contribution to the campaign and subject to restrictions on campaign contributions.

Reinvent Albany Position - Support And Recommend Improvements

Reinvent Albany has not seen data about how common loans to political committees are. We do believe loans can appear to make candidates or political committees financially liable to the person or company making the loan, and more beholden to them than a contribution. We therefore support a ban on loans from certain sources albeit we believe this is a very minor improvement in the campaign finance system, and contribution limits, inclusive of loans unpaid by Election Day, need to be dramatically lowered for all offices.

Reinvent Albany Recommendations

- Require constituted committees to repay loans by the next election or have them be treated as contributions as is true for candidate and other political committees.

Part O. Lobbyist Disclosure of Campaign Contributions

Summary

This bill provides for disclosure of fundraising activities by lobbyists including raising money for candidate committees and giving directly to candidates in a primary or general election for statewide offices, state legislative offices, and offices of any municipality.

Lobbyists filing a statement of registration with the Joint Commission on Public Ethics (JCOPE) must file a fundraising report every two months on the same schedule as bimonthly lobbying reporting. The first fundraising report shall include all fundraising for the last six months of the calendar year preceding the year in which the statement of registration is filed. The fundraising report includes the name, address, and phone number of the lobbyist and their staff involved in fundraising activities for the candidate; the name, address and phone number of the candidate or elected official serviced; compensation and expenses paid or owed for fundraising services; a list of the lobbyists' contractors in providing fundraising services; and the amount of money raised for the candidate including direct contributions by the lobbyist. JCOPE may review the filings and will make them available in electronic form. Changes to fundraising activities requires lobbyists submit an amended filing within 10 days.

Reinvent Albany Position - Support And Recommend Improvements

Reinvent Albany believes there should be more disclosure of fundraising activities by lobbyists for candidates and elected officials as intended by this bill. This bill imposes minimal additional reporting requirements because lobbyists are required to report total funds raised rather than individual donation information. This top-level data is likely information lobbyists already compile for their fundraising services. We believe the bill can be strengthened further by including our recommendations.

Reinvent Albany Recommendations

- **Include lobbyist fundraising in campaign finance filings with the State Board of Elections.** Candidates in their filings with the board, for example, could designate which contributions were raised in conjunction with fundraising services provided by lobbyists. This would provide a granular complement to the aggregate information the bill requires be provided to JCOPE by lobbyists.
- **Charge JCOPE with promulgating rules for determining what constitutes fundraising and staff involved in fundraising.** This is not always clear. For example, lobbyists may plan a fundraiser in Albany for lawmakers, handling logistics and providing advice on invitees. If the lawmaker's campaign committee sends the invitations, and the elected makes a speech at the fundraiser asking for contributions, are those contributions attributed to the lobbyist or the candidate in totaling up the money raised by the lobbyist?

Part P. Ban Political Consultants from Lobbying Certain Elected Officials

Summary

This bill bans individual lobbyists from seeking to influence any elected official they simultaneously provide political consulting services to. It also bans individual political consultants from simultaneously lobbying any elected officials they provide campaign-related services to. The bill defines political consulting as being paid to provide advice or service to a candidate or elected official in pursuing public office including campaign management, fundraising, media services, and public relations but excludes litigation regarding petitioning, getting on the ballot or other aspects of election law. It also requires disclosure in periodic election filings by candidates and political committees of their political consultants, the amount they are paid, and the fair market value of services offered.

Reinvent Albany Position - Support Only With Amendments

Reinvent Albany supports this proposal but only with amendments. When an individual both lobbies and helps elect a public official, the elected official is more likely to be unduly influenced by that individual. This bill establishes very modest restrictions to diminish undue influence or its appearance. This is a narrowly drawn ban in that it does not bar a lobbying or political consulting firm from both lobbying and doing political consulting but rather bans any individual from doing so at the same time. We believe this reform would be far more impactful if it banned firms from doing both political consulting and lobbying.

Reinvent Albany Recommendations

- **Amend the Public Officers law to prohibit elected officials from being lobbied and receiving political consulting services from the same firm and individuals working across firms.** We believe a firmwide ban would be more impactful in reducing undue influence. The responsibility should also not only be placed on the lobbyist or political consultant, but also on the elected official or candidate. In too many instances, lobbying laws make the lobbyist liable for violations but not in addition elected officials or public servants.
- **Establish a cooling off period between providing political consulting services and lobbying a candidate.** Under this bill, it appears a political consultant could run a candidate's campaign while not lobbying them, and if the candidate is elected, begin lobbying them immediately afterwards if they ceased providing political consulting services. In short, the bill bans simultaneous lobbying and political consulting by an individual but not sequentially providing those services. Similarly, a lobbyist could lobby a lawmaker during the legislative session, and stop lobbying them during the campaign season to provide political consulting services, only to resume lobbying them again after the campaign season ends.

Part Q. Disclosure Requirements for Certain Nonprofit Entities

Summary

This bill makes modifications to existing law which requires the disclosure of donors to a 501(c)(3) organization when a 501(c)(3) organization provides funds or makes an in-kind donation exceeding \$2,500 during a six month reporting period to a 501(c)(4) organization. The bill also modifies another section of law requiring 501(c)(4)s to disclose donors when spending \$10,000 or more in a calendar year for covered communications not already reported as lobbying or campaign finance expenditures.

One of the modifications made is to charge JCOPE rather than the Attorney General's Office (the Department of Law) with the administration of both sections of the law. Another amendment requires the 501(c)4 to notify any 501(c)3 providing the 501(c)4 \$2,500 or more of the 501(c)4's obligation to file a sources of funding disclosure report, presumably to notify the 501(c)3 they will be reported as a donor by the 501(c)4. Another change to the law in the bill enables 501(c)3s and 501(c)4s to shield certain donors from disclosure. If the 501(c)3 maintains a segregated account for transfers to a 501(c)4, it only has to report donations into that segregated account. 501(c)3s and 501(c)4s may apply to exempt particular donors from disclosure for future disclosures with JCOPE, whose Executive Director will determine whether disclosure is required based on existing criteria regarding potential threats or harm to the donor, in addition to a new criterion regarding whether disclosure is likely to deter the donor from making future contributions to the 501(c)3 or 501(c)4.

Reinvent Albany Position - Support Only With Amendments

We support some of the changes to existing law put forth in this bill.

We support protecting 501(c)3s from revealing all their donors when making grants to 501(c)4s by enabling 501(c)3s to set up a segregated fund for covered communications and only report donations into that fund. We also support 501(c)3s and 501(c)4s being able to petition the enforcement entity to protect individual donors when disclosure could result in threats or harm to the donor.

We do not support, however, moving jurisdiction over 501(c)3 and 501(c)4 disclosures from the Attorney General's Office to JCOPE. We believe the Attorney General's Office is better equipped to administer 501(c)3 and 501(c)4 disclosures unrelated to lobbying and campaign finance expenditures because of their extensive experience working with charities through the Charities Bureau.

Reinvent Albany Recommendations

- **Require online public disclosures in this bill to be downloadable in a machine readable format and made available in the state's open data platform.** This will increase transparency and allow for third party analysis of donations to 501(c)3s and 501(c)4s.

Part R. Lower Lobbyist Disclosure Thresholds to \$500

Summary

This bill lowers the thresholds for registering as a lobbyist, filing the client semi-annual periodic filing, and disclosing reportable business relationships. Currently, a person or organization must register as a lobbyist if they are a lobbyist/client and intend to or spend \$5,000 in a calendar year. This bill would require a person or organization to register if they are a lobbyist/client and intend to or spend more than \$500 in a calendar year. Clients who hire a lobbyist but do not lobby themselves would be required to file a semi-annual report of their activities if they spend more than \$500 in a calendar year, down from \$5,000. Lobbyists would have to report their business relationships with elected officials and state employees if compensation paid is more than \$500, down from compensation in excess of \$1,000. A reportable business relationship is a relationship in which a state employee provides or performs a service, or is in a management or executive position or has a 10 percent ownership stake in an entity performing or providing the services to a lobbyist or client.

Reinvent Albany Position - Oppose

Reinvent Albany opposes lowering the requirement to register as a lobbyist and for clients to report activities in a semi-annual report if their compensation and expenditures exceed \$500. To our knowledge, lobbying firms already have to file semi-annual reports for all of their clients even if they don't reach the current \$5,000 threshold. The burdens of reporting required by this bill would therefore fall on lobbyist/clients who spend between \$500 and \$5,000 lobbying, which is very likely small nonprofits and organizations who might minimally advocate for state funding or on legislation. New York State has some of the most comprehensive lobbying reporting requirements in the country, with 7 filings annually for lobbyist/clients that involves carefully tracking and reporting compensation, expenses, hours spent lobbying, persons lobbied, and bills, executive orders, and procurement lobbied on in addition to potentially having to disclose reportable business relationships. We believe these burdens are too great to require them for a small organization that spends between \$500 and \$5,000 in a calendar year.

We are agnostic as to the need to lower the threshold for reporting reportable business relationships. [According to JCOPE's website, only 161 lobbyists and clients have disclosed reportable business relationships since 2011.](#) It is not clear to us whether lowering the threshold to \$500 would make a meaningful difference in reportable business relationships disclosed. We are interested to hear what lobbyists who have reported business relationships believe the impact of this proposal would be.

Reinvent Albany Recommendations

- **JCOPE should dramatically improve disclosure of reportable business relationships under existing law by requiring they be provided in digital form rather than handwritten PDFs.** The current forms are scanned and disclosed on JCOPE’s website but they are not made available together in a machine readable downloadable form for third party analysis. Nor are they easily searchable by lawmaker or state person. For example, in order to determine if an elected official has a business relationship with a lawmaker, the user would have to look through all 161 PDFs individually after downloading them one at a time. Small measures like these which do not require legislation would be arguably more impactful than lowering the threshold for reportable business relationships. JCOPE, to its credit and at the request of good government groups, put lobbyist and client filings in a downloadable, machine readable format on its website and recently modernized its filing system which we believe should result in greater transparency of reported lobbying activity. It also promulgated lengthy rules clarifying what constitutes lobbying activity and provided guidelines for reporting new forms of lobbying activity like social media advocacy.

Part S. Increase Lobbyist Penalties

Summary

This bill increases penalties for violation of the lobbying law. For first time offenses, lobbyists may be barred from lobbying for up to two years for knowingly and willingly not filing a required report or violating the prohibition on giving gifts, or knowingly and willingly filing false information. For second offenses within 10 years of the first offense related to filings or violating the gift ban, lobbyists or clients will be banned from participating in lobbying activities for between 2 and 6 years (up from the current one year ban). Penalties are also increased for knowing and willful violations on restricted contacts regarding state procurement. For second offenses, lobbyists or clients can be fined up to \$25K if the second offense occurred within 10 years of the first offense, up from the current 4 years. The bill also increases penalties for lobbying while banned from lobbying to a class E felony, a further 2-10 year ban on lobbying, a civil penalty of up to \$50K, and a civil penalty up to five times the value of the compensation, gift or benefit received. The bill also establishes a penalty of up to \$10K for a knowing and willing failure to provide requested documents in response to a random audit. The bill additionally expands penalties to include possibly debarring the entire firm at which a lobbyist works, and enables the attorney general to recover an assessment against an

entire firm. Aggravating factors JCOPE can consider when assessing penalties are also expanded to include written notice to the lobbyist and past violations by the lobbyist.

Reinvent Albany Position - Support And Recommend Improvements

Reinvent Albany supports increasing penalties including barring lobbyists from engaging in lobbying activity for knowing and willful violations. We believe this will have a deterrent effect for the most egregious violations of the lobbying law where there is an intent to avoid JCOPE or public scrutiny and transparency of lobbying activity, and for multiple violations with a knowing or willful intent. Recent scandals involving both the executive branch and former legislative leaders have involved improper actions by particular lobbyists that have eroded public confidence in government and created distrust of the lobbying community, even while most lobbyists and clients have never been accused of any wrongdoing and comply with rigorous disclosure requirements that are among the strictest in the nation.

Reinvent Albany Recommendations

- **Clarify that violations should be significant in order for violations to be assessed.** Violations should be assessed for major infractions like deliberately not filing numerous required reports or consistently drastically underreporting substantive information. While our experience has been that JCOPE and the City Clerk's Office in New York City are not overly aggressive in their enforcement of the lobbying law, we do not believe a lobbyist or client should face steep penalties for failing to report every state official at a large meeting or because they reported they lobbied the budget but did not specify the exact or correct budget bill. Tracking lobbying activity can be a tedious and inexact task, and lobbyists and clients should not be unduly penalized for missing some details even if they are aware of it.

Part T. Increase the “two year” [ban] to Five years, cover Elected officials, and explicitly prohibit lobbying

Summary

This bill amends public officers law section 74 to address the issue of state policy makers leaving government service and immediately going to work as lobbyists to advocate before the government they just departed.

Under current law, former state officers and employees cannot appear or practice before the state agency they departed for two years, nor can they receive compensation to

represent anybody. They are further banned for life from advocating on or receiving compensation for any particular matter they worked on while a state officer or employee. Former legislators and legislative employees are also barred for two years from receiving compensation for working directly or indirectly on any bills or resolutions before the legislature, and also cannot appear, practice or directly communicate directly with the legislature. Former staffers of the governor cannot appear or practice before any state agency for two years.

This bill expands existing prohibitions from two years to five years, and prohibits former state officers and employees, lawmakers and legislative employees from even registering as a lobbyist if they were required to file a statement of financial disclosure when working for government, effectively meaning they were a former policy maker.

Reinvent Albany Position - Oppose

Reinvent Albany opposes this legislation. While we support existing restrictions on the revolving door and believe they can be strengthened, this bill goes too far with little benefit. We believe a two-year ban is adequate to mitigate the undue influence or its perception former state and legislative officers and employees may have when they lobby the entity they used to work for.

By barring former state officers, state employees, lawmakers and legislative employees from even registering as a lobbyist, this bill limits career options of thousands of employees in ways that do not advance ethics. For example, a staffer for a state lawmaker could not lobby any municipality in the state, activity which is likely unrelated to their employment in the legislature. A former state agency policymaker who joins a lobbying firm would be barred from doing grassroots lobbying including reaching out to the public or managing social media advocacy to advocate for a bill before the legislature on behalf of a client. This lobbying activity in many instances likely has little direct connection to their state agency employment.

Reinvent Albany Recommendations

- **Increase enforcement of existing lobbying prohibitions** like the ban on individuals receiving compensation from a firm for lobbying directed at the entity from which they departed.
- **Expand the current two-year ban in more targeted ways rather than lengthening the ban from 2 to 5 years.** For example, it makes more sense to expand the current two-year ban to prohibit central staffers in the legislature from lobbying the executive chamber for two years after they depart the legislature, given the close contacts and relationships forged in negotiating bills.

It also makes sense to bar very senior state agency officials from lobbying the executive chamber after they depart their agency.

Part V. Financial Disclosure for Local Elected Officials

Summary

This bill gives JCOPE the authority to receive and scrutinize financial disclosure filings for municipal officers (including potentially officers and employees, paid or unpaid, including members of administrative boards and commissions) and if it finds potential ethical issues, make referrals to local district attorneys or local ethics bodies. The bill enables the public to copy and inspect municipal financial disclosure filings filed with JCOPE.

The bill also requires certain municipal officers - the county executive, county manager, chair of the board of supervisors, and any municipal elected making \$50K or more annually - to file a financial disclosure form prescribed in section 73-a of the Public Officers Law. However, municipal officers may instead file the financial disclosure form of the municipality, whose minimum requirements are specified in section 812 of the General Municipal Law, if JCOPE authorizes it. The municipality must first pass a resolution allowing its financial disclosure form to be submitted in place of the form required under section 73-a of the Public Officers Law.

Reinvent Albany Position - Support

Reinvent Albany supports this bill because it will result in greater transparency of municipal officers' finances and greater standardization for disclosure.

The financial disclosure requirements of section 73-a of the Public Officers require more transparency than the financial disclosure requirements of section 812 of the General Municipal Law which establishes the minimum standards for municipal financial disclosure. While the two disclosure regimes are similar, 73-a requires disclosure of detailed services provided for legal or lobbying firms, including identifying clients in most instances, in addition to business referrals made by lobbyists to state policy makers. This bill also will allow the public to access municipal filings in one place - JCOPE.

We also believe JCOPE may have more resources and be better positioned than certain municipalities to scrutinize filings and make referrals for alleged violations.

Reinvent Albany Recommendations

- **While we support this legislation, another way to address this is to amend section 812 of the General Municipal Law to reflect changes in recent years to 73-a of the Public Officers Law** requiring the additional transparency that was added and allow for public inspection and copying. This would lack the redundant layer of review of the filings of JCOPE, however, which may enhance enforcement.

Part W. Lobbyist Code of Conduct

Summary

This bill establishes a Code of Conduct for lobbyists, establishing standards and principles lobbyist must abide by. These standards include acting with honesty, integrity and in good faith to clients and government officials alike. Lobbyists must identify potential conflicts with clients, and either disclose or resolve them. The Code requires disclosure of conflicts to clients in writing (and to government) and keeping both apprised if any new conflicts arise. Clients must consent to any conflicts that do exist which also must be disclosed to any government official the lobbyist is communicating to on behalf of the client. Lobbyists are further required to disclose to clients any referral or consulting fees they are paying related to the client.

The bill also requires lobbyists to provide factually correct and current information to government officials to the best of their knowledge, information and belief, and using reasonable measures to ensure accurate advocacy. The lobbyist must correct any inaccurate or untimely information provided.

The Joint Commission on Public Ethics (JCOPE) is authorized to promulgate rules on the Code of Conduct and is charged with enforcing it. Knowing and willful violations of the Code result in a \$25,000 civil penalty for a first offense, and for subsequent offenses may result in a lobbying ban for up to 5 years.

Reinvent Albany Position - Oppose

Reinvent Albany supports elements of this Code but is concerned by other parts. We think lobbyists should disclose conflicts, referrals and consulting fees to clients related to services rendered.

However, the Code is also very general and vague in parts, and contains no definitions.

It is not clear, for example, what constitutes a conflict in this legislation. JCOPE may promulgate a definition as authorized by the bill, but lobbyists could be severely penalized for not disclosing what a lobbyist perceives as a routine business relationship and JCOPE believes is a conflict.

We are also concerned by the requirement of lobbyists to provide factually correct and current information because facts may be different depending on sources referenced. The accuracy of sources themselves may be viewed as reliable by some and by others as lacking veracity. Requiring lobbyists to only provide current information is also burdensome in updating communications materials and doing continual research to make sure information is the most up to date.

Reinvent Albany Recommendations

- **Provide definitions for what constitutes a conflict, and what is considered factual, accurate and timely information.** This proposal has standards which are too vague and general even while JCOPE can promulgate rules under this law to provide more specificity.
- **Reframe the Code so it is an expression of the intent and goals of the lobbying law itself rather than an addition to it that creates new standards which lack specificity.** The legislation would be better crafted if the Code was a statement of principles lobbyists agreed to follow in order to lobby, as fulfilled by existing lobbying laws.