

STATE OF NEW YORK

S. 6441

A. 8528

1987-1988 Regular Sessions

SENATE-ASSEMBLY

July 2, 1987

IN SENATE -- Introduced by Sens. ANDERSON, OHRENSTEIN, BRUNO, COOR, DALY, DONOVAN, DUNNE, FALEY, FLOSS, GOODRUE, GOODMAN, JOHNSON, KENOE, KNORR, KUH, LACK, LAVALLE, E. LEVY, N. LEVY, LOMBARDI, MARCHI, MARINO, McHUGH, MEGA, PADAVAN, PRESENT, ROLISON, SCHERERHORN, SENARD, SKELOS, SPANO, STAFFORD, TRUNZO, TULLY, VELELLA, VOLKER, BABBUSSI, BARTOSIEWICZ, BERNSTEIN, CONNOR, GOLD, JENKINS, MARKOWITZ, MASTIELLO, MENDEZ, MOLAN, ONORATO, OPPENHEIMER, PATERSON, PERRY, QUATTROCIOCHI, RUIZ, STACHOWSKI, STAVISKY, WEINSTEIN -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY -- Introduced by M. of A. M. H. MILLER, RAFFLEYEA, KOPPELL, RADLER, DUGAN, BALPIN, TALLON -- Multi-Sponsored by -- M. of A. ABBATE, ABRAMSON, BARBARO, BARNETT, BARRAGA, BECKER, BENAN, BENNETT, BIANCHI, BOYLAND, BRAGMAN, BRENNAN, BRODSKY, BUTLER, CASALE, CATAFANO, CLARF, COCHRANE, COLMAN, CONNELLY, CONNERS, COOKE, COOMBE, CROWLEY, D'ANDREA, DANIELS, DAVIS, DEARIE, DELTORO, DIAZ, DINAPOLI, ENGEL, EYE, FARELL, FELDMAN, FRISA, GANTT, GENOVESI, GORSKI, GOTTFRIED, GRABER, GRANNIS, GREEN, GREENE, GRIFFITH, HARENBERG, HASPER, HEALEY, HEVESI, HILLMAN, BINCHAY, BOYD, JACOBS, JENKINS, KEANE, KELLEHER, KRAMER, LAFAYETTE, LARRIN, LENTOL, LOPEZ, MACNEIL, MARSHALL, MATERSOHN, MCCANN, McMULLY, McPHILLIPS, R. H. MILLER, MURPHY, MURTAGH, MOLAN, NORMAN, NOZZOLIO, O'NEIL, ORTLOFF, PAROLA, PASSANANTE, PATAKI, PATTON, FAXON, PFEFFER, PILLITTERE, FORDUM, PRESCOTT, FROUD, RETTALIATA, RIVERA, ROBACE, SANDERS, SAMICKI, SCHIMMINGER, SCHMIDT, SEABROOK, SEMINARIO, SERRANO, SREFFER II, SINGEL, SILVER, STRANIERE, P. M. SULLIVAN, TALOMIE, TEDISSO, TUCCI, TONKO, VANN, VITALIANO, WEINSTEIN, WEFER, REVOLI, YOUNG, ZALESKI, ZIMMER -- (at request of the Governor) -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the public officers law, the executive law and the legislative law, in relation to regulating business or professional activities of, and requiring financial disclosure by, statewide elected officials, members of the legislature, legislative employees and state officers and employees and certain political party chairmen; creating an ethics commission and committee in connection therewith; to amend the judiciary law, in relation to providing for financial disclosure by certain judges, officers and employees of the courts of record of the unified court system; to amend the general municipal law, in relation to requiring financial disclosure statements for elected officials and certain officers and employees of certain counties, cities, towns and villages and for certain state and local political party officials; and creating a temporary state commission on local government ethics; to amend the lobbying act, in relation to the threshold for listing of expenses in the aggregate; to amend chapter one thousand forty of the laws of nineteen hundred eighty-one relating to the New York temporary state commission on lobbying, in relation to extending the expiration date of such chapter; and repealing paragraph (d) of subdivision two of section eighty-eight of the public officers law, relating to public inspection of financial disclosure statements, and section eighty of the legislative law, relating to the creation of a legislative committee on ethics

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CCCCCZ

SENATE VOTE 59 Y 0 N

HOME RULE MESSAGE Y N

Date 7.2.87

Bill is disapproved

ASSEMBLY VOTE 141 Y 0 N

Date 7.2.87

Counsel to Governor

SENATE

The Senate Bill
by Mr. **ANDERSON**
Entitled: "

Calendar No. 1669

Senate No. 6441
Assem. Rept. No. _____

AN ACT to amend the public officers law, the executive law and the legislative law, in relation to regulating business or professional activities of, and requiring financial disclosure by, statewide elected officials, members of the legislature, legislative employees and state officers and employees and certain political party chairmen, creating an ethics commission and committee in connection therewith; extending the expiration date of such chapter; and repealing paragraph (d) of subdivision two of section eighty-eight of the public officers law, relating to public inspection of financial disclosure statements, and section eighty of the legislative law, relating to the creation of legislative committee on ethics

No. 1 (THREE DAY MESSAGE OF GOVERNOR)

The President put the question whether the Senate would agree to final passage of said bill, and the facts which necessitate an immediate vote thereon having been certified by the Governor, the same being upon the desks of the members in final form, it was decided in the affirmative, a majority of all the members elected voting in favor thereof and three-fifths being present as follows:

AYE	Dist.		NAY	AYE	Dist.	NAY
	51	Mr. Anderson			21	Mr. Markowitz
	17	Mr. Babbush			58	Mr. Masiello
	20	Mr. Bartosiewicz	EXCUSED		46	Mr. McHugh
	33	Mr. Bernstein	EXCUSED		23	Mr. Mega
	43	Mr. Bruno			30	Mrs. Mendez
	25	Mr. Connor			22	Ms. Montgomery
	40	Mr. Cook			42	Mr. Nolan
	61	Mr. Daly			27	Mr. Ohrenstein
	47	Mr. Donovan			14	Mr. Onorato
	6	Mr. Dunne			36	Mrs. Oppenheimer
	44	Mr. Farley			11	Mr. Padavan
	60	Mr. Floss			29	Mr. Paterson
	31	Mr. Galber			54	Mr. Perry
	13	Mr. Gold			56	Mr. Present
	37	Mrs. Goodhue			55	Mr. Quattrociocchi
	26	Mr. Goodman			41	Mr. Rolison
	18	Mr. Halperin			32	Mr. Ruiz
	48	Ms. Hoffmann			39	Mr. Schermerhorn
	10	Mr. Jenkins			50	Mr. Seward
	4	Mr. Johnson			9	Mr. Skelos
	53	Mr. Kehoe			19	Mr. Solomon
	15	Mr. Knorr			35	Mr. Spano
	52	Mr. Kuhl			57	Mr. Stachowski
	2	Mr. Lack			45	Mr. Stafford
	1	Mr. LaValle			12	Mr. Stavisky
	28	Mr. Leichter			3	Mr. Trunzo
	38	Mr. E. Levy			7	Mr. Tully
	8	Mr. N. Levy			34	Mr. Veella
	49	Mr. Lombardi			59	Mr. Volker
	24	Mr. Marchi			16	Mr. Weinstein
	5	Mr. Manno				

AYES 59
NAYS 0

Ordered, that the Secretary deliver said bill to the Assembly and request its concurrence therein.

S-6441
(A-5528)

FILE: 55441(05528)

R.R. NO: 557 SPONSOR: ANDERSON--

AN ACT TO AMEND THE PUBLIC OFFICERS LAW, THE EXECUTIVE LAW AND THE LEGISLATIVE LAW, IN RELATION TO REGULATING BUSINESS OR PROFESSIONAL ACTIVITIES AND REQUIRING FINANCIAL DISCLOSURE BY, STATEWIDE ELECTED OFFICIALS, MEMBERS OF THE LEGISLATURE, LEGISLATIVE EMPLOYEES AND STATE OFFICERS AND EMPLOYEES AND CERTAIN POLITICAL PARTY CHAIRMEN, CREATING AN ETHICS COMMISSION AND COMMITTEE IN CONNECTION THEREWITH; TO AMEND THE JUDICIARY LAW, IN RELATION TO PROVIDING FOR FINANCIAL DISCLOSURE BY CERTAIN JUDGES, OFFICERS AND EMPLOYEES OF THE COURTS OF RECORD OF...

Y	ABBATE,PJ	Y	GOTTFRIED,RN	Y	Orloff,C
Y	ABRAMSON,E	Y	GRABER,VJ	Y	OShea,CJ
Y	BARBARO,FJ	Y	GRANNIS,A	Y	PARENT,WL
Y	BARNETT,HW	Y	GREEN,RL	Y	Parola,FE
Y	BARRAGA,TF	Y	GREENE,A	Y	PASSANNANTE,WF
Y	Becker,GR	Y	GRIFFITH,E	Y	Pataki,GE
Y	Behan,DL	Y	HALPIN,PG	Y	PATTON,BA
Y	BENNETT,LE	Y	Hannon,K	Y	Paxon,LW
Y	BIANCHI,IN	Y	HARENBERG,PE	Y	PHEFFER,AI
Y	BOYLAND,WF	Y	Harris,GH	Y	PILLITTERE,JT
Y	BRAGMAN,MJ	Y	Hasper,J	Y	PORDUM,FJ
Y	BRENNAN,JF	Y	Hawley,RS	Y	Prescott,DW
Y	BRODSKY,RL	Y	Healey,PB	Y	Proskin,AW
Y	Burns,GW	Y	HEVESI,AG	Y	PROUD,G
Y	Bush,WE	ABS	HIKIND,D	Y	Rappleyea,CD
Y	BUTLER,DJ	Y	HILLMAN,MC	Y	Rettaliata,AP
Y	Casale,AJ	Y	HINCHEY,MD	ABS	RIVERA,J
Y	CATAPANO,TF	Y	HOYT,WB	Y	ROBACH,RJ
Y	Casbro,RT	Y	JACOBS,RS	Y	Saland,SM
Y	CLARK,EM	Y	JENKINS,C	Y	SANDERS,S
Y	Cochrane,JC	Y	KEANE,RJ	Y	Sawicki,J
Y	COLMAN,S	Y	Kelleher,NW	Y	SCHIMMINGER,RL
Y	CONNELLY,EA	Y	King,RL	Y	SCHMIDT,FD
Y	CONNERS,RJ	Y	KOPPELL,GO	Y	SEABROOK,L
ABS	CONNOR,RJ	Y	KREMER,AJ	Y	Sears,WR
EOR	Cooke,AT	Y	LAFAYETTE,IC	Y	SEMINERIO,AS
Y	Coombe,RI	Y	Larkin,WJ	Y	SERRANO,JE
Y	CROWLEY,J	Y	LASHER,HL	Y	Sheffer,JB
Y	DAndrea,RA	Y	Leibell,VL	Y	SIEGEL,HA
EOR	DANIELS,GL	Y	LENTOL,JR	Y	SILVER,S
Y	Davidson,DR	Y	LOPEZ,VJ	Y	Straniero,RA
Y	DAVIS,G	Y	MacNeil,HS	Y	SULLIVAN,EC
Y	DEARIE,JC	Y	Madison,GH	Y	Sullivan,PM
Y	DEL TORO,A	Y	MARSHALL,HM	Y	TALLON,JR
Y	DIAZ,HL	Y	MAYERSOHN,N	Y	Talomie,FG
Y	DINAPOLI,TP	Y	McCann,W	Y	Tedisco,J
Y	DUGAN,EC	Y	McGee,PK	Y	TOCCI,RC
Y	Eannace,RJ	Y	MCNULTY,MR	Y	TONKO,PD
Y	ENGEL,EL	Y	MCPHILLIPS,MM	Y	VANN,A
Y	EVE,AD	Y	Miller,HM	Y	VITALIANO,EN
Y	FARRELL,MD	Y	Miller,RH	Y	Warren,GE
Y	Faso,JJ	Y	MURPHY,MJ	Y	WEINSTEIN,HE
Y	FELDMAN,D	Y	MURTAUGH,JB	Y	WEPRIN,S
Y	Flanagan,JJ	Y	NADLER,J	Y	Wertz,RC
Y	FRIEDMAN,G	Y	Nagle,JP	Y	Winner,GH
Y	Frisa,D	Y	NOLAN,CT	Y	YEVOLI,LJ
Y	Gaffney,RJ	Y	NORMAN,C	Y	YOUNG,GP
Y	GANTT,DF	Y	Nortz,HR	Y	ZALESKI,TM
Y	GENOVESI,AJ	Y	Nozzolio,MF	Y	ZIMMER,MN
Y	GRANT,DT	Y	O'Neill,JG		MR. SPEAKER

YEAS: 144

NAYS: 0

CONTROL: 33083728

CERTIFICATION:

Legend: Y=YES, N=NO, NV=ABSTAIN, ABS=ABSENT, EOR=EXCUSED FOR OTHER REASONS.

003

PROGRAM BILL # 119

GOVERNOR'S PROGRAM BILL

1987

MEMORANDUM

RE: AN ACT to amend the public officers law, the executive law and the legislative law, in relation to regulating business or professional activities of, and requiring financial disclosure by, statewide elected officials, members of the legislature, legislative employees and state officers and employees and certain political party chairmen, creating an ethics commission and committee in connection therewith; to amend the judiciary law, in relation to providing for financial disclosure by certain judges, officers and employees of the courts of record of the unified court system; to amend the general municipal law, in relation to requiring financial disclosure statements for elected officials and certain officers and employees of certain counties, cities, towns and villages and for certain state and local political party officials and creating a temporary state commission on local government ethics; to amend the lobbying act, in relation to the threshold for listing of expenses in the aggregate; to amend chapter one thousand forty of the laws of nineteen hundred eighty-one relating to the New York temporary state commission on lobbying, in relation to extending the expiration date of such chapter; and repealing paragraph (d) of subdivision two of section eighty-eight of the public officers law, relating to public inspection of financial disclosure statements, and section eighty of the legislative law, relating to the creation of a legislative committee on ethics

Purpose:

The "Ethics in Government Act" is designed to limit opportunities for abuse of official positions and eliminate any appearance of undue influence or illegal profit-taking by

executive officers and employees, legislative officers and employees, elected officials, party officers and candidates for office. The Act attacks the problem in three ways: (a) First and foremost, it requires the filing of comprehensive financial disclosure statements to reveal income, assets and debts of reporting individuals; (b) Secondly, it prohibits representation before most State agencies; and (c) Third, it establishes Ethics Commissions to monitor, investigate and impose sanctions for violations of the conflict of interest prohibitions and financial disclosure requirements. By its comprehensive provisions, the Act reaches almost all government officials, employees and candidates, thus providing the most sweeping reform in the political arena in New York State since 1964.

Summary of Provisions:

A. New and Strengthened Conflict of Interest Prohibitions

(1) Practice

- New prohibitions on practice before State agencies for Statewide elected officials, State officers and employees, legislators and legislative employees, and political party chairman in counties over 300,000 or who earn more than \$30,000, which prohibit appearances or the rendition of services in a case, proceeding application or other matter before a State agency in connection with
 - (a) purchase, sale or rental of property, goods and services
 - (b) ratemaking
 - (c) rulemaking
 - (d) obtaining grants or loans
 - (e) franchises
 - (f) licensing of professions, trades or occupations or licensing of any other business activity regulated by regulatory agencies.
- Prohibits same types of practice before New York City agencies for county party chairmen in the City of New York.
- New prohibitions on oral communications between the public officers or employees and a State agency regarding matters being handled by the officer's or employee's firm.

1006

(2) Business Transactions

- Prohibits doing business with State agencies in the absence of competitive bidding by Statewide elected officials, State officers and employees, legislators, legislative employees and political party chairmen in counties over 300,000 or who earn more than \$30,000.
- New prohibition on doing business before New York City agencies by political party chairmen in New York City.

(3) Revolving Door

- New prohibition for State officers and employees that prevents them from appearing or practicing before their former agency for 2 years, and from ever appearing, practicing, communicating or otherwise rendering services in relation to matters in which the employee was directly concerned and personally participated.
- New prohibition for legislative employees that prevents them from lobbying bills during the legislative term in which they were employed in regard to matters in which the employee was directly concerned and personally participated.

B. Comprehensive Financial Disclosure Requirements

- (1) Requires comprehensive financial disclosure statements, which will be reviewed and monitored by permanent ethics commissions and subject to an effective penalty scheme, to be filed by:
 - All Statewide elected officials and candidates for such offices;
 - All Members of the Legislature and candidates for such offices;
 - All State officers and employees, including those in State agencies, authorities, public benefit corporations and commissions, who hold policy-making positions or earn more than \$30,000;
 - All legislative employees who hold policy-making positions or earn more than \$30,000; and
 - All political party chairmen in counties with a population of over 300,000 or who earn more than \$30,000.

1165

Requires disclosure of a broad range of financial interests, including (a) businesses or positions with entities who do business with or are regulated by State agencies, (b) interests in State contracts, (c) contracts for future employment, (d) income sources, notes and accounts receivable, securities, gifts, travel, reimbursements, business investments, and/or deferred income, in excess of \$1000, (e) liabilities over \$5000, (f) real property holdings other than residences, and (g) assignments of income and transfers of property. It also requires a listing of party positions and a firm description, as well as disclosure by the reporting person's spouse and unemancipated children of most of the above financial interests.

- (2) Requires financial disclosure statements to be promulgated by the Chief Judge, to be filed, beginning in 1991, by all judges, justices, officers and employees of courts of record throughout the State who earn more than \$30,000.
- (3) Requires New York City to adopt a financial disclosure form at least as stringent as the State form.
- (4) Requires all political subdivisions with a population of over 50,000 to promulgate financial disclosure forms for its officers and employees, and provides that a financial disclosure statement similar to the State form will apply to these localities if they fail to act by 1991.

c. Ethics Commissions

- Creates a permanent State Ethics Commission for executive officers and employees, and a permanent Legislative Ethics Committee for legislators and legislative employees to review and monitor compliance with the conflict of interest prohibitions and financial disclosure requirements, investigate violations and impose penalties, and provide advice and assistance to assure the prevention of conflicts of interest.
- Gives Ethics Commissions subpoena power and the duty to conduct investigations, either on its own initiative or in response to a complaint.
- Requires Ethics Commissions to review financial disclosure forms for possible conflicts of interest.
- Creates a Temporary State Commission on Local Government Ethics authorized to receive, review,

monitor and investigate violations of financial disclosure requirements of certain local governments.

- Creates an advisory council for each ethics commission, with a majority of non-governmentally related persons to determine requests by the reporting individual for (1) an exemption from public disclosure for an item of information that has no material bearing on the reporting person's official duties or (2) an exemption from reporting for an item relating to the spouse or unemancipated child, where the spouse objects and the item has no material bearing on the reporting person's official duties.

D. Penalties

- Vests jurisdiction in the permanent ethics commission/committee to monitor compliance with and investigate violations of the conflict of interest prohibitions and the financial disclosure requirements.
- Provides that a knowing and intentional violation of the conflict of interest prohibitions or a knowing and willful failure to file a financial disclosure statement or a false statement made with intent to deceive are subject to a civil penalty of up to \$10,000. In lieu of a civil penalty, the commission/committee can refer the matter to the appropriate prosecutor, in which event the violation is punishable as a misdemeanor.

Statement in Support:

Public trust and confidence in elected and appointed public officials are fundamental and necessary conditions for a strong and stable democratic government. Favoritism and the potential for conflicts of interest, as well as the mere appearance of such, serve to weaken and erode the public's trust and confidence in government. To enhance public trust and confidence in our governmental institutions, this bill contains strengthened, prohibitions against behavior which may permit or appear to permit undue influence or conflicts of interest. It also provides comprehensive financial disclosure requirements to assure that the public is aware of all private and business interests which may influence or appear to influence public officers and employees in their official acts.

10-Day Bill

BUDGET REPORT ON BILLS

Session Year: 1987

SENATE

Introduced by:

ASSEMBLY

No. 6441

Senator Anderson, et al.,

No.

Law: Public Officers; Executive;
Legislative; Judiciary;
General Municipal;
Lobbying Act; Unconsolidated
(C. 1040 of 1981)

Sections: Various

Division of the Budget recommendation on the above bill:

Approve: X : Veto: No Objection: No Recommendation:

1. Subject and Purpose: This bill is intended to discourage unethical conduct by public officials and employees by requiring individuals earning in excess of \$30,000 or in policymaking positions to submit annual financial disclosure statements. This bill also is intended to remove the serious deficiencies which existed in S. 4661 and had resulted in the Governor vetoing that bill.
2. Summary of Provisions: This bill amends several sections of law to regulate various private financial activities by public officers and employees, and to establish financial disclosure requirements for officials and employees of the Executive, Legislative and Judicial branches as well as for individuals employed by local governments. Briefly, the bill would:
 - Require public employees of the executive and legislative branches earning over \$30,000 or in policymaking positions to file annual financial disclosure statements beginning January 1, 1989.
 - Establish a five member State Ethics Commission located in the Department of State to oversee the new disclosure requirements affecting executive branch employees.
 - Establish an eight member Legislative Ethics Committee to oversee the disclosure requirements for legislative members and employees.
 - Establish an eight member Temporary State Commission on Local Government Ethics to oversee disclosure requirements established by local governments under this bill.
 - Provide for the establishment of rules and regulations to administer the new requirements and establish civil penalties and potential criminal penalties for violations.
 - Require the chief judge to approve a form of annual statement of financial disclosure similar to that used for the executive and legislative branches to apply to all judges, justices, officers and employees of the courts of record of the Unified Court System earning in excess of \$30,000 annually. Such judicial disclosures would be required to commence in 1991.
3. Legislative History: This bill is similar to S.4661 of 1987 which the Governor vetoed on April 15, 1987. In addition, there have been various proposals and Executive Orders in previous years dealing with practices of public officials.

6441

4. Arguments in Support: It could be argued that the stringent financial reporting standards contained in this bill will discourage unethical practices by public employees seeking personal gain from their public position. The disclosure requirement will make public potential and actual conflicts of interest arising from public officers' and employees' private financial interests.

Moreover, this bill represents an improved piece of legislation since it addresses the six serious deficiencies listed in the Governor's Veto Message for S.4661. Specifically:

- This bill prohibits public officials from engaging in a wide range of actions on behalf of clients before State agencies.
- While this bill does not provide absolute access by the public to the disclosure forms, it provides a mechanism to ensure that all pertinent information will be available.
- This bill provides for both civil and possible criminal penalties for willful false statements or willful failure to file.
- This bill places restrictions on the actions of political party officials at the national, state and local levels.
- This bill establishes a set of minimum standards for financial disclosure forms for use by local government officials.
- This bill permanently bars State employees who leave government service from later private employment in connection with transactions on which they worked while in State service and, for a period of two years, bars them from practicing before their former agency.

5. Possible Objections:

- a. It could be argued that this bill would place a significant burden on a large number of public employees since it would require detailed financial statements to be filed by anyone earning over \$30,000 annually (roughly the job rate of a grade 15 in 1989). It can be argued that this limit is significantly lower than appropriate or necessary to achieve the purposes of this bill, particularly since the bill requires any individual in a "policymaking" position to file a financial disclosure statement regardless of his or her salary.
- b. It could also be argued that this bill would result in a significant increase in workload for the Department of State, in which the new State Ethics Commission would be established. Although no precise figures are known, it is estimated that the reporting requirements could affect 65,000 State officers and employees. This volume would create a significant workload since the Commission is required to review financial disclosure statements to determine if the statement "reasonably indicate[s]" that agency actions will be affected. Commission staff would also receive complaints about alleged violations of the Public Officers Law, review requests for exemptions from filing statements or to delete specific materials contained in statements, and advise other agencies on establishing rules and regulations relating to conflicts of interest.

4411

- c. It could be argued that providing the State ethics panels with the power to decide whether a local district attorney may prosecute for violations under the Public Officers Law is an inappropriate intrusion on the district attorneys' authority to determine when it is appropriate to pursue possible violations of law.
 - d. Finally, the fact that the State ethics panels may withhold from public release some of the information on financial disclosure statements could be seen as a flaw which will result in future abuses.
6. Other Interested State Agencies: The Attorney General supports this bill. The Department of State while not having yet taken a formal position on this bill is expected not to oppose it.
7. Known Position of Others: Several groups, including the New York Bar Association, the New York Public Interest Research Group, Common Cause and local governments would be interested in this bill.
8. Budgetary Implications: This bill would require additional personal and nonpersonal service funding for two new State Ethics Commissions. One commission would administer the new reporting requirements for the statewide elected officials, State officers and employees. The other commission would administer the law for the legislative members and employees. Additionally, a Temporary State Commission would be established to deal with the local government officials that would be covered by this bill. It is estimated that the State Ethics Commission for statewide officials, State officers and employees will require between \$300,000 and \$500,000 annually to perform its duties. Similar costs for the Legislative Ethics Committee and the Temporary State Commission for Local Governments would be expected.
9. Recommendation: The intent of this bill, namely, to identify and eliminate conflicts of interest arising from public officers' and employees' private financial interests, is unquestionably laudable. The need for positive action in the area of ethics in government in order to restore the public's faith in government far outweighs the shortcomings of this bill. Therefore, the Budget Division recommends that the bill be approved.

July 29, 1987

PB

S. 6441



DAVID GASKELL
SECRETARY OF THE BOARD

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
STATE BOARD OF EQUALIZATION AND ASSESSMENT

ROBERT L. BEEBE
COUNSEL

AGENCY BUILDING #4 - EMPIRE STATE PLAZA
ALBANY, NEW YORK 12242

August 4, 1987

Honorable Evan A. Davis
Counsel to the Governor
Executive Chamber
State Capitol
Room 225
Albany, New York

Re: Senate Bill No. 6441
By: Senator Anderson, et al.

Senate Bill No. 6442
By: Senator Anderson, et al.

Dear Mr. Davis:

Enclosed are our staff analyses of the above-captioned bills. We look forward to working toward an efficient implementation of this legislation.

Very truly yours,

Robert L. Beebe

Enclosures
Memoranda dated 7/13/87 and 7/15/87 by Mr. Harrison

cc: Members of the State Board of
Equalization and Assessment

David Gaskell

PB



NEW YORK STATE EXECUTIVE DEPARTMENT
DIVISION FOR YOUTH
84 HOLLAND AVENUE
ALBANY, NEW YORK 12208

LEONARD G. DUNSTON
EXECUTIVE DEPUTY DIRECTOR

LES GOLDBERG
EXECUTIVE DEPUTY DIRECTOR

July 13, 1987

The Honorable Evan A. Davis
Counsel to the Governor
Executive Chamber
State Capitol
Albany, NY 12224

Dear Mr. Davis:

Re: S.6441/A.8528 AN ACT to amend the public officers law, the executive law and the legislative law, in relation to regulating business or professional activities of, and requiring financial disclosure by, statewide elected officials, members of the legislature, legislative employees and state officers and employees and certain political party chairmen, creating an ethics commission and committee in connection therewith; to amend the judiciary law, in relation to providing for financial disclosure by certain judges, officers and employees of the courts of record of the unified court system; to amend the general municipal law, in relation to requiring financial disclosure statements for elected officials and certain officers and employees of certain counties, cities, towns and villages and for certain state and local political party officials and creating a temporary state commission on local government ethics; to amend the lobbying act, in relation to the threshold for listing of expenses in the aggregate; to amend chapter one thousand forty of the laws of nineteen hundred eighty-one relating to the New York temporary state commission on lobbying, in relation to extending the expiration date of such chapter; and repealing paragraph (d) of subdivision two of section eighty-eight of the public officers law, relating to public inspection of financial disclosure statements, and section eighty of the legislative law, relating to the creation of a legislative committee on ethics

This is in response to your request for comment on the above referenced bill which is before the Governor for executive action.

This legislation creates the "Ethics in Government Act" which was written to prevent dishonest acts by public officials and public employees and to promote confidence in government on the part of private citizens. It seeks to do this by requiring financial disclosure on the part of defined categories of individuals, by establishing ethics commissions to implement and monitor the Act, and by supplementing the prohibitions against conflicts of interest and appearances of impropriety found in the Public Officers Law.

This bill is praiseworthy in concept. Our sole reservation is that it may constitute an unwarranted invasion of personal privacy for many State employees whose official duties involve only ministerial matters and who are unable, because of lack of information or resources, to seek exemptions.

We recommend and support approval of this legislation.

Very truly yours,



Donald E. Urell
General Counsel

BCT/klp

S-6441



STATE OF NEW YORK • EXECUTIVE DEPARTMENT
STATE COMMISSION OF CORRECTION
60 SOUTH PEARL STREET
ALBANY, NY 12207-1596
(518) 474-1416

CHAIRMAN
WILLIAM G. McMAHON
COMMISSIONERS
JOHN J. McNULTY, JR.
JEANNE EDNA THELWELL

July 10, 1987

Honorable Evan A. Davis
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Re: S.6441/A.8528: Ethics in
Government Act

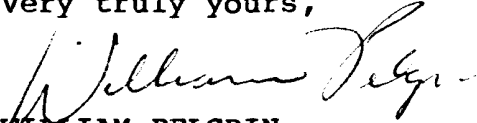
Dear Mr. Davis:

The State Commission of Correction supports this bill which provides for improved financial disclosure, public scrutiny and conflict of interest policies for members of all three branches of government.

We share with many government leaders the belief that this legislation, when signed, will improve the public perception of government and those who serve within it.

Thank you for the opportunity to comment on this bill.

Very truly yours,


WILLIAM PELGRIN
COUNSEL

WP/VZ:mj

S-6441



STATE OF NEW YORK
EXECUTIVE DEPARTMENT
CRIME VICTIMS BOARD
97 CENTRAL AVENUE
ALBANY, NEW YORK 12206
(518) 473-9649

BOARD MEMBERS

RONALD A. ZWEIBEL, Chairman
GENNARO A. FISCHETTI
GEORGE L. GROBE, JR.
DIANE McGRATH
ANGELO PETROMELIS

MEMORANDUM

Executive Secretary
GERALDINE JORDAN

TO: HON. EVAN A. DAVIS, Counsel to the Governor

FROM: Lorraine Felegy, Counsel *LF*

RE: 1987-1988 Regular Session

Senate Bill S.6441 - AN ACT to amend the public officers law, the executive law and the legislative law, in relation to regulating business or professional activities of, and requiring financial disclosure by, statewide elected officials, members of the legislature, legislative employees and state officers and employees and certain political party chairmen, creating an ethics commission and committee in connection therewith; to amend the judiciary law, in relation to providing for financial disclosure by certain judges, officers and employees of the courts of record of the unified court system; to amend the general municipal law, in relation to requiring financial disclosure statements for elected officials and certain officers and employees of certain counties, cities, towns and villages and for certain state and local political party officials and creating a temporary state commission on local government ethics; to amend the lobbying act, in relation to the threshold for listing of expenses in the aggregate; to amend chapter one thousand forty of the laws of nineteen hundred eighty-one relating to the New York temporary state commission on lobbying, in relation to extending the expiration date of such chapter; and repealing paragraph (d) of subdivision two of section eighty-eight of the public officers law, relating to public inspection of financial disclosure statements, and section eighty of the legislative law, relating to the creation of a legislative committee on ethics

DATE: July 14, 1987

Recommendation: Approval

Comment: This bill, known as the Ethics in Government Act, provides a comprehensive mechanism to limit opportunities for abuse of official positions and eliminate the appearance of undue influence or illegal profit-taking by executive officers and employees, legislative officers and employees, elected officials, party officers and candidates for office. This proposal strengthens existing law by requiring the filing of detailed financial disclosure statements to reveal income, assets and debts of reporting individuals, prohibiting representation before most State agencies and establishing ethics commissions to monitor, investigate and impose sanctions for violations of the conflict of interest prohibitions and financial disclosure requirements.

The enactment of this bill will improve the public's confidence in its elected and appointed officials. Public trust and confidence is essential for a strong and stable democratic government. We, therefore, support this proposal.

LF:jt



MARGARITA ROSA
GENERAL COUNSEL

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
DIVISION OF HUMAN RIGHTS
55 WEST 125 STREET
NEW YORK, NY 10027

July 10, 1987

Honorable Evan A. Davis
Counsel to the Governor
Executive Chamber
State Capitol
Albany, N.Y. 12224

S. 6441 A. 8528

Dear Mr. Davis:

The Division is in accord with the purposes of
the above referenced legislation and supports the same.

Sincerely,


MARGARITA ROSA
General Counsel

MR/HJH:gg



STATE OF NEW YORK
EXECUTIVE DEPARTMENT
DIVISION OF PROBATION AND CORRECTIONAL ALTERNATIVES
60 SOUTH PEARL STREET
ALBANY, NEW YORK 12207-1595

MARIO M CUOMO
Governor

5-664/11
EDMUND B WUTZER
State Director

MEMORANDUM

TO: EVAN A. DAVIS
Counsel to the Governor

FROM: LINDA J. VALENTI
Counsel

DATE: July 20, 1987

RE: S. 6441 (Anderson)/A. 8528 (Miller)
Ethics in Government Act

To recapture public trust and confidence in New York State Government, this legislation would enact an "Ethics in Government Act" to address business and professional activities of governmental officials and employees. Specific language and provisions include the State Legislature and its employees among those who must adhere to new statutory requirements.

The Division of Probation and Correctional Alternatives believes the underlying principles of the Ethics in Government Act are in the public interest and therefore supports regulating the business and professional activities of such individuals to avoid conflicts of interest, undue influence, and corruption. This measure is more comprehensive in scope than S. 4661, which was vetoed earlier this year because of serious deficiencies which would have weakened current law or significantly limited the effectiveness of the act. Specifically, it would restrict certain actions, contacts, and communications between public officials acting on behalf of clients and State agencies, permit prosecution for willful false statements in a disclosure form or willful failure to file, and bar state employees who leave government service from practicing before their former agency or receiving compensation for any such services rendered on behalf of another with respect to any matter to which the employee was directly concerned and personally participated during his former period of service or employment. In addition, language has been omitted from the previously vetoed legislation which will now enable the various newly created ethics commissions to have the power to subpoena federal, state or local tax returns.

Accordingly, the Division recommends that the Governor sign S. 6441 into law.



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224
(518) 474-1238

1515 BROADWAY
52ND FLOOR
NEW YORK, NY 10036
(212) 930-0200

VINCENT TESE
DIRECTOR OF
ECONOMIC DEVELOPMENT

TEN-DAY BILL MEMORANDUM

August 4, 1987

TO: EVAN A. DAVIS
COUNSEL TO THE GOVERNOR
FROM: Vincent Tese *VT*
SUBJECT: S. 6441 (Anderson et al.)
RECOMMENDATION: Approval

I recommend approval of this bill, introduced at the request of the Governor, which would enact the "Ethics in Government" Act. This Act is designed to limit opportunities for abuse of official positions and eliminate the appearance of undue influence or illegal profit-taking by prohibiting Statewide elected officials, State officers and employees, Legislators and legislative employees, and political party chairmen in counties having populations over 300,000 or who earn more than \$30,000 per year, from making appearances or rendering services in matters before State agencies regarding:

- (a) the purchase, sale, rental or lease of real property, goods or services;
- (b) rate making;
- (c) rule making;
- (d) obtaining loans or grants;
- (e) licensing; or
- (f) franchises.

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Similar prohibitions would exist for political party chairmen in New York City. Exceptions would be provided for appearances in connection with ministerial matters.

State officers or employees, after termination of employment, may not appear before a State agency or receive compensation for any services rendered with respect to any case, proceeding or application with which the person was directly concerned during his period of employment. Rules of conduct for a member of the Legislature are set forth.

A new section would be added to the Public Officers Law to require comprehensive financial disclosure for Statewide elected officials, political party chairmen, State officers and employees, members of the Legislature and their employees, certain judges and justices, and court employees, who receive more than a \$30,000 annual salary.

A new State Ethics Commission would be created for executive officers and employees and a Legislative Ethics Committee for Legislators and legislative employees, which would review and monitor compliance with the conflict of interest prohibitions and financial disclosure requirements, investigate violations, impose penalties and provide advice and assistance. An advisory council would be created for each of the above ethics bodies, to make determinations at the request of the reporting individual for exemption from public disclosure for information which has no material bearing on the reporting individual's official duties. In addition, a Temporary State Commission on Local Government Ethics is created to receive, review, monitor and investigate violations of financial disclosure requirements of certain local governments.

Knowing and willful violations of the conflict of interest provisions or financial disclosure provisions are subject to a civil penalty of up to \$10,000. Alternatively, the State Ethics Commission may refer a violation to the appropriate prosecutor for punishment as a Class "A" misdemeanor.

This reform of the ethics laws should enhance public trust and confidence in New York State's elected and appointed officials, and its governmental institutions.

212

S. 6441

Memorandum



STATE OF NEW YORK
EXECUTIVE DEPARTMENT

DIVISION OF EQUALIZATION AND ASSESSMENT

July 15, 1987

TO: Robert L. Beebe
FROM: Stephen J. Harrison *SH*
SUBJECT: Senate Bill No. 6441
By: Sen. Anderson, et al.

This Governor's Program Bill (No. 119) would amend the Public Officers, Executive and Legislative Laws to enact the "Ethics in Government Act."* As stated in the sponsor's memorandum in support, the bill is intended to limit opportunities for abuse of official positions and eliminate the appearance of undue influence or illegal profit taking by officials. To accomplish these ends, the bill would: (1) require the filing of comprehensive financial disclosure statements designed to reveal income, assets and debts of reporting individuals, (2) limit representative appearances before most State agencies, and (3) establish oversight bodies to monitor, investigate and impose penalties for unethical conduct. The sponsor's memorandum contains a good summary of the bill's provisions, so I will concentrate on the bill's effect on the State Board, its employees and the local governments with which we interact in our administration of the real property tax.

The bill would make a series of amendments to section 73 of the Public Officers Law which currently restricts business and professional activities of State and Legislative officers and employees. As a "State agency" (Public Officers Law, §73(1)), the members of the State Board and its employees, the State Division, would be subject to this statute. The principal change here is new subdivision seven which would limit representation by State and Legislative officials and employees before State agencies. In addition to retaining the current two year prohibition against State officers and employees appearing before their former agencies, as amended, subdivision eight of section 73 would permanently prohibit such appearances in regard to matters the former official or employee participated in while so employed.

* Governor Cuomo vetoed a similar bill (S. 4661) on April 15, 1987 (Veto #2).

Bill section three would then add a new section 73-a to the Public Officers Law providing for annual financial disclosure by "every statewide elected official, state officer or employee, member of the legislature, legislative employee and political party chairman and every candidate for statewide elected office or for member of the legislature. . ." (proposed, §73-a(2)). The members of the State Board and nearly 300 of its employees who earn over \$30,000 per annum would be subject to the filing requirement (proposed Public Officers Law, §73-a(1)(c)(ii)).

The disclosure forms would be required to be filed by May 15 with the State Ethics Commission (to be established in accordance with proposed §94 of the Executive Law (bill §7)). Among its powers and duties, this Commission would be authorized to permit a non-policy making State employee, who otherwise would be required to file a disclosure form due to his or her salary, to request an exemption from filing (proposed Executive Law, §94(9)(k)). Since a spokesperson for the Office of the State Comptroller estimated that some 68,000 State employees earn over \$30,000 annually, this exemption provision could become critical to any meaningful review of the completed forms given the form's length and complexity.

The State Ethics Commission would also be empowered to impose civil penalties for the failure to file a required report or for submitting a report containing a wilfully false statement or to refer the matter for criminal prosecution (proposed Executive Officers Law, §94(13)). In this regard, the Commission would be deemed an adjudicatory body and would be required to promulgate rules governing its proceedings. The promulgation of these rules, however, would not be subject to the normal rule making procedure (e.g., opportunity for public comment) of the State Administrative Procedure Act (Art.2). No rationale for this anomaly is offered in the bill or memorandum in support.

The bill would also make a series of amendments to the General Municipal Law as it relates to the ethics of local government officers and employees. Codes of ethics are already required to be established by counties, cities, towns, villages and school districts (General Municipal Law, §806(1)). The bill would authorize these local governments to amend their codes to establish financial disclosure forms (proposed General Municipal Law, §806(1)(b)). Where a "political subdivision" (defined in proposed §810(1) as a county, city, town or village having a population of 50,000 or more) does not adopt a financial disclosure form by January 1, 1991, a statutory form, virtually identical to the aforementioned State official and legislative form, would be required (proposed General Municipal Law, §811(2)).

Like the State Ethics Commission, a Temporary State Commission on Local Government Ethics would be established (proposed General Municipal Law, §813). It would have comparable authority to that of the State body. This Commission would expire on December 31, 1992 when its authority would be transferred to local ethics boards.

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STATE OF NEW YORK
EXECUTIVE DEPARTMENT
DIVISION OF VETERANS' AFFAIRS
80 CENTRE STREET
NEW YORK, NEW YORK 10013

DR. NICHOLAS F. SALLESE
DIRECTOR
HEYMAN ROTHBART
COUNSEL

(212) 587 4823
(212) 587 4821

July 14, 1987

Hon. Evan A. Davis
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

RE: A. 8528/ S. 6441

Dear Mr. Davis:

This bill amends the public officers law, executive law and the legislative law with regard to business and professional activities and financial disclosures by statewide elected officials, members and employees of the legislature, state officers and employees and certain political party chairmen.

The bill amends the judiciary law for disclosure by certain judges, officers and employees of the courts and amends the general municipal law to require financial disclosure statements by elected officials and certain employees of counties, cities, towns and villages.

This bill is a program bill introduced at the request of the Governor with the purpose of providing a detailed practical program for the review of financial and revenue producing activities of elected officials, employees, legislators, judges and other employees and officials.

The Division of Veterans' Affairs supports this bill for the reason that it provides in a carefully detailed and well-organized manner, a program under which the ethics of responsible employees can be effectively reviewed.

Yours sincerely,


Heyman Rothbart
Counsel

cc: Dr. Nicholas F. Sallese
John J. Parkinson



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

AUG 7 1987

MEMORANDUM filed with Senate Bill Number 6441, entitled:

CHAPTER 813
APPROVAL # 58

"AN ACT to amend the public officers law, the executive law and the legislative law, in relation to regulating business or professional activities of, and requiring financial disclosure by, statewide elected officials, members of the legislature, legislative employees and state officers and employees and certain political party chairmen, creating an ethics commission and committee in connection therewith; to amend the judiciary law, in relation to providing for financial disclosure by certain judges, officers and employees of the courts of record of the unified court system; to amend the general municipal law, in relation to requiring financial disclosure statements for elected officials and certain officers and employees of certain counties, cities, towns and villages and for certain state and local political party officials and creating a temporary state commission on local government ethics; to amend the lobbying act, in relation to the threshold for listing of expenses in the aggregate; to amend chapter one thousand forty of the laws of nineteen hundred eighty-one relating to the New York temporary state commission on lobbying, in relation to extending the expiration date of such chapter; and repealing paragraph (d) of subdivision two of section eighty-eight of the public officers law, relating to public inspection of financial disclosure statements, and section eighty of the legislative law, relating to the creation of a legislative committee on ethics"

Senate Bill Number 6442, entitled:

CHAPTER 814
APPROVAL # 59

"AN ACT to amend the state finance law, the executive law, the legislative law, the judiciary law, the public authorities law and the public officers law, in relation to systems of internal control for state agencies, covered authorities, the legislature and the judiciary and providing for the repeal of such provisions upon expiration thereof"

A P P R O V E D

Today, I am signing into law two sweeping reforms that constitute the foundation of our efforts to restore public trust and confidence in government.

The "Ethics in Government Act" (S.6441) establishes strong ethical standards to govern the conduct of public officers and employees in all three branches of government. Specifically, the Act provides for:

- Ethics commissions with the power to receive complaints, conduct investigations, issue subpoenas and refer matters for prosecution.

1026

- Restrictions on dealings with government, which will bar public officers and employees from representing private clients before State agencies, doing business with the State in the absence of competitive bidding, and dealing with the State after leaving government service.
- Disclosure of financial interests by all elected and appointed officials, including judges, and by employees earning more than \$30,000 per year.

The "Accountability, Audit and Internal Control Act of 1987" (S.6442) establishes a comprehensive system of internal controls to ensure the integrity of governmental operations in all three branches of government. Specifically, the Act provides for:

- Internal administrative and accounting control systems for all State governmental entities to safeguard assets, check the accuracy and reliability of accounting data, deter and detect fraud, waste, abuse and error, and assure that personnel actually perform the services for which they are being paid.
- Periodic audits by the State Comptroller of the internal control systems of State agencies and major public authorities.
- External audits by independent accounting firms at least once every two years of the Governor's office, the Division of the Budget, the Department of Law, the Department of Audit and Control and the Legislature.

These laws establish a firm foundation for reform. With their enactment, New York moves from a position lagging far behind other States to a position in the forefront. This, however, does not absolve us from further responsibility. Rather, it constitutes an important new beginning in perfecting the laws that protect the integrity of our government. Constant vigilance and continuing efforts to secure reform are necessary to ensure that we achieve all that remains to be done.

These laws can be a turning point for New York State. They demonstrate our deep commitment to the honesty, integrity and accountability of our government and its officials. They reaffirm our dedication to the rule of law, our ability to achieve fundamental reforms through changes in our laws, and our insistence on laws that will protect the important processes of our government.

The bills are approved.

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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
ALBANY, NEW YORK
12236

S. 6441

EDWARD V. REGAN
STATE COMPTROLLER

July 10, 1987

REPORT TO THE GOVERNOR ON LEGISLATION

TO: The Honorable Evan A. Davis, Counsel to the Governor

RE: Senate 6441

INTRODUCED BY: Senator Anderson, et al.

TITLE: AN ACT to amend the public officers law, the executive law and the legislative law, in relation to regulating business or professional activities of, and requiring financial disclosure by, statewide elected officials, members of the legislature, legislative employees and state officers and employees and certain political party chairmen, creating an ethics commission and committee in connection therewith; to amend the judiciary law, in relation to providing for financial disclosure by certain judges, officers and employees of the courts of record of the unified court system; to amend the general municipal law, in relation to requiring financial disclosure statements for elected officials and certain officers and employees of certain counties, cities, towns and villages and for certain state and local political party officials and creating a temporary state commission on local government ethics; to amend the lobbying act, in relation to the threshold for listing of expenses in the aggregate; to amend chapter one thousand forty of the laws of nineteen hundred eighty-one relating to the New York temporary state commission on lobbying, in relation to extending the expiration date of such chapter; and repealing paragraph (d) of subdivision two of section eighty-eight of the public officers law, relating to public inspection of financial disclosure statements, and section eighty of the legislative law, relating to the creation of a legislative committee on ethics

6288

EFFECTIVE DATE: This act shall take effect immediately, except that sections 2 through 16 and sections 18 and 19 of this act shall take effect January 1, 1989, and sections 20 through 25 of this act shall take effect December 31, 1987, subject to certain additional provisions.

RECOMMENDATION: Approval

DISCUSSION:

This bill would enact the "Ethics in Government Act". The bill would limit situations in which statewide elected officials, state officers and employees, legislators and legislative employees and certain political party chairmen could appear or render services in certain matters before state agencies or contract to provide goods or services to state agencies. It would also limit appearances or the rendition of services by New York City political party chairmen before city agencies and contracts for goods or services involving such chairmen and city agencies. In addition, a state officer or employee would be permanently barred from rendering services before any state agency in a matter in which he was directly concerned and personally participated or which was under his active consideration during his state service, and would be barred for two years from the termination of such employment from appearing or practicing before his former agency on any matter. A former legislative employee would not be permitted, during the remainder of the legislative term in which he was employed, to "lobby" bills in relation to matters in which he was directly concerned and personally participated during such service.

Financial disclosure on the form provided in the bill would be required of statewide elected officials, legislators and candidates for statewide elected office or member of the legislature, and certain state officers and employees, legislative employees and political party chairmen. A similar disclosure form would have to be completed by certain local elected officials, officers, employees, political party officials and candidates for local elected office after 1991. Further, the Chief Judge would be required to adopt a disclosure form for Judges and court officers and employees. A State Ethics Commission and a Legislative Ethics Committee would be created to monitor and enforce the financial disclosure requirements of the bill and certain conflict of interest and ethics provisions, and a Temporary State Commission on Local Government Ethics would be created to monitor and enforce financial disclosure required of certain local governments. A public advisory council would be established within each commission.

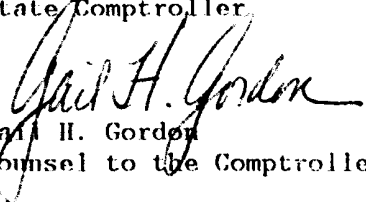
The Comptroller has publicly supported comprehensive government ethics reform. He has also supported detailed personal financial disclosure by candidates for public office, public officials and public employees in policymaking positions. Enactment of this legislation would strengthen existing standards of conduct for public officials and employees and certain political party officers, and it would enhance public confidence in government.

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For these reasons, the Comptroller recommends approval of this bill by the Governor. The Comptroller would also encourage the Legislature, as this legislation is implemented, to examine those provisions of the Ethics in Government Act which might be broadened or strengthened, and to address the need for campaign financing reform.

EDWARD V. REGAN
State Comptroller

By


Gail H. Gordon
Counsel to the Comptroller

GHG:IMF:d1

10136

S-6441



STATE OF NEW YORK
GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS
AGENCY BUILDING NO. 2
ALBANY, NEW YORK 12223

THOMAS F. HARTNETT
DIRECTOR

NANCY L. HODES
EXECUTIVE DEPUTY DIRECTOR
JOSEPH M. BRESS
GENERAL COUNSEL

July 30, 1987

TO: Hon. Evan A. Davis
FROM: Joseph M. Bress *JMB*
SUBJECT: S.6441

This bill would amend the Public Officers Law, the Executive Law, the Legislative Law, the General Municipal Law, the Judiciary Law, the Lobbying Act and Chapter 1040 of the Laws of 1981 in relation to regulating the business or professional activities of, and requiring financial disclosure by, statewide elected officials, members of the Legislature, legislative employees and state officers and employees. At the same time, this bill provides a mechanism for the implementation of similar requirements by local governments for its officer and employees. The Chief Judge of the Unified Court System is also directed to approve by September 1, 1988 a form for the annual statement of financial disclosure for all judges, justices, officers and employees of the courts of record who receive annual compensation in excess of \$30,000. Such form is to be substantially similar to the form required by the newly created Public Officers Law §73-a contained in the instant legislation.

With respect to statewide elected officials, state officers and employees, members of the Legislature and legislative employees, this bill has a number of significant features. First, a permanent State Ethics Commission and a permanent Legislative Ethics Committee would be established to promulgate rules and regulations concerning disclosure procedures, to monitor the financial disclosure process and to receive and investigate complaints about alleged violations of §§73, 73-a and 74 of the Public Officers Law. The jurisdiction of the State Ethics Commission would embrace financial disclosure by statewide elected

103

officials, state officers and employees, candidates for statewide office and political party chairmen. The new Legislative Ethics Committee would oversee the financial disclosure process for members of the Legislature, legislative employees and candidates for member of the Legislature.

Next, this bill would require the annual submission of a detailed financial disclosure statement by statewide elected officials; state officers and employees and legislative employees who receive in excess of thirty thousand dollars in annual compensation or hold policy-making positions; members of the Legislature; political party chairmen; and candidates for statewide elective office. This statement would indicate the reporting individual's property, business and professional interests. Certain property, business and professional interests of the reporting individual's family would also be disclosed pursuant to this statement.

A wilful failure to file such statement or the knowing and wilful makings with intent to deceive, of false statements on the disclosure form will be subject to a \$10,000 fine and may be punished as a Class A misdemeanor. Similarly, wilful violations of the revamped provisions of Public Officers Law §73 will be subject to the same civil and criminal sanctions. The new disclosure requirements and ethical standards for local officials and employees are supported by the same sanctions.

Finally, this bill would prohibit, with certain exceptions, statewide elected officials, state officers and employees, members of the Legislature and legislative employees from acting in a representative capacity before a state agency in connection with the purchase, sale, rental or lease of real property, goods or services; rate-making proceedings; the adoption of rules and regulations having the effect of law; the obtaining of grants or loans; licensing; and franchising pursuant to the Public Service Law.

Earlier in this legislative session, a comprehensive ethics bill was vetoed by the Governor. This office articulated a number of basic criticisms to that bill which included the elimination of criminal sanctions for violation of the ethics provisions; the failure to bar public officials and employees from acting in a representative capacity before quasi-judicial bodies; and the degree of confidentiality accorded to information disclosed by officers and employees subject to the bill.

The instant bill has retained the laudatory features of the vetoed measure while incorporating modifications which address the very concerns raised by this office. Clearly, criminal sanctions are an inherent part of the enforcement mechanism of this bill and may be utilized in appropriate cases of wilful or knowing failures to file a proper disclosure statement. Statewide elected officials, stated officers and employees, members of the legislature, legislative employees and political party chairmen cannot receive compensation in connection with an appearance before a wide range of proceedings, applications and other matters

before a state agency. At the same time, this bill clarifies the implications of this stricture upon people having a professional relationship with a covered individual through a firm, association or corporation. Finally, this bill creates a comprehensive system for obtaining exemptions for the disclosure requirement and for requesting specific deletions of information from the copies of the disclosure statements that will be available for public inspection. Here, a better balance has been struck between the privacy rights of the disclosing individual and the goals of preventing corruption.

In light of these improvements, the Governor's Office of Employee Relations recommends approval of this measure.



STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY 12224

ROBERT ABRAMS
ATTORNEY GENERAL

MEMORANDUM FOR THE GOVERNOR

Re: S. 6441

This bill is a revised version of the "Ethics in Government Act." A bill on the same subject was passed by both houses earlier in this session (S. 4661), but you disapproved that version. In a memorandum to you, I had urged your disapproval because of a substantial number of defects and omissions. In reviewing this bill, I have examined its provisions relating to those defects and omissions in order to determine the Legislature's response. Based on the analysis presented below, I believe that the bill now before you, despite some deficiencies, is far stronger than the earlier bill. The changes which have been made make this a much more meaningful reform of the ethical standards imposed on government officials.

Appearances before State Agencies

In my memorandum on S. 4661, I urged that State officials, including legislators and legislative employees, be barred from all appearances before State agencies. That bill contained a limited bar, and I noted the instances in which appearances were permitted. The bill before you considerably broadens the bar contained in the earlier bill, but, unfortunately, does not enact a complete bar.

Its most significant changes are that State officials, including legislators and legislative employees, may not appear in "quasi-judicial" proceedings nor may they appear before my office when it acts as a regulatory agency except when we are "performing duties specified in section sixty-three of the executive law." The first of these changes would completely bar State officials from appearing at administrative hearings conducted by such agencies as the Tax Commission, the Insurance Department, the Workers Compensation Board, the Unemployment Insurance Appeals Board, the Department of Social Services, the Division of Human Rights, the Department of Labor, the Department of Environmental Conservation, the Department of State, the Education

6441

Department, the State Liquor Authority, the Office of Professional Medical Conduct and the Department of Motor Vehicles, all of which would have been permitted by S. 4661. The second change would bar appearances before several bureaus in my office, including, most significantly, the Real Estate Financing Bureau in cooperative and condominium conversions.

These additional restrictions will go a long way toward reducing both the real and apparent conflicts which can result when State officials represent clients before State agencies. While it would have been preferable for the Legislature to impose a total bar, and eliminate appearances in such areas as criminal and administrative investigations, this revised bill reflects a meaningful response to the criticisms of the earlier bill.

With regard to appearances before my office, the language of the bill is not entirely clear. It distinguishes between duties specified in section 63 of the Executive Law and other duties of the office. However, there are a significant number of matters where our jurisdictional basis is section 63 and another provision of law. For example, our actions in the area of securities regulation may be based on powers given to the Attorney General under the Martin Act and subdivision 12 of section 63 of the Executive Law. In all such instances, where regulatory jurisdiction is being exercised based on both section 63 and another provision of law, I would interpret the language of this bill to bar appearances by State officials, including legislators and their employees.

Enforcement of the Financial Disclosure Requirements

As noted in my memo on S. 4661, knowingly and wilfully making a false statement in a financial disclosure statement is currently a misdemeanor. In the earlier bill, the disclosure requirements were significantly enhanced but, in a backward step, the criminal enforcement provision was eliminated. Violation was subject only to a civil penalty of \$2,500 imposed administratively by the Ethics Commission or Legislative Ethics Committee.

Under the bill before you, the amount of the civil penalty has been increased to up to \$10,000, which is clearly an improvement. In addition, an A misdemeanor criminal penalty is included, thereby restoring the criminal sanctions. Unfortunately, the bill before you provides that criminal convictions may be obtained only after referral by such Commission or Committee. I believe that this is an

1035

unwarranted restriction on the ability of prosecutors to act in cases of wrongdoing. The seriousness of this restriction will depend upon the willingness of the ethics panels to authorize the pursuit of criminal cases.

Public Availability of the Financial Disclosure Statements

Under S. 4661, only part of each financial disclosure statement was available to the public. A separate part B was to remain confidential. This has been entirely changed in the bill before you.

Under this bill, the entire statement is available "except the categories of value and amount." However, any person filing a statement may apply to a newly created five member Public Advisory Council and seek to have part of his or her statement deleted for purposes of public inspection. The Council may, by an affirmative vote of three members, grant an application when it finds that the information to be deleted "will have no material bearing on the discharge of the reporting person's official duties." A denial of an application may be appealed to the Ethics Commission or Legislative Ethics Committee.

Clearly, it is far preferable to have the entire statement (less values and amounts) available subject to deletions than to have a major portion of the statement remain secret in all instances. The critical question as the bill is implemented is how the "no material bearing" language will be interpreted.

Another concern I noted in my memorandum on S. 4661 was the provision that Part B of the disclosure form was "not subject to subpoena or court order." The Legislature has completely rectified the problem, as this provision has been eliminated in the bill before you.

Confidentiality of the Proceedings of the Ethics Panels

My previous memorandum noted the provisions contained in subdivisions 12.a and 17.b of section 94 of the Executive Law and subdivisions 11.a and 16.b of section 80 of the Legislative Law, which provided for the total confidentiality of the proceedings of the Ethics Committee and Legislative Ethics Commission. This secrecy, is, unfortunately, continued in the current bill, as these provisions remain unchanged.

36

Ability of Ethics Panels to Refer Matters For Criminal Prosecution

My memorandum on S. 4661 noted that the Ethics Commission and the Legislative Ethics Committee were not empowered to refer matters of wrongdoing to prosecutors and were probably barred from even sharing evidence of criminal wrongdoing with them. Under the bill now before you, these bodies may refer knowing and intentional violations of subdivisions 2, 3, 4, 5, 7 or 8 of section 73 of the Public Officers Law to prosecutors, as well as any knowing and intentional failure to file a disclosure statement or any knowing and intentional making of a false statement on the disclosure form "with intent to deceive." However, they are specifically barred from referring any other matters over which they have jurisdiction. As noted above, I believe prohibiting prosecutors from obtaining convictions without a prior referral is unwarranted.

In one respect, this bill is a step backward from existing law. Today, a knowing and intentional violation of subdivisions 2, 3, 4, 5 or 7 of section 73 of the Public Officers Law is a misdemeanor, which may be prosecuted without any prior referral to the prosecutor (the bill before you makes existing subdivision 7 subdivision 8 and creates a new subdivision 7). Subdivision 2 deals with certain appearances before State agencies by State employees, legislators and legislative staff for a contingent fee; subdivision 3 deals with their appearing before the Court of Claims; subdivision 4 contains restrictions on their authority to do business with State agencies; subdivision 5 deals with their accepting money or other value which is intended to influence their actions; and subdivision 7 (renumbered as subdivision 8 under the bill) contains restrictions on the authority of state employees to appear before their former agencies.

As violations of these provisions can now be criminally prosecuted without first receiving a referral from a State agency and no abuses have been demonstrated, there seems to be no reason to prohibit prosecutions without a prior referral from an ethics panel. Similarly, I believe that violations of new subdivision 7, which deals with appearances before State agencies by State officers and employees, legislators, members of their staffs and certain party officials, and appearances before New York City agencies by County leaders in the City, should be subject to criminal sanctions without prior referral.

Party Leaders and Political Campaigns

S. 4661 contained no provisions to enact campaign finance reforms or to deal with the problem of party leaders appearing before government agencies, doing business with government agencies or serving as public officials at the same time they hold party office. This bill, similarly, contains no provisions on financing of political campaigns. This subject should be a top priority at next year's legislative session.

The bill does, however, place certain restrictions on and require financial disclosure of some party leaders. The bill specifically restricts the ability of the chairmen or chairwomen of the State parties to appear before or do business with State agencies. It also restricts the ability of the county leaders within New York City to appear before or do business with State and City agencies. The restrictions imposed are similar to those imposed on State employees with respect to State agencies. These are among the most important improvements from the previous bill.

The bill also requires financial disclosure, identical to the disclosure required of State employees, of State party chairmen, and of county leaders who either hold their office in counties of 300,000 or more or who receive \$30,000 or more annually in compensation and expenses. In addition, financial disclosure is required of other party leaders who receive \$30,000 or more in compensation or expenses in other counties and localities with a population of 50,000 or more. This is another major reform in the bill before you which had not appeared in the earlier bill.

Regretably, the bill fails to speak at all to the problem of one individual holding public and party office at the same time. This problem, in my view, should be addressed in the future.

Ability of Former State Employees to Appear before State Agencies

I noted in my memorandum on S. 4661 that little had been done to restrict individuals who have left government from appearing before their former agencies. New provisions are added in this bill which are among the most significant of the changes which have been made. The restrictions contained in the bill before you are very far reaching and will significantly enhance the public's confidence in its State

38

government. In the current bill, State employees are barred from appearing before their former agencies for two years. Under existing law, which would have remained unchanged under S. 4661, this two year bar applies only to matters in which they were directly concerned or personally participated while employed by the State. In addition, the bill before you bars former employees from forever appearing before any State agency on matters in which they were directly concerned or personally participated, or which was under their active consideration. These are truly historical changes.

With respect to legislative employees, the restrictions imposed remain the same as in the earlier bill.

Restrictions on the Activities of Local Public Officials

In my earlier memorandum, I noted the absence in S. 4661 of any provisions restricting the activities of local public officials. No such provisions are contained in this bill. This is unfortunate, given the events of recent years.

Conclusion

In writing to you on S. 4661, I noted that significant improvements would have been made in State law in terms of promoting ethics by the creation of the new ethics panels, the extensive financial disclosure requirements and the limitations on the ability State officials and employees, including statewide elected officials, legislators and legislative staffers, to appear before State agencies. This bill continues to include the panels and financial disclosure requirements, and broadens the bar on appearances. In these respects, it represents meaningful reform.

While noting the strengths of the earlier bill in my previous memorandum, I also noted that it was, in many respects, seriously flawed. The above analysis of the current bill shows that not every problem which existed in S. 4661 has been resolved. However, I believe that the changes which have been made, especially those which deal with party officials and which restrict former State employees in representing private interests before the agencies for which they worked, make this a vastly strengthened bill. Despite its shortcomings, it represents a major step forward for the State of New York in terms of the ethical guidelines imposed on its public and party officials and State employees.

10029

MEMORANDUM FOR THE GOVERNOR

Re: S. 6441

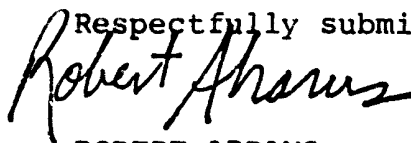
7.

In my previous memorandum, I urged your veto of S. 4661 because I believed it would foster further constructive debate and discussion and that a "better, more comprehensive bill" would result. In my view, the bill before you now is a dramatically improved proposal which more than vindicates the wisdom of your veto. While not perfect, this bill would make truly historic reforms in our ethics laws.

I urge approval of the bill.

Dated: July 7, 1987

Respectfully submitted,



ROBERT ABRAMS
Attorney General

S-6441

Memorandum



August 3, 1987

TO: Evan A. Davis, Esq., Counsel to the Governor

FROM: Jeffrey Chamberlain, Counsel *JC*

SUBJECT: SENATE 6441, ASSEMBLY 8528

The Division of State Police does not object to approval of this legislation. Public trust and confidence in elected and appointed officials are essential. The Division prides itself on maintaining the highest standards of integrity among its members and employees and there is nothing in this bill which would prohibit us from maintaining these standards.

However, we note with some concern that the public disclosure provisions of this legislation could require publicizing the marital status, names of spouses and children, and home addresses of members of the State Police. We zealously guard against public release of this information because of the great potential for harassment and danger to police officers and their families due to the nature of their work. The legislation contains provisions which could exempt employees from some of the disclosure requirements, and we expect to employ these provisions for that purpose.

cc: John Poklemba, Esq.
Counsel to the Director of Criminal Justice

6441

C-813

NEW YORK STATE OFFICE FOR THE AGING

Nelson A. Rockefeller Empire State Plaza, Albany, NY 12223-0001

MARIO D. CUOMO
Governor

EUGENE S. CALLENDER
Director

August 6, 1987

Hon. Evan Davis
Counsel to the Governor
Executive Chamber
New York State Capitol
Albany, New York 12224

S. 6441/A. 8528

Dear Mr. Davis:

The Office for the Aging has reviewed S. 6441/A. 8528, regarding ethics and financial disclosure, and recommends its approval because of the need for concrete steps to enhance public confidence in government and in light of the significant improvements over the prior bill which was vetoed.

Nevertheless, the existence of serious flaws in this bill will mandate continued efforts to strengthen disclosure and ethics requirements through both legislative and executive action. Specifically, continued scrutiny must be utilized to ensure that certain provisions in this bill, discussed below, are not used to shield improper or questionable activities.

Specific comments include:

It is unusual, to say the least, for a crime to be unprosecutable unless a commission specifically refers it to the prosecutor. Where an act violates the law and a prosecutor determines that criminal prosecution is appropriate, prosecution should not be barred by a decision by a commission to handle the matter civilly.

Section 73(8) seems, on its face, to prohibit State employees from leaving one agency to work on the same project at a second agency. (Currently, for example, a former employee at the State Office for the Aging who has moved to another agency is "on loan" to SOFA two days a week to continue an interagency project; this would appear, by the terms of this section, to be prohibited in the future.) This provision could also harm efforts to enhance public-private sector cooperation in areas like employment policy. Perhaps the import of this section can be clarified after enactment.

ES

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S. 6441/A.8528

The legalization of vote trading in Section 76 is a significant step backwards, both in public perception and potentially in the reality of policymaking.

Generally, the establishment of several different bodies authorized to variously interpret the ethical standards set by this bill is a bad process, though required through legislative negotiations to get this bill passed. Currently, the Attorney General interprets the Public Officers Law for both State and local governments; his authority will be dramatically diminished by diffusion of authority to interpret these standards among various bodies. For example, State Office for the Aging employees and staff of county-level grantee Area Agencies on Aging are often asked to serve on the same boards of directors of aging programs. Under current law, a single standard exists for both State and local employees in the Public Officers Law, and the Attorney General issues opinions covering both. Under this bill, similar statutory standards would apply under the Public Officers Law, but in actuality the restrictions would differ because different commissions could be able to issue binding interpretations that would differ depending on level and branch of government. This lack of uniformity will not promote public confidence.

Specifically, rulemaking authority should not be given to these commissions, certainly not such authority exempt from the State Administrative Procedure Act.

There is an error of omission on page 31 after line 41.

Section 94(18)(i) seems to say that illegal activities will be expunged and never revealed if the guilty party resigns. Resignation is not punishment, and should not suffice as such in all cases.

Section 94(15) seems to say that incorrect, even bad faith, opinions by these commissions (which are not politically insulated) will be an absolute bar to civil or criminal prosecution.

Requiring a sworn complaint before investigating seems unduly rigid, and likely to discourage whistle blowers.

The power of these various commissions to prevent criminal prosecution and shield questionable activities by

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August 6, 1987

S. 6441/A. 8528

covered individuals may amount to significant loopholes, areas where this bill is too narrow. In scope of individuals covered, however, the bill may well be too broad because of the tremendous administrative burden of requiring filings from so many individuals. Agencies like SOFA may well require considerable guidance in implementing the paperwork requirements of this bill, while substantive restrictions seems inadequate to meet the problems that sparked this bill.

Because of the flaws in this bill, continued efforts should be made to strengthen legislatively and to monitor administratively the ethical prohibitions in the Public Officers Law. Inasmuch as this bill is a significant improvement over the prior vetoed bill and in light of the need for substantive action to enhance public confidence in government, the State Office for the Aging recommends that this bill be signed into law.

Sincerely,



Craig E. Polhemus
Associate Director/Counsel

Pursuant to EO 12:
Hermes Fernandez
Ilene Margolin
Henrik Dullea

11-40



NEW YORK STATE ENERGY OFFICE

WILLIAM D. COTTER
COMMISSIONER

86441

M E M O R A N D U M

July 16, 1987

To: Evan A. Davis, Counsel to the Governor
From: Howard A. Fromer, Acting General Counsel
Subject: S.6441

HAF

This bill would amend the Public Officers Law, the Executive Law, the Legislative Law, the General Municipal Law and the Judiciary Law to establish broad-ranging ethical and financial disclosure provisions applicable to governmental officials and employees, on both the State and local levels, as well as certain political party officials.

The bill generally broadens and expands conflict of interest and disclosure provisions which were included in S.4661, disapproved earlier this session.

Among other provisions, S.6441 would require detailed, annual financial disclosure statements to be filed, beginning in 1989, by statewide elected officials; members of the Legislature; those legislative employees, State officers and State employees who receive annual compensation in excess of \$30,000 or who hold policy-making positions; and certain political party officials, including county leaders elected from counties which have a population of 300,000 or more, or who receive annual compensation or expenses of \$30,000 or more.

Financial disclosure provisions would also be made applicable under this bill, beginning in 1991, to local governmental officials and employees within counties, cities, towns or villages with populations of 50,000 or more, and to judges, justices, officers and employees of the unified court system who receive annual compensation in excess of \$30,000.

The bill would prohibit statewide elected officials, State officers and employees, members of the Legislature, legislative employees, and certain political party officials from appearing or providing other services for compensation, outside the scope of official duties, in connection with a broad range of matters before State agencies. It would also prohibit appearances and the provision of other services for compensation by county leaders within New York City in a broad range of matters before City agencies. Further, this bill prohibits former State officers or employees from appearing or practicing before their former agencies in connection with any matter for two years, and from appearing, practicing, communicating or otherwise providing services for compensation in connection with any matter

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in which such person was directly involved while serving as a State officer or employee.

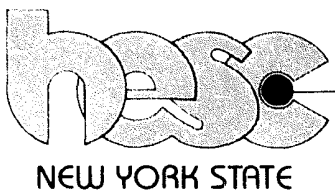
The bill would establish a State Ethics Commission, within the Department of State, and a Legislative Ethics Commission, to review financial disclosure statements, issue advisory opinions and investigate allegations of violations of conflict of interest provisions, with respect to State officials, officers and employees, and certain political party officials, and with respect to members of the Legislature and legislative employees, respectively.

While the State Energy Office has no position on the bill, we note that under the provisions defining State officers and employees for the purpose of filing annual financial disclosure statements, over 40% of the Office's employees would be required to file such statements.

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FB

5-6441



HIGHER EDUCATION SERVICES CORPORATION

Dolores E. Cross
President

MEMORANDUM

TO: Evan A. Davis
Counsel to the Governor

FROM: Gilbert Harwood, Counsel *GH*

RE: Senate 6441

DATE: August 3, 1987

Recommendation - approval.

On the overall, the emphasis effected by the passage of this bill on standards of conduct of elected and party officials, State, legislative and local officers and employees, and the expanded application of financial disclosure, taken together with the institution of ethics commissions and structured procedures for overseeing compliance with the prescribed standards and financial reporting requirements and for resolving and punishing conflicts of interest are distinctive positive steps. Reasonably implemented, the system being established offers a meaningful methodology towards assuring improved standards of conduct by those in public service.

There are indeed distinct weaknesses, problems, omissions and errors in the bill. Though some of these at some future date bring into question and perhaps vitiate aspects of the system being created, they do not contraindicate enactment of this bill into law. Enactment cannot be viewed as the last step in the process. Given the extensive changes being effected, adjustments will have to be made at future legislative sessions. The bill itself provides for this through its annual report and recommended amendment procedures. However, just as or more importantly, the enactment of this bill and the establishment of the oversight system is an acknowledgment by the Legislature of the need for more appropriate controls. It would seem this recognition, and the precedent of this enactment, should provide significant impetus for further reasonable amendments.



Albany, New York 12255

However, comment on some of the issues this bill presents should be made. There are those who may view the establishment of the separate ethics commission and financial disclosure procedure for the Legislature, under the aegis of the Legislature, as inappropriate. However, this is in keeping with the concept of separation of powers. An elected assembly is expected to keep its own house in order, including taking steps to punish members for breaches of standards of conduct. One problem here, however, is the relationship of the Legislative Ethics Commission to the two houses. It is difficult to see how the Commission can impose a penalty on a member of either house. Is this not the prerogative of the sitting members acting as a body? Query too, if the Legislative Ethics Commission is made up of entirely of legislators, how it can properly provide for overseeing its own members' activities? It would also seem inappropriate for the Legislature to have oversight of candidates' financial disclosures as the bill now provides. This procedure will not only offer opportunities for abuse, but the concept of separation would seem to call for some other body to provide this oversight.

Requiring financial disclosure for all State employees earning in excess of \$30,000 a year, regardless of the duties of their positions, raises a question initially as to the motivation behind this provision. Even if it does not raise issues as to the conditions of employment of some employees, it may well develop a substantial adverse reaction. Requiring such reports as a general matter is not only unnecessary and unfair with respect to many employees, it also places an undue burden on the governance system being established. It dilutes that system's ability to meet more important responsibilities, such as focusing on those persons whose positions or financial disclosures offer conflict of interest possibilities. It is noted provision is made for exempting or reducing the reporting requirements of individuals or types of positions. However, this places a major initial burden on the Ethics Commissions to pass on the applications for such relief. The bill provides the bases for such action. The procedure could easily be changed to shift the burden from the Commission to the agencies, to require the latter to report the employees (regardless of income) who are involved in the particular activities noted. See in this connection, the new Section 94.9(k).

The bill subjects violations of prescribed standards and of financial disclosure requirements to primarily civil penalties. It empowers the Ethics Commissions to refer the matters for criminal prosecution. However, it appears unless the Commission makes such a referral, criminal prosecution cannot be had. Such limitation would seem to open the door to a constitutional attack when a criminal prosecution is so effected. It is also noted that the amendments to subdivisions 7, 8, 11, 12 and 13 of Section 73 are in effect, under Bill Section 19, held hostage to subdivision 10 being effective in all respects. Subdivision 10 permits a firm

in which an employee of the Legislature, State officer or employee and political chairman is connected, to appear, practice and communicate or provide any services before a state or city agency if such person does not share in the net revenues as defined in accordance with the statute. Each of the amendments of the other subdivisions referred to can and should stand on their own merits. The amendments should not turn on what happens to subdivision 10. In all events, whether this broad type of repealer will be effective if the conditions described occur is questionable. However, even if we could now say it would be, and that these conditions reasonably may occur, it would seem the system this bill establishes is sufficient reason for approving the bill.

A last point that might be noted is that Section 74 of the Public Officers Law relating to conflicts of interest has not been addressed. There are a number of areas where improvements could be made in establishing the areas in which conflicts of interest arise. Indeed, the establishment of separate Ethics Commissions (State, Legislative and local) could very well lead to the establishment of different standards with respect to conflicts of interest in the absence of such further guidance.



**Metropolitan
Transportation
Authority**

347 Madison Avenue
New York, New York 10017
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M E M O R A N D U M

**TO: Honorable Evan A. Davis
 Counsel to the Governor**

FROM: Robert E. Morgan

RE: A. 8528 / S. 6441

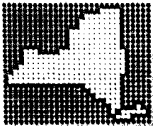
You have requested the comments and recommendation of the Metropolitan Transportation Authority concerning the above bill which is before the Governor for executive action.

Please be advised that the Metropolitan Transportation Authority has no objections to this legislation.

cc: D. Hyde
 M. Downey
 S. Polan

100150

S-6441



New York State Council on the Arts

145 Broadway
New York, N.Y. 10038
(212) 642-1900

MEMORANDUM

To: Hon. Evan A. Davis, Counsel to the Governor
From: Mary Hays, Executive Director
Date: July 113, 1987
Re: Bill S.6441/A8528

The New York State Council on the Arts supports this bill.

cc: Iris O'Malley

100051

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Memorandum

S. 6441



To: Evan Davis
 Counsel to the Governor

From: Jean Miller, General Counsel *JM*
 State Consumer Protection Board

Re: S.6441 (Anderson, et al.)

Date: July 23, 1987

-----X----- The Consumer Protection Board
 supports this bill.

Comments:

This bill makes various changes in the Public Officers Law, the Executive Law and the Legislative Law to: inter alia, expand several prohibitions with regard to contracting with State agencies to cover political party chairs and their equivalent; severely restrict appearances before State agencies by statewide elected officials, state officers or employees, legislators, legislative employees and political party chairs; prohibit state officers and employees from appearing or receiving compensation for appearing before their former state agency in any matter within two years of the termination of their service and, for matters in which they were directly concerned and personally participated, to forever bar their appearance; prohibit legislative employees from promoting or opposing legislation relating to any matter with respect to which they were directly concerned or personally participated for the remainder of the legislative term during which they left; and to prohibit party officers from serving as a deputy or assistant attorney general or solicitor general. The bill also requires: extensive financial disclosures from the heads of state departments, their deputies and assistants, officers and employees of statewide elected offices, officers, employees of state departments, boards, bureaus, divisions, commissions, councils or other state agencies, officers and employees of covered authorities and legislative employees any of whom receive \$30,000 per year or more or who hold policy making positions as determined by their appointing authority; an annual statement of financial disclosure from members and candidates to become members of the Legislature, from political party chairs and every candidate for statewide public office to be filed with either the Legislative Ethics Committee or the State Ethics Committee. The Chief Judge is also required to approve a form of disclosure for all justices,

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judges, officers and employees of courts of record which are paid over \$30,000. The proposal allows local governing bodies to require financial disclosure of locally elected officials and party officials by 1991 or, if no disclosure is mandated locally, financial disclosure will be required pursuant to the terms of this proposal from locally elected officials, officers and employees, local political party officials and candidates for local office.

Finally, the legislation establishes a five member State Ethics Committee in the Department of State and a five member Public Advisory Council; it abolishes the special legislative committee on ethics and establishes an eight member Legislative Ethics Committee and a five member Legislative Advisory Council; establishes a nine member Temporary State Commission on Local Government Ethics and a five member Public Advisory Council.

This bill will further delineate the line between the private concerns and the public duties and responsibilities of statewide elected officers, heads of state agencies and their employees, members of the Legislature and legislative employees. Government can only work effectively, for the people, when its public employees are prohibited from using the power of their positions for private gain. Indeed, the breach of this public trust jeopardizes the very form of our representative government.

The standards of conduct in this bill allow the State to enforce this public duty of responsible political party leaders as well as government employees and officers. Its required financial disclosures allow the public to judge the independence of their representatives and those who work in the public sector. For all these reasons, the Board recommends that this bill be signed into law.

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S. 6441



STATE OF NEW YORK
DEPARTMENT OF STATE
ALBANY, N.Y. 12231-0001

GAIL S. SHAFFER
SECRETARY OF STATE

MEMORANDUM

TO: Honorable Evan A. Davis DATE: July 27, 1987
Counsel to the Governor

FROM: Gail S. Shaffer
Secretary of State

SUBJECT: S.6441 (Sens. Anderson et al./M. of A. Miller et al.)
Recommendation: Approval

You requested our comments and recommendation on the above-numbered bill.

This bill would enact an "Ethics in Government Act" to provide more stringent standards for public officer activities before agencies, financial disclosure of officials, employees, and political candidates and establishes three ethics commissions responsible for receiving and reviewing financial disclosure statements.

This bill takes an important first step in limiting the activities of public officers before state agencies and limiting the "revolving door" for State officers and employees and legislative employees who leave state service to enter the private sector. It appropriately prohibits political party chairmen of New York City boroughs and their firms from selling goods and services to city agencies or appearing for compensation before city agencies.

The bill expands the prohibitions on appearances of firms with members who are state officers and employees by including legislators and legislative employees and to specify that associates, retired members, "of counsel" and shareholders are within the term "member" of the firm.

The law now allows the firm to appear, but prohibits the officer or employee from sharing in the profits. Unfortunately, the bill relaxes this requirement by adding "or, acting in good faith, reasonably believed that they would not share in the net revenues." While the bill has taken a step in the right direction, I believe that such firms should not appear before state agencies as even the mere appearance of the officer or legislator's name on the firm's papers, for instance, can raise the spectre of partial treatment.

I am pleased that all parts of the financial disclosure statement are subject to a uniform standard of availability to the public, although we note that the standard for withholding information is less onerous than that set out in the Freedom of Information Law for other public records.

I am also pleased that the penalties for knowingly and willfully failing to file or filing a false statement have been tightened in this bill. I wish to point out, however, that this bill provides for criminal penalties only in instances where either the State Ethics Commission or the Legislative Ethics Committee refers a violation to the appropriate prosecutor. This raises questions of infringement upon prosecutorial discretion and equal protection issues which should be considered.

The bill creates a State Ethics Commission in the Department of State, which has various responsibilities relating to the filing of financial disclosure statements by State officers, candidates for state officer and certain state employees. The Commission will have an obvious budgetary impact on the Department of State which must be addressed in the next budget. In this regard, I am compelled to point out the need to adequately finance the operations of the Commission so that it can perform its filing, disclosure, deliberative and enforcement functions in a highly effective manner.

The bill also establishes two other ethics commissions for the Legislature and local governments. As to the latter, it is a temporary commission to be assisted by a broad based local government advisory body. We recognize that the bill imposes some potentially confusing requirements on local government officers and employees, however, the magnitude of the need for governments of all levels to be above reproach, in this instance, must tip the balance in favor of their imposition. We are pleased that the bill does create the option for a local government not directed by the bill to establish filing requirements to "opt into" the system. Further, the bill does provide options for those directed to establish these requirements to either adopt their own or to be covered by those set out in the bill.

I believe that this bill makes an important statement that government in New York must be conducted in a fair and impartial manner. I am pleased to recommend its approval.

GSS:id

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STATE OF NEW YORK
DEPARTMENT OF AGRICULTURE AND MARKETS
CAPITAL PLAZA - 1 WINNERS CIRCLE
ALBANY, NEW YORK 12235

July 17, 1987

Hon. Evan A. Davis
Executive Chamber
State Capitol
Albany, New York 12224

Re: S.6441/A.8528

Dear Mr. Davis:

The bill, introduced at the request of the Governor, entitled "The Ethics in Government Act" would amend the Public Officers Law, the Executive Law and the Legislative Law in relation to regulating business or professional activities of, and requiring financial disclosure by, statewide elected officials, members of the legislature, legislative employees, state officers and employees and certain political party chairmen. The bill also creates an ethics commission and committee to supervise the enforcement and administration of the act.

The bill also amends the Judiciary Law and the General Municipal Law to regulate activities of and require financial disclosure by certain judges, officers and employees of the courts of record and certain officers and employees of counties, cities, towns and villages. The bill creates a temporary state commission on local government ethics to supervise and administer the bills provisions.

The bill also amends the Lobbying Act in relation to the threshold for listing expenses and Chapter 1040 of the Laws of 1981 relating to the New York Temporary State Commission on Lobbying. Paragraph d of subdivision 2 of section 88 of the Public Officers law relating to public inspection of financial disclosure statements is repealed and section 80 of the Legislative Law relating to the creation of a legislative committee on ethics.

The bill would generally prohibit public officials from representing private entities before state agencies. Those officials would also be prohibited from holding any financial

100156

Hon. Evan A. Davis
Page 2
July 17, 1987

interest in any entity which provides good or services to any state agency unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding.

The bill properly imposes standards of ethical conduct upon elected state officials and state officers and employees who, by their position, are charged with protection of the public trust. The bill will ensure that state officers and employees conduct is in the best interest of the state at all times.

I recommend that the Governor sign the bill.

Sincerely,



Donald G. Butcher
Commissioner

DGB:MM:sa

bcc: Commissioner Butcher
First Deputy Commissioner Laws
Deputy Commissioner Smith
Assistant Commissioner Papa
Assistant Commissioner Borgeson
Assistant Commissioner Edwards
Susan Reynolds
James Burnes
Ellen Catalano
Joan A. Kehoe
Elaine Ryan
Ben Wiles ✓

10657

PB

86441



STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
THE STATE OFFICE BUILDING CAMPUS
ALBANY, N.Y. 12226

THOMAS A. COUGHLIN III
COMMISSIONER

JOSE HERNANDEZ-CUEBAS
DEPUTY COMMISSIONER AND COUNSEL

July 17, 1987

Honorable Evan Davis
Counsel to the Governor
Executive Chamber
Room 225
State Capitol
Albany, New York 12224

Re: S.6441/A.8528

Dear Mr. Davis:

This legislation amends the Public Officers Law, the Executive Law and the Legislative Law, in relation to enacting the "Ethics in Government Act."

The Department of Correctional Services has reviewed this legislation and recommends approval of the bill.

Sincerely yours,

J.W. Hernandez-Cuebas
Deputy Commissioner
and Counsel

JHC/12

S-6441



THE NEW YORK STATE LOTTERY

SWAN STREET BUILDING
EMPIRE STATE PLAZA
ALBANY, NEW YORK 12223

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

M E M O R A N D U M

July 14, 1987

TO: Evan Davis
Counsel to the Governor

FROM: Diane A. Goodman, Counsel *[Signature]*
New York State Division of the Lottery

SUBJECT: Re: S 6441 A 8528

I. AGENCY POSITION:

The Division has no objection to this legislation.

II. DISCUSSION:

This bill amends the Executive law and the Legislative law in relation to ethical practices on the part of state officials, officers, employees, political party chairmen of large cities of over one-million population. It requires that none of the above persons shall receive any benefit directly or indirectly by appearances or rendition of services with government agencies.

No person who has served as a state officer or employee shall, within a period of two years, appear, practice or communicate or render services before any state agency or receive any compensation in respect to any case, proceeding or transaction with which he was concerned while he served in government. This does not impair the ability of any firm, association or corporation to appear or communicate with a state agency. However, the ex-employee may not share in the net revenues generated from that transaction.

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Legislators and former legislators as well as state officers and employees can appear before an agency as to matters which are under the authority of a superior of their firm, corporation, etc., (ministerial function).

There are also financial disclosure requirements.

The Division has no objection to this legislation.

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STATE OF NEW YORK
DEPARTMENT OF LABOR

GOVERNOR W. AVERELL HARRIMAN
STATE OFFICE BUILDING CAMPUS
ALBANY, NEW YORK 12240

Counsel's Office
(518) 457-4380

July 21, 1987

Honorable Evan Davis
Counsel to the Governor
Room 210
The Capitol
Albany, New York 12224

Re: S.6441/A.8528 - AN ACT to amend the public officers law, the executive law and the legislative law, in relation to regulating business or professional activities of, and requiring financial disclosure by, statewide elected officials, members of the legislature, legislative employees and state officers and employees and certain political party chairmen, creating an ethics commission and committee in connection therewith; to amend the judiciary law, in relation to providing for financial disclosure by certain judges, officers and employees of the courts of record of the unified court system; to amend the general municipal law, in relation to requiring financial disclosure statements for elected officials and certain officers and employees of certain counties, cities, towns and villages and for certain state and local political party officials and creating a temporary state commission on local govern-

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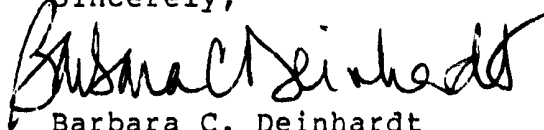
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ment ethics; to amend the lobbying act, in relation to the threshold for listing of expenses in the aggregate; to amend chapter one thousand forty of the laws of nineteen hundred eighty-one relating to the New York temporary state commission on lobbying, in relation to extending the expiration date of such chapter; and repealing paragraph (d) of subdivision two of section eighty-eight of the public officers law, relating to public inspection of financial disclosure statements, and section eighty of the legislative law, relating to the creation of a legislative committee on ethics

Dear Mr. Davis:

The Department of Labor has no objection to the above-referenced legislation which would amend state law to create a comprehensive state ethics code for public officials.

Sincerely,



Barbara C. Deinhardt
Deputy Commissioner of Labor
for Legal Affairs

MC:lz

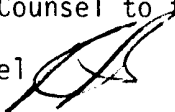
cc: Alyse Gray

62

Memorandum



State of New York
Office of Advocate
for the Disabled

TO: Honorable Evan A. Davis, Counsel to the Governor
FROM: Robert J. Boehlert, Counsel 
SUBJECT: S.6441 - Memorandum in Support

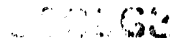
DATE: 7/13/87

RE: AN ACT to amend the public officers law, the executive law and the legislative law, in relation to regulating business or professional activities of, and requiring financial disclosure by, statewide elected officials, members of the legislature, legislative employees and state officers and employees and certain political party chairmen, creating an ethics commission and committee in connection therewith; to amend the judiciary law, in relation to providing for financial disclosure by certain judges, officers and employees of the courts of record of the unified court system; to amend the general municipal law, in relation to requiring financial disclosure statements for elected officials and certain officers and employees of certain counties, cities, towns and villages and for certain state and local political party officials and creating a temporary state commission on local government ethics; to amend the lobbying act, in relation to the threshold for listing of expenses in the aggregate; to amend chapter one thousand forty of the laws of nineteen hundred eighty-one relating to the New York temporary state commission on lobbying, in relation to extending the expiration date of such chapter; and repealing paragraph (d) of subdivision two of section eighty-eight of the public officers law, relating to public inspection of financial disclosure statements, and section eighty of the legislative law, relating to the creation of a legislative committee on ethics

The subject bill amends the Executive, Legislative and other consolidated and unconsolidated Laws to regulate the business and professional activities and require certain financial disclosures by elected officials and employees of state and local government, the legislature, the judiciary, and political party chairmen and to create a state ethics commission and committee and a temporary commission on local government ethics.

Good government has an obligation to the citizens it represents to demand of its elected and appointed officials the objectivity, fairness and integrity which should be the hallmarks of a democratic system of government. The Advocate's Office urges approval of this measure, introduced at the request of the Governor, to set a national standard for ethical conduct and help restore the faith and confidence of New Yorkers in their government.

Thank you for providing the Advocate's Office with an opportunity to comment on S.6441.





COUNSEL

STATE OF NEW YORK

COMMISSION ON QUALITY OF CARE
FOR THE MENTALLY DISABLED
99 WASHINGTON AVENUE, SUITE 1002
ALBANY, NEW YORK 12210
(518) 473-4065

PAUL F. STAVIS
COUNSEL

July 15, 1987

ASSISTANT COUNSELS
PATRICIA W. JOHNSON
LOUISE M. TARANTINO
DEBORAH A. GLASBRENER

Evan A. Davis, Esq.
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

RE: S. 6441/A.8528

Dear Mr. Davis:

Thank you for referring the above-cited bill to the Commission for study and recommendation. This law amends the Public Officers Law by establishing an extensive code of ethics which applies to statewide elected officials, members of the Legislature, legislative employees, State officers and employees and certain political party chairmen, as well as certain employees of the judiciary. In the Commission's judgment, a statute such as this has long been needed and therefore the Commission supports and recommends action by the Governor to approve this measure.

The statutes which previously existed in this area were often too ambiguous to establish definitive standards which could be used to judge the behavior of such governmental employees as covered by the instant bill. In certain investigations conducted by the Commission, absence of clear standards made it difficult to determine whether certain questionable practices by individuals were inappropriate or not in the best interests of the State and its agencies. Now, however, the behavior of governmental employees will be much more clearly defined and through the disclosure provisions, reported and monitored by the special agency established for that purpose.

If I can provide you with any further information or analysis, please contact me.

Sincerely yours,

PAUL F. STAVIS
Counsel

PB

S.6441



State of New York
Council on Children and Families
Mayor Erastus Corning 2nd Tower
28th Floor
Empire State Plaza
Albany, New York 12223

Joseph J. Cocozza, Ph.D.
Executive Director
(518) 474-8038

M E M O R A N D U M

TO: Evan A. Davis
Counsel to the Governor

DATE: July 22, 1987

FROM: Joseph J. Cocozza
Executive Director

SUBJECT: Senate 6441; before the Governor for Approval

RECOMMENDATION: Approval

The above referenced bill would establish a comprehensive ethics code for government employees and establish uniform financial reporting requirements.

The Council on Children and Families recommends approval of the bill. Although the bill would have no unique impact on the Council's operations or areas of concern, all State agencies will benefit from the effective application of a clear and fair code of ethics. The Council does not anticipate significant problems in implementing the bill as drafted with respect to affected Council employees.

/mjg

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S. 6441



MARIO M. CUOMO
GOVERNOR

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
ONE FORDHAM PLAZA
BRONX, NEW YORK 10458

WILLIAM B. EIMICKE
COMMISSIONER

July 20, 1987

Honorable Evan A. Davis, Counsel
Executive Chamber
State Capitol
Albany, New York 12223

Re: S. 6441 - Approval
An act to amend
the public officers law,
the executive law and the
legislative law, in
relation to regulating
business or professional
activities

Dear Mr. Davis:

Thank you for sharing with us a copy of S. 6441, a bill commonly referred to as the "Ethics in Government Act". This legislation is designed to limit opportunities for abuse of official positions and eliminate any appearance of undue influence or illegal profit-taking by executive officers, legislative officers, elected officials, party officers and candidates for office.

Those who serve in government are entrusted with the significant responsibility of serving and protecting the public. Recent events have made it clear that some in government have violated the public's trust. It is therefore imperative that we codify a set of rules that make clear to the public that these abuses of power on the part of any who serve will not be tolerated. This legislation will help to make impropriety unlikely and will minimize the potential for conflicts of interest.

Within the Division of Housing, we have many professional employees. Prior to commencing their employment with the Division, many of these employees worked privately in their areas of expertise. Certainly the Division and the State generally

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have been the beneficiaries of the broad range of knowledge that these architects, engineers, lawyers and community organizers have brought to the agency. However, as these professionals have assumed the role of public officers the potential has existed for official decisions, whether consciously or otherwise, being motivated by something other than the public's interest.

Heretofore, our employees have been guided in their conduct in this area of conflict-of-interests by the vague requirements delineated in the Public Officers Law. The legislation recently enacted represents the combined effort of the Governor and the Legislature to outline clearly what specific activities will be deemed acceptable professional behavior and what penalties will flow if indeed said behavior isn't followed. Moreover, the bill represents a signal to the people of New York that its leaders intend to adhere to the highest standards of ethical conduct.

The Division supports this legislation.

Sincerely,



Dennis B. Hasher
General Counsel

cc: William B. Eimicke

DBH/cj

11/10/07

5-6441



STATE OF NEW YORK
DEPARTMENT OF AGRICULTURE AND MARKETS
CAPITAL PLAZA - 1 WINNERS CIRCLE
ALBANY, NEW YORK 12235

July 17, 1987

Hon. Evan A. Davis
Executive Chamber
State Capitol
Albany, New York 12224

Re: S.6441/A.8528

Dear Mr. Davis:

The bill, introduced at the request of the Governor, entitled "The Ethics in Government Act" would amend the Public Officers Law, the Executive Law and the Legislative Law in relation to regulating business or professional activities of, and requiring financial disclosure by, statewide elected officials, members of the legislature, legislative employees, state officers and employees and certain political party chairmen. The bill also creates an ethics commission and committee to supervise the enforcement and administration of the act.

The bill also amends the Judiciary Law and the General Municipal Law to regulate activities of and require financial disclosure by certain judges, officers and employees of the courts of record and certain officers and employees of counties, cities, towns and villages. The bill creates a temporary state commission on local government ethics to supervise and administer the bills provisions.

The bill also amends the Lobbying Act in relation to the threshold for listing expenses and Chapter 1040 of the Laws of 1981 relating to the New York Temporary State Commission on Lobbying. Paragraph d of subdivision 2 of section 88 of the Public Officers law relating to public inspection of financial disclosure statements is repealed and section 80 of the Legislative Law relating to the creation of a legislative committee on ethics.

The bill would generally prohibit public officials from representing private entities before state agencies. Those officials would also be prohibited from holding any financial

1168

Hon. Evan A. Davis
Page 2
July 17, 1987

interest in any entity which provides good or services to any state agency unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding.

The bill properly imposes standards of ethical conduct upon elected state officials and state officers and employees who, by their position, are charged with protection of the public trust. The bill will ensure that state officers and employees conduct is in the best interest of the state at all times.

I recommend that the Governor sign the bill.

Sincerely,



Donald G. Butcher
Commissioner

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S-6441



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

July 30, 1987

Honorable Evan A. Davis
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

RE: Senate 6441

Dear Mr. Davis:

Your office has requested this Department's Comments on Senate 6441 which is before the Governor for executive action. Senate 6441 would amend the Public Officers Law, Executive Law and Legislative Law to enact the "Ethics in Government Act", which provides for comprehensive ethics reforms relating to public officials.

The bill contains new and strengthened conflict of interest provisions and financial disclosure requirements. It also creates a permanent State Ethics Commission, with the power to impose civil penalties of up to \$10,000 for violations. The measure applies to all elected and appointed public officers and employees.

The Department of Health vigorously supports approval of this bill. It is a significant step towards assuring high standards of conduct by all public officials in this State.

Very truly yours,

A handwritten signature in black ink that reads 'Peter J. Millock'.

Peter J. Millock
General Counsel

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S-6441



STATE OF NEW YORK
WORKERS' COMPENSATION BOARD

180 LIVINGSTON STREET
BROOKLYN, NY 11248

(718) 802-6671

GLADYS CARRION
GENERAL COUNSEL

Ermine J. Perrotta
CHAIRMAN

July 23, 1987

Hon. Evan A. Davis
Counsel to the Governor
Executive Chamber
State Capitol
Albany, N.Y. 12224

Re: S6441/A8528

Dear Mr. Davis:

We are in receipt of your request for our analysis, comments and recommendations regarding the legislation noted above. We appreciate the opportunity to present our opinion on this proposal.

This bill is known as the "Ethics in Government Act." As the name implies it is a comprehensive ethics bill dealing with all branches of Government, State and local, the legislative and the judiciary. The act provides for the creation of a State ethics commission, a legislative ethics committee, and a temporary state commission on local government ethics. The function of these commissions is to require detailed financial disclosure statements from certain employees and officers of state agencies, state legislators and certain employees of the legislature, officers and certain employees of local government, judges and certain employees of the court system and to investigate and penalize those officers and employees who file false statements.

As a state agency the Workers' Compensation Board will be affected by this legislation. The bill prescribes regulations and rules that limit the activities of officers and employees who leave the Board and engage in employment related to their former activities with the Board. This bill is the first comprehensive Ethics bill to be enacted in New York State, applicable to all branches of Government. We support it as it will do much to improve the image of good government in New York State and dispel the unfair and unsavory picture the public has obtained as a result of recent scandalous behavior by a very small number of public officials.

Very truly yours,

Gladys Carrion
General Counsel

GC:ss

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PUBLIC EMPLOYMENT RELATIONS BOARD

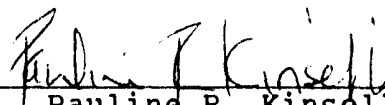
July 21, 1987

TO: Hon. Evan A. Davis
Counsel to the Governor

RE: S. 6441

INTRODUCED BY: Senator Anderson,
et al.RECOMMENDATION: No objectionSTATUTE INVOLVED: Public Officers Law, Executive Law, and
Legislative LawEFFECTIVE DATE: Immediately and later datesDISCUSSION:

This bill, known as the Ethics in Government Act, creates financial disclosure requirements, as well as ethics requirements for persons appearing before State agencies and creates commissions responsible for implementation of the legislation. The Public Employment Relations Board deems this matter appropriate for legislation rather than negotiation, and accordingly does not have any jurisdictional concern regarding this proposal. The Board, therefore, has no objection to approval of this bill.



Pauline R. Kinsella
Special Counsel to the Board



STATE OF NEW YORK
BANKING DEPARTMENT
TWO RECTOR STREET
NEW YORK, N.Y. 10006

JILL M. CONSIDINE
SUPERINTENDENT OF BANKS

July 16, 1987

BANKING DEPARTMENT
MEMORANDUM ON BILL
BEFORE THE GOVERNOR
FOR EXECUTIVE ACTION

SENATE

ASSEMBLY

Introduced by:

Senator Anderson et. al.

S. 6441

A. 8528

M. of A. Miller et. al.

Recommendation:

No objection

Statutes Involved:

Public Officers Law §§73, 73-a (new),
76, 78, 88

Executive Law §§94 (new), 166

Legislative Law §80

General Municipal Law §§806, 808, 810

(new), 811 (new), §§812 (new), 813 (new)

Judiciary Law 211

Effective Date:

Varies, see Bill

Summary of Provisions of Bill

This Bill would require various public officials and employees to make an annual statement of financial disclosures, would restrict the activities of such persons after they leave State or local government service, and would otherwise regulate the conduct of such persons.

Comments:

This Bill relates to the conduct of governmental officials and employees.



A. 8528

5-6-4/11

STATE OF NEW YORK
STATE BOARD OF ELECTIONS

P.O. BOX 4
ONE COMMERCIAL PLAZA
ALBANY, NY 12260-0004

M E M O R A N D U M

July 22, 1987

To: HON. EVAN A. DAVIS
Counsel to the Governor

From: State Board of Elections

Subject: Assembly Bill No. 8528 (Member of Assembly Miller, et al)

Purpose:

The bill regulates the business and professional activities of state officers and employees and requires financial disclosure by certain public officers, employees, political party chairmen, etc.

Comments:

This bill does not affect the administration of the Election Law.

Recommendation:

No comment.

STATE BOARD OF ELECTIONS

By: Thomas P. Zolozzi
Special Counsel

NEW YORK STATE
DEPARTMENT OF SOCIAL SERVICES
40 NORTH PEARL STREET, ALBANY, NEW YORK 12243

CESAR A. PERALES
Commissioner



MEMORANDUM

TO: Evan A. Davis
Counsel to the Governor

FROM: Cesar A. Perales *Cesar A. Perales*

RE: Ten Day Bill
Senate 6441

DATE: August 4, 1987

RECOMMENDATION: Approval

STATUTES INVOLVED: Sections 73, 73-a (added), 76, 78, and 88 of the Public Officers Law, Sections 94 (added) and 166 of the Executive Law, Section 80 of the Legislative Law, Sections 805-a, 806, 808, 810-813 (added) of the General Municipal Law, and the Lobbying Act (L. 1981 Ch. 1040).

EFFECTIVE DATE: Mandated filing by State employees is effective January 1, 1989 and must be complied with by April 1989; filings by local government employees can be delayed until 1991. Most other provisions of the bill are effective either immediately upon enactment or by December 31, 1987, except that the restrictions on post service employment by legislative employees shall not affect those separated prior to January 1, 1989.

DISCUSSION:

1. Purpose and effect of bill: This bill seeks to enhance public confidence in the integrity of State and local government. The portion of the bill which would have the greatest impact on the Department is the requirement for State agency officials to file an extensive financial disclosure form.

The bill would require State agency or legislative employees making more than \$30,000 per year or holding "a policy making position" to file a financial disclosure statement. Similar disclosure requirements would apply to New York City employees and could be extended, at local option, to other political subdivisions.

The disclosure statement, which would be available for public inspection except when non-disclosure is authorized by the newly created State Board of Ethics, would disclose 1) businesses or

interests which do business with the State, 2) interests in State contracts, 3) contracts for future employment, 4) all sources of income (excluding gifts from close family members) greater than \$1,000, 5) liabilities over \$5,000 (other than routine house and consumer loans and routine business accounts payable) 6) real property holdings (other than primary and secondary residences), and 7) assignments of income which would otherwise be discloseable; the requirements generally apply to a spouse or unemancipated child.

The bill also would prohibit appearances by state employees legislators and legislative employees before State agencies except in limited situations; however, the legal firm of a lawyer subject to this proscription could appear before a regulatory agency if the person subject to the proscription receives no share of the compensation for the appearance.

The bill also would make a number of minor changes in existing law, the most noteworthy of which would be to raise the maximum dollar value of a gift which may be accepted by public employees from twenty-five dollars to seventy-five dollars.

2. Prior legislative history and other significant background: This bill is similar to but significantly improved over Senate 4661 which was disapproved earlier this year.
3. Budget implications: No fiscal impact to the Department of Social Services is anticipated.
4. Arguments in support: The existence of corruption in New York City Government and reports of abusive payroll practices in the State Legislature demand that strong action be taken to assure public faith in the integrity of governmental officials. The broad disclosure required by this bill would allow for public scrutiny of a large number of the abuses which have shaken public confidence. Any official who resents the intrusion in his or her private life occurring under this disclosure requirement would have ample time to remove him or her self from public service or could elect to appeal any mandated public disclosure to the appropriate ethics committee. By requiring that there be an extensive filing requirement, the Legislature lays the groundwork for identifying those abusive activities which, in the future, it can set about to correct.
5. Arguments in opposition: The proposed filing requirements are much too broad in that they affect large numbers of State professional employees (and even senior clerical employees) who exercise no professional discretion in the exercise of their duties. The sheer volume of filings is likely to obscure whatever meaningful information the filing requirement generates.

The proposal also fails to require local governments other than New York City to enact disclosure requirements. Given the breadth of and likely objections to the disclosure which is required, it is highly unlikely that any local government would adopt the proposed disclosure statements. The restrictions on appearances are also inadequate in that only a small portion of the appearances made by legislative officials before all State agencies and almost none by their firms are covered by the provisions of the proposal.

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6. Reason for Recommendation: The Department strongly supports this revised ethics legislation because it represents a major revision of the currently inadequate ethics laws in New York State. It should improve the integrity of State and local government and should help restore the people's faith in government.

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THE STATE INSURANCE FUND

199 CHURCH STREET - NEW YORK, N. Y. 10007

(212) 962-8900

RAYMOND C. GREEN
GENERAL ATTORNEY

July, 10, 1987

Hon. Evan A. Davis
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Re: S.6441


Dear Sir:

The State Insurance Fund supports the enactment into law of S.6441 (Ethics bill). Its scope is comprehensive and its standards and requirements generally are necessary and fair.

Our analysis has raised two minor points, one substantive and one technical. The threshold for financial disclosure for State employees would be annual compensation in excess of \$30,000. This amount may be lower than desirable since it would require financial disclosure of many middle level employees who have no policymaking role and it also may create a burdensome workload for the State Ethics Commission. Our technical comment concerns line 41 of page 31 of our copy of the bill. It appears that a line is missing which would complete 18(a).

Considering the overriding importance of enacting meaningful ethics legislation, we recommend that this bill be signed into law.

Very truly yours,


Raymond C. Green
General Attorney

RCG:cr

100078



STATE OF NEW YORK
INSURANCE DEPARTMENT
160 WEST BROADWAY
NEW YORK 10013

JAMES P. CORCORAN
SUPERINTENDENT OF INSURANCE

July 14, 1987

Honorable Evan A. Davis
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Re: Senate Bill 6441
(Sen. Anderson, Ohrenstein et al)

Dear Evan:

This is in response to your request for our comments concerning the captioned bill.

Section 1 provides that Sections 2 through 17 may be cited as the "Ethics in Government Act".

Section 2 amends Section 73(1) of the Public Officers Law to add definitions of "licensing", "ministerial matter", "representative capacity", "statewide elected official", and "state officer or employee", and to amend the current definitions of "compensation", "regulatory agency" and "state agency".

Section 73(2) (regarding contingent compensation) and Section 73(3) (regarding Court of Claims matters) are amended.

Section 73(4) is amended to prohibit statewide elected officials, members of the Legislature and legislative

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employees, political party chairmen or firms or associations owned or controlled by such persons to contract for or provide services (worth in excess of \$25) with or to any private entity where the power to contract, appoint or retain on behalf of such private entity is exercised, directly or indirectly, by a state agency or officer thereof, unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding. A similar provision is added in Section 73(4) affecting political party chairmen in New York City dealing with city agencies.

Section 73(5), relating to the receipt of gifts, is amended to add statewide elected officials to those to whom the provision is applicable.

Section 73(6) is amended to require the filing of a financial disclosure statement with the Legislative Ethics Committee by legislative employees not subject to Section 73-a (see section 3 of bill).

Section 73(7) is amended to provide that no statewide elected official, or state officer or employee, other than in the proper discharge of official duties, or member of the Legislature or legislative employee or political party chairman shall receive compensation for the appearance or rendition of services before a state agency in connection with certain specified matters, except in connection with a ministerial matter and appearances in connection with certain quasi-judicial proceedings. The bill also adds a similar provision concerning political party chairmen in New York City and city agencies. Section 73(7)(d) states that there is no prohibition against a member of the Legislature or a legislative employee participating in or advocating a position in any matter in an official or legislative capacity. Section 73(e) states that there is no prohibition against a state officer or employee appearing before a state agency as an authorized representative of an employee organization. Section 73(7)(f) states that a political party chairman is not prohibited from advocating in an official capacity. Finally, Section 73(7)(g) provides that Section 73(7) does not prohibit internal research or discussion of a matter provided a client is not charged and the person does not share in the revenue produced by the matter.

Section 73(8) (formerly subdivision 7), regarding appearances by state officers and employees, is amended to prohibit any appearance or "practice" before an agency on "any matter" within 2 years of termination. The amendment also bars any appearance, practice, communication or other rendition of service before the agency, or the receipt of compensation for such services, with respect to any "case, proceeding, application or transaction with respect to which such person

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was directly concerned and in which he personally participated during the period of his service or employment or which was under his active consideration."

In addition, Section 73(8) is amended by adding a prohibition against certain legislative employees, "during the term of office of the legislature in which he or she was employed", receiving compensation during the remainder of the legislative term for lobbying on matters as to which such person "personally participated". The Legislative Ethics Committee may permit such a legislative employee to receive compensation for lobbying if he or she had acted primarily in a "supervisory capacity" and did not have an "important and material degree" of involvement in a matter.

Section 73(9) (formerly subdivision 8) is amended to prohibit a deputy or assistant attorney-general or solicitor general from being a party officer.

Section 73(10) (formerly subdivision 9) is amended to specifically not prohibit a firm, association or corporation in which a statewide elected official, state officer or employee is a member, associate, retired member, of counsel or shareholder, from appearing, practicing, communicating or otherwise rendering service or transacting business with a state agency or the Court of Claims if such person (as listed above) does not share in the entity's net revenues resulting therefrom, as defined in accordance with generally accepted accounting principles, or if he or she, acting in good faith, reasonably believed that he or she would not share in the net revenues.

Section 73(11) (formerly subdivision 10) provides that conduct permitted by subdivision 8 of this section for a former legislator or former legislative employee shall not constitute professional misconduct or grounds for disciplinary action of any kind. The subdivision would also be amended subject to subdivision 8 to specifically not prohibit a legislator or former legislator from relating in any manner to a state agency solely because of the legislator's action concerning the election or confirmation of any person affiliated with the agency. The subdivision would also be amended to recognize that the appearance by a firm, association or corporation in accordance with subdivision 10 shall not constitute professional misconduct or grounds for a disciplinary action solely by reason of the professional relationship between the official and the firm.

Section 73(12) prohibits oral communications with an employee of any agency as to the merits of a cause by those persons who are members, associates, retired members or counsels to or shareholders of any entity which is appearing or

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rendering services in connection with any matter listed in paragraphs (a) or (b) of subdivision 7.

Section 73(14) contains a penalty provision which provides that violators of subdivision 2 through 5, 7, 8 or 12 shall be subject to civil penalties not to exceed \$10,000 by the State Ethics Committee or the Legislative Ethics Committee, as the case may be. Each committee may in lieu of imposing a civil penalty refer a violation to an appropriate prosecutor for prosecution and upon conviction, but only after such referral, such violation shall be punishable as a class A misdemeanor.

Section 3 of the bill adds a new Section 73-a to the Public Officers Law, entitled "Financial disclosure", which is applicable to "statewide elected officials", state officers or employees of state agencies, legislative employees, members of the Legislature, political party chairmen, and candidates for statewide elected office or for a member of the legislature. All such persons are required to file an annual statement of financial disclosure containing information as set forth in a specified form. A state officer or employee includes (among others) all departmental personnel who receive annual compensation in excess of \$30,000 or hold policy-making positions.

Page 14 sets forth the introductory information required to be in the Annual Statement of Financial Disclosure. The names of all unemancipated children are required to be set forth, and data is required regarding their financial resources.

In many respects, the form is somewhat similar to the form currently used by the Board of Financial Disclosure. However, the form (at bill page 14, lines 19 through 25) sets forth categories "A" through "F", with varying amounts, and thus seems to be less specific than the current form in regard to the manner of reporting of amounts.

Pages 14 through 25 set forth the financial disclosure form, which shall be made available to the public unless a request for deletion is granted (see p. 32, lines 23 et seq.). It is noted that on page 20, in item 12(b), the reporting individual is required to describe the parties to and the terms of any agreement providing for continuation of payments or benefits to such individual in excess of \$1,000 from a prior employer other than the state. This specifically includes "interests in or contributions to a pension fund, profit-sharing plan, or life or health insurance buy-out agreements; severance payments; etc." Among other information, the form requests information concerning: directorships, trusteeships, partnerships, offices; employment; positions held in political parties; investments in business activities;

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certain gifts; future employment contracts; nature and amount of any income in excess of \$1,000 from each source; ownership of certain types of property; trusts; securities; notes and accounts receivable; income received; and liabilities to banking institutions.

Section 73-a(4) sets forth penalty provisions for knowingly and wilfully failing to file or for knowingly and wilfully with intent to deceive making a false statement in such filing.

Section 4 amends Section 76 of the Public Officers Law regarding the receiving of bribes by members of the Legislature.

Section 5 amends Section 78 of the Public Officers Law to require acknowledgment of receipt of the provisions of Section 73-a.

Section 6 repeals Section 88(2)(d) of the Public Officers Law, relating to public inspection of legislative members' code of ethics states, since these provisions are superseded by other provisions of the bill.

Section 7 adds a new Section 94 to the Executive Law to establish a State Ethics Commission within the Department of State. The Commission is authorized to adopt rules concerning exemption from filing financial disclosure statements. (page 28, lines 34-53)

Section 8 amends Section 166 of the Executive Law, dealing with records of appearances, to add certain agencies to those currently listed as requiring the filing of records of appearance.

Section 9 repeals Section 80 of the Executive Law, relating to the existing special legislative committees on ethics. Section 9 enacts a new Section 80 dealing with the Legislative Ethics Committee, and setting forth its functions.

Section 10 amends Section 806(1) of the General Municipal Law to provide that, effective January 1, 1991, codes of ethics of political subdivisions may contain provisions which require the filing of completed annual statements of financial disclosure with the appropriate body, as defined in Section 810.

Section 11 amends Section 806(3) of the General Municipal Law to provide for the filing, on and after January 1, 1991, of information and material by the clerk of each municipality and each political subdivision with the Temporary State Commission on Local Government Ethics.

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Section 12 amends Section 808 of the General Municipal Law requiring the local board of ethics or other local legal authority to notify the Temporary State Commission on Local Government Ethics that it is the repository for completed annual statements of financial disclosure.

Section 13 adds a new Section 810 of the General Municipal Law to provide a series of "additional definitions" of terms used in connection with local codes of ethics and financial disclosure statements.

Section 14 adds a new Section 811 to the General Municipal Law regarding the authority of the local governing body to adopt a local law, ordinance, or resolution promulgating a form of annual statement of financial disclosure which is designed to assure disclosure by municipal officers and employees. Subdivision 2 provides that in the event that a political subdivision fails by January 1, 1991 to promulgate, or fails by that date to continue using, a form of annual statement of financial disclosure, then after such date the provisions of Section 812 shall apply.

Section 15 adds a new Section 812 to the General Municipal Law to require that any political subdivision or other county, city, town or village to which Section 812 is made applicable, whether by virtue of subdivision 2 of Section 811 or as a result of an election to be subject to Section 812, shall require certain specified persons to file an annual statement of financial disclosure. Pages 49 through 61 of the bill set forth the annual statement form.

Section 16 adds a new Section 813 to the General Municipal Law to provide for the establishment of the Temporary State Commission on Local Government Ethics and to set forth its powers and duties.

Section 17 adds a subdivision 4 to Section 211 of the Judiciary Law to require the Chief Judge to approve a form of annual statement of financial disclosure applicable to court personnel who earn in excess of \$30,000.

Section 18 provides that the provision of Public Officers Law Section 73(7) shall not apply to the appearance or rendition of services before an agency where the person performing the service was substantially and actively involved in the matter as of January 1, 1988 and the substitution of new counsel would impose a substantial hardship on the client.

Section 19 sets forth a "reverse severability" clause setting forth the legislative intention that the amendments to Section 73 of the Public Officers Law be considered one interdependent and connected whole.

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Section 20 amends Section 73(5) of the Public Officers Law to prohibit solicitation or receipt by a state agency officer or employee, member of the legislature or legislative employee of any gift having a value of \$75 (rather than \$25) or more, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or reward him, for any official action on his part.

Section 21 makes a similar amendment to Section 805-a(1) of the General Municipal Law regarding municipal officers and employees.

Section 22, 23 and 24 amend the Lobbying Act, requiring detailed reporting of lobbying expenses in excess of \$75 (rather than the current \$50).

Section 25 extends the effective date of the Lobbying Act until December 31, 1991 (rather than 1987) and the existence of the State Temporary Commission on Lobbying until March 31, 1992 (rather than 1988).

Section 26 sets forth the effective date provision for the bill.

Discussion

The Insurance Department notes that the amendment to Section 73(8) (on page 7, lines 34 et seq.) is an embellishment of the amendment contained in the earlier bill. The amendment would prohibit a state officer or employee from appearing or practicing within a period of two years before an agency in relation to any case, proceeding or application or other matter. The amendment also provides that no such person shall appear, practice, communicate or otherwise render services in relation to any case, proceeding, application or transaction with respect to which such person was directly concerned and in which he personally participated during the period of service or employment or which was under his active consideration.

We also note that at bill page 41, line 40 a public advisory council is created within the State Ethics Commission. The language describing the council is confused since there are words missing at the end of line 41.

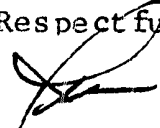
We note the special effective date provision in Bill Section 26(a) relating to legislative employees. We do not understand the need for this provision, in view of the fact that Section 2 of the bill does not take effect until January 1, 1989. Moreover, we wonder, if the special language was needed, why the language was not also inserted for state employees. We assume, however, that this and other questions

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will be resolved by advising state employees in the course of the implementation of this act.

In conclusion, we have reviewed this bill from the limited perspective of its impact on our Department's operations and responsibilities. Other than to note the foregoing points, the Department has no objection to this bill.

Respectfully,



JAMES P. CORCORAN
Superintendent of Insurance

S. 6441



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
W. AVERELL HARRIMAN STATE OFFICE BUILDING CAMPUS
ALBANY, NY 12227

RODERICK G. W. CHU
COMMISSIONER OF TAXATION AND FINANCE
PRESIDENT, STATE TAX COMMISSION

July 17, 1987

The Honorable Mario M. Cuomo
Governor of New York
State Capitol
Albany, New York 12224

Dear Governor Cuomo:

Re: Senate Bill No. 6441

The Department of Taxation and Finance recommends approval of Senate Bill No. 6441, the "Ethics in Government Act."

Unlike its vetoed predecessor, Senate Bill No. 4661, this bill establishes a comprehensive financial disclosure and conflict of interest requirement for public officials throughout New York State along with its companion legislation, the "New York state governmental accountability, audit and internal control act of 1987."

This bill contains many desirable features not found in previous versions. There is a strong revolving door provision. The judiciary is covered by the disclosure requirement. Major party officials are covered by financial disclosure and conflict of interest provisions. State officials are barred from appearing before State agencies in licensing proceedings. There is no longer a requirement that items in disclosure statements be kept confidential.

Since the main provisions do not go into effect until 1989, this Department points out certain aspects of the legislation which cause us some concern in our operations.

1. The legislation places few restrictions on appearances by State officials before either the Department of Taxation and Finance or the new Division of Tax Appeals established by L. 1986, ch. 282. State officials, except in rule-making and licensing proceedings under the revised section 73.7 of the Public Officers Law, generally are permitted to appear before this entire agency. Since the

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Division of Tax Appeals is established almost as a quasi-court with no other functions, appearances by State officials before the Division of Tax Appeals may arguably be less objectionable than appearances before units of government which combine investigative, prosecutorial and judicial functions. However, to assure integrity and public confidence in our operations we recommend that all State officials should be barred from representing clients before the Department of Taxation and Finance.

2. We would additionally note the problems caused by the fact that over fifteen hundred employees of this agency, by virtue of their salaries, would be covered by the financial disclosure requirement of new section 73-a of the Public Officers Law. Only a minute fraction of these employees could be regarded as occupying policy-making positions. There is little public policy justification in subjecting individuals in Grade 18 positions to financial disclosure requirements.

3. Finally, we would note that the nonpolicy-making employees of the Tax Department who are covered by financial disclosure requirements under section 73-a can apply for an exemption from the disclosure requirements under new section 94.9(k) of the Executive Law. Since it is unlikely that a part-time ethics commission will possess any expertise concerning the duties of Tax Department employees, this agency will be handed the burden each year of determining whether over one thousand of its employees meet the exemption requirements of section 94.9(k). A clear and concise definition of who is covered by financial disclosure requirements would resolve this process in a far better manner.

Moreover, we believe the exemption standards of section 94.9(k) of the Executive Law are uneven. Under these standards, Tax Department employees employed in auditing, investigations, enforcement, and quasi-judicial positions would be eligible for exemptions, but Department personnel engaged in rule-making activities would be ineligible for an exemption. We do not understand the apparent premise that people engaged in rule-making proceedings are somehow more susceptible to conflict of interest problems than auditors, hearing officers, and investigators.

In addition, we note that investigators in licensing agencies (such as the Department of State and the Department of Education) would not have an exemption from disclosure requirements (see section 94.9(k)(i)) while Tax Department investigators would be eligible for an exemption. Given the analogous duties of these investigators, we see little reason for the disparate treatment of these investigators.

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July 17, 1987

In conclusion, we believe that the benefits of Senate Bill No. 6441 are substantial and far outweigh the technical issues noted above. Accordingly, we urge approval of this measure.

Sincerely,



Roderick G. W. Chu
Commissioner

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MARYANN SACCOMANDO FREEDMAN
President
92 Franklin Street
Fourth Floor
Buffalo, NY 14202
716/852-1291

New York State Bar Association

July 23, 1987

Honorable Mario M. Cuomo
Governor of the State of New York
Executive Chambers
The Capitol
Albany, New York 12224

Re: Senate 6441/Assembly 8528 and
Assembly 8453

Dear Governor Cuomo:

I am writing to support enactment of Senate 6441-Assembly 8528. Those provisions of the proposed legislation which would be known as the "Ethics in Government Act" represent meaningful progress in the development of the ethics laws of New York. You and the members of the Legislature are to be commended for the effort and the achievements reflected in the bill.

I also want to indicate support for the enactment Assembly 8453, the "Governmental Accountability, Audit and Internal Control Act of 1987", which also is an important step toward adequate public disclosure and accountability.

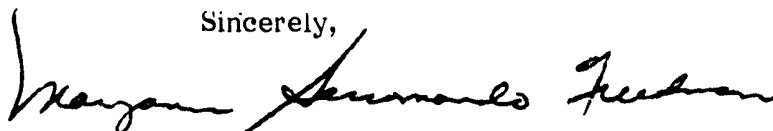
Enclosed is a memorandum which focuses on those provisions in Senate 6441-Assembly 8528 which warrant further consideration, or should be highlighted. It includes points previously made on behalf of the Executive Committee of our Association.

As a matter of special concern, I note those provisions of the bill which effectively - and in my opinion inappropriately - preempt the Lawyers' Code of Professional Responsibility and established procedures for attorney discipline. It is my belief that the Code and the disciplinary jurisdiction of the Appellate Divisions should apply equally to all attorneys.

I am confident that those who have committed themselves to the development of the "Ethics in Government Act" will not view its enactment as the conclusion of the effort to develop comprehensive ethics policies that will assure high standards of conduct by public officials in our State. While more remains to be done, this year's accomplishments are truly important.

We look forward to continued leadership and accomplishments in the improvement of our State's ethics laws, and I promise our Association's continuing interest and offer its resources to assist you and the Legislature in this important endeavor.

Sincerely,



Maryann Saccomando Freedman
President



New York State Bar Association

MEMORANDUM WITH RESPECT TO SENATE 6441-ASSEMBLY 8528

The bill would effect significant changes in the Public Officers Law, the Executive Law, the Legislative Law, the General Municipal Law and the Judiciary Law.

Its provisions deal with the regulation of business and professional activities of specified statewide elected officials, members of the Legislature, legislative employees, State officers and employees and political party chairpersons, including the receipt of compensation by the covered person or another in relation to certain matters before State agencies.

The proposed legislation would also significantly expand financial disclosure requirements for members of the Legislature and legislative employees, and would for the first time require by statute the filing of financial information by certain persons in the Executive branch--statewide elected officials and State officers and employees--and certain persons in the Judicial branch--judges, justices, officers and employees of courts of record of the Unified Court System. Also, financial disclosure requirements would be extended to political subdivisions having a population of 50,000 or more.

Ethics overseers would be established: for the Executive branch and political party chairpersons, the State Ethics Commission; for the Legislative branch, the Legislative Ethics Committee; and for the local governmental units, the Temporary State Commission on Local Government Ethics.



1991

One Elk Street, Albany, New York 12207

518-463-3200

In general, these are positive steps. There are however, provisions in the proposed legislation dealing with certain of these matters which should be noted.

* * *

Page 6 - Proposed Public Officers Law §73(6)(c). Proposed §73(6)(a) provides for the filing of financial disclosure statements by legislative employees not subject to provisions of proposed §73-a. Proposed §73(6)(c) provides that legislative employees filing false financial disclosure statements may only be assessed a civil penalty, whereas current law provides that the proscribed action would constitute a misdemeanor. Assessment of the civil penalty is to be made by the Legislative Ethics Committee, except that the Committee may refer the violation to the appropriate prosecutor, in which event, upon conviction, the proscribed action would be punishable as a Class A misdemeanor.

The effect of proposed subparagraph (c) would be to preclude any independent criminal prosecution for the knowing and willful (with intent to deceive) making of a false statement or giving of information known to be false in the required written financial statement. Further, the reference in subparagraph (c) to proposed Legislative Law §80(12) [on page 37] concerning the manner of assessing the civil penalty has the effect of exempting false filings from any other penalty, civil or criminal, notwithstanding any other provision of law to the contrary.

* * *

Page 6 - Proposed Public Officers Law §73(7). While this proposed subdivision would not limit the ability of covered persons to appear before State agencies in a representative capacity (as did the proposed §73(7) in the predecessor bill [Senate 4661-Assembly 7239]), it does limit the ability of covered persons to receive compensation for "the appearance or rendition of services by himself or another" with respect to certain matters before State agencies. However, §18 of the bill [on page 69] provides an exemption if the person subject to the restriction shall have been substantially and actively involved in the matter as of January 1, 1988, and the substitution of a new counsel would impose a substantial hardship on the client.

Since the exemption is not keyed to the date of the introduction of the bill or of the enactment of the bill into law, covered persons are permitted hereafter to become involved in matters requiring their continued appearance or the continued rendition of services for compensation before a State agency under circumstances inconsistent with the spirit of §73(7), even after the effective date (January 1, 1989) of the amendment.

Proposed §73(7)(g), which was not in the predecessor bill, allows covered persons in certain circumstances to participate in "internal research or discussion" of matters before a State agency which otherwise are prohibited matters.

* * *

Page 8 - Proposed Public Officers Law §73(10). Covered persons' law firms would not be covered by the prohibitions against transacting business with a State agency otherwise covered by proposed §73, notwithstanding any proscription in the Judiciary Law, the Education Law, or any other law or disciplinary rule with respect to the covered person, provided the covered person does not share in net revenues derived from the matter. Similarly, the covered persons' firm would not be restricted from appearing before the Court of Claims, notwithstanding any statutory or disciplinary proscriptions.

The effect of this provision is to create a protected class of attorneys, and to exclude from the jurisdiction of the Appellate Divisions the monitoring and disciplining of attorneys whose actions violate the disciplinary rules now or hereafter contained in the Code of Professional Responsibility.

* * *

Page 9 - Proposed Public Officers §73(11). This subdivision creates an exemption from the provisions of the Judiciary Law, the Education Law or any other law or disciplinary rule for covered persons who, following termination of services, comply with proposed §73(8), and provides that various actions of covered persons' firms or affiliates in accordance with proposed §73(10) are "authorized" and "shall not constitute professional misconduct or grounds for disciplinary action of any kind solely by reason of the professional relationship" between the covered person and the firm or individual trans-

acting business with the State agency or Court of Claims or promoting or opposing legislation. Section 26(a) of the bill [on page 71] provides that proposed §73(8) shall apply, with respect to legislative employees, only to those terminating their service on or after January 1, 1989.

Accordingly, these two provisions further expand the protected class of attorneys--those exempted from statutes and disciplinary rules and from professional discipline under the jurisdiction of the Appellate Divisions.

* * *

Page 10 - Proposed Public Officers Law §73(14). This subdivision would amend existing law by providing that certain proscribed actions of covered persons would no longer be misdemeanors, but would be subject to a civil penalty to be assessed by the State Ethics Commission or the Legislative Ethics Committee, unless the responsible review entity were to refer the violation to the appropriate prosecutor.

* * *

Page 10 - Proposed Public Officers Law §73-a(1)(c). The definition of "state officer or employee" includes persons holding specified positions who receive annual compensation in excess of \$30,000 or who hold policy-making positions as annually determined by the appointing authority. Proposed Executive Law §94(9)(k) [on page 28] permits the State Ethics Commission to exempt from the financial disclosure statement filing requirements individuals or classes of individuals who

do not hold policy-making positions, even if their compensation is in excess of \$30,000.

* * *

Page 14 - Proposed Annual Statement of Financial Disclosure.

Item 8 of Part A of the proposed Annual State of Financial Disclosure set forth in the predecessor bill [on page 16] does not appear in the proposed disclosure form. Former Item 8 required the reporting of any interest or relationship which the reporting individual determines in his or her discretion might reasonably be expected to be particularly affected by State agency action (in the case of Executive branch covered persons) or by legislative action (in the case of Legislative branch covered persons).

* * *

Page 25 - Proposed Public Officers Law §73-a(4). The penalty to be assessed against reporting individuals who knowingly and willfully fail to file financial disclosure statements or knowingly and willfully, with intent to deceive, make a false statement or give information known to be false is to be a civil penalty assessed by the State Ethics Commission or the Legislative Ethics Committee, as the case may be, unless the responsible review entity determines to refer the violation to the appropriate prosecutor.

The subdivision removes those covered persons who are attorneys from the scope of statutory provisions and disciplinary rules and the jurisdiction of the Appellate Divisions: it provides that, notwithstanding any other provision of law to the

contrary, no other penalty, civil or criminal, may be imposed for failure to file financial disclosure statements or for a false filing.

* * *

Page 25 - Proposed Public Officers Law §76. The proposed amendment to §76 would eliminate from the present scope of proscribed bribes the actions of members of the Legislature who give or promise to give any official vote in consideration that another member of the Legislature shall give any such vote either on the same or another question.

* * *

Page 30 - Proposed Public Officers Law §94(13). Covered persons who knowingly and intentionally violate certain provisions of proposed §73 and reporting individuals who knowingly and willfully fail to file financial disclosure statements or who knowingly and willingly (with intent to deceive) give a false statement shall only be assessed a civil penalty, unless the State Ethics Commission determines to refer the violation to the appropriate prosecutor.

The ability of the State Ethics Commission to refer violations to the appropriate prosecutor is limited to the extent that the Commission may not refer violations of proposed §73(12) [on page 9], which restricts oral communications by covered persons with a State agency as to the merits of a cause before the agency if the covered persons' firm or affiliate is appearing or rendering services in connection therewith.

* * *

Page 30 - Proposed Executive Law §94(15). The advisory opinions of the State Ethics Commission may be introduced and be a defense in any criminal or civil action. Although requests for such opinions are to remain confidential, the proposed subdivision permits, but does not require, the Commission to publish all such opinions.

* * *

Page 31 - Proposed Executive Law §94(17)(b). Notwithstanding the Open Meetings Law, meetings of the State Ethics Commission (and, pursuant to subsequent provisions of the bill, of the Legislative Ethics Committee and the Temporary State Commission on Local Government Ethics) would not be open to the public unless expressly provided otherwise by the responsible review entity.

* * *

Page 31 - Proposed Executive Law §94(18). Text has been omitted between lines 41 and 42. (See, for example, lines 53 through 56 on page 38, and lines 32 through 35 on page 66.)

* * *

Page 33 - Proposed Executive Law §166. The bill includes the proposed amendments to Executive Law §166 contained in the predecessor bill [on page 31] which would broaden the requirements with respect to the maintenance of records of appearances before State agencies. Additional agencies would be required to keep records of appearances.

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However, the proposed bill does not include the previous proposal that certain persons in the Executive and Legislative branches, persons affiliated with them, and others, would be subject to notice of appearance filing requirements.

* * *

Page 37 - Proposed Legislative Law §80(12). As to the penalties for the violation of financial disclosure provisions and the creation of a protected class of persons, see comments above with respect to proposed Public Officers Law §73-a(4) and proposed Executive Law §94(13).

* * *

Page 38 - Proposed Legislative Law §80(14). As to the impact of advisory opinions issued by the Legislative Ethics Committee, see comments above with respect to the comparable authority granted to the State Ethics Commission pursuant to proposed Executive Law §94(15).

* * *

Pages 61 and 65 - Proposed General Municipal Law §812(6) and §813(13). As to the penalties for the violation of financial disclosure provisions and the creation of a special class of persons, see comments above with respect to proposed Public Officers Law §73-a(4) and proposed Executive Law §94(13).

* * *

Page 66 - Proposed General Municipal Law §813(15). As to the impact of advisory opinions issued by the Temporary State

Commission on Local Government Ethics, see comments above with respect to the comparable authority granted to the State Ethics Commission pursuant to proposed Executive Law §94(15).

* * *

Page 69 - Bill §18. See comments above with respect to Proposed Public Officers Law §73(7).

* * *

Page 69 - Bill §19. This section of the bill provides that "if any clause, sentence, paragraph or part" of proposed Public Officers Law §73(10) affected by amendments to subdivisions (7), (8), (11), (12) and (13) of §73 made by the bill are adjudged to be invalid with respect to conduct prohibited by such subdivisions, the judgment shall invalidate the remainder of such amendments to those subdivisions, and render them null and void, in which event those subdivisions of present §73 would be revived. Thus, if the protected class of attorneys created by proposed §73(10) were stripped of the protections afforded by the bill, the financial disclosure requirements and restrictions on activities of covered persons would be abrogated.

July 23, 1987

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new york state
common cause

248 State Street, Albany, New York 12210 (518) 465-4888

S-6441

Robert C. Newman
Chairperson
Paul H. Elisha
Executive Director

Downstate Office
5 Beekman Street, Suite 407
New York, N.Y. 10038
(212) 349-1755
(212) 349-8045

Governor Mario M. Cuomo
Executive Chamber
State Capitol
Albany, New York 12224

July 9, 1987

Dear Governor Cuomo:

I am writing to express this organization's pleasure with the passage of an acceptable Ethics Bill by the State Legislature and to urge you to sign this significant legislation.

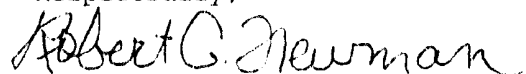
The final version of this bill does not go as far as we had hoped, in addressing all those areas in which a critical need for reform was indicated. In realistic terms, however, this must stand as a major accomplishment and you deserve much praise for your persistence in seeking the strongest measure obtainable.

We also believe that previously enacted legislation which now provides funding for the continued existence of the Moreland Act Commission offers an exceptional opportunity to reexamine points at issue which were among those outlined in your initial charge to the Commission and which are still awaiting reform. Specifically, we urge you to recommend the following for consideration as priorities by the Feerick commission:

- 1 - To investigate the effects and propriety of the holding of simultaneous political and governmental offices or positions by state, county and municipal political party officials.
- 2 - To determine the effect of special interest campaign contributions on the electoral process and to propose practical methods for eliminating any deleterious effects they may have, so that the process can be made more equitable, accountable and influence-free.
- 3 - To establish effective standards and methods for controlling the expenditure of time and effort by legislative employees, both on required governmental activity and on directed political activity.

As always, we stand ready to offer whatever organizational resources we may possess, in support of these and other necessary endeavors, to help achieve a more ethical and responsive system of government for New York State.

Respectfully,


Robert C. Newman

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S. 6441

THE
ASSOCIATION OF TOWNS
 OF THE
 STATE OF NEW YORK

President
 James J. Grifflery, Town Justice
 Town of Cambridge

Vice Presidents
 Thomas F. Doty, Supervisor
 Town of Owego
 Shirley Rowak, Assessor
 Town of Guilderland
 Roger Azud, Building Inspector
 Town of Hempstead
 John J. Kelly, Supervisor
 Town of Schroon
 William Von Dohlen, Town Attorney
 Town of Greece

Executive Secretary-Treasurer
 G. Jeffrey Haber

Director
 Zelda M. Uthe

Counsel
 A. Kevin Crawford

146 State Street
 Albany, N.Y. 12207

Telephone
 Area Code 518 - 465-7933

Executive Committee Members
 Henrietta Acampora, Supervisor
 Town of Brookhaven
 Frederick G. Field, Jr., Supervisor
 Town of Colonie
 James M. Hennessy, Highway Superintendent
 Town of Wellsville
 John J. Kazanjian, Supervisor
 Town of New Hartford
 Ronald H. Moline, Supervisor
 Town of Tonawanda
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 Town of Wright
 Ann Strommer, Receiver
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 Susan Tolchin, Town Clerk
 Town of Greenburgh

Past President
 Caryl Clark, Town Clerk Receiver
 Town of Lake George

Honorary President
 William K. Sanford

August 6, 1987

Honorable Mario M. Cuomo
 Governor, State of New York
 Executive Chamber
 Capitol
 Albany, New York 12224

Recommendation of no objection
 Senate 6441
 By Mr. Anderson

Sir:

This bill would, in addition to other extensive provisions applicable to State legislators and State government officials, amend the General Municipal Law (GML) in regard to a) requiring financial disclosure statements for elected officials and certain officers and employees of some counties, cities, towns and villages, and b) with respect to creating a Temporary State Commission on Local Government Ethics.

Specifically, this bill would add a new section 810 to Article 18 of the GML to define the following key terms: "political subdivision" as a county, city, town or village having a population of 50,000 or more; "local elected official" as meaning an elected official of the political subdivision, except judges or justices of the unified court system; "local officer or employee" as meaning the head of any agency, department, division, council, board, commission, or bureau of a political subdivision and their deputies and assistants, and the officers and employees of those same agencies who hold policymaking positions; "spouse" as meaning the husband or wife of the reporting individual unless living separate and apart from the reporting individual with the intention of terminating the marriage or providing for

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permanent separation, or unless separated pursuant to judicial order, decree or judgment, or a legally binding separation agreement; "relative" as meaning an individual's spouse, child, step-child, step-parent or any person who is a direct descendant of the grandparents of the reporting individual or of the reporting individual's spouse; "unemancipated child" as meaning any son, daughter, step son or step-daughter who is under age 18, unmarried and living in the household of the reporting individual; and "appropriate body" as meaning the local board of ethics, if any, or the temporary state commission on local government ethics if there is no local board of ethics designated as the repository of financial statements.

The bill amends section 806 of the GML to provide that on or after January 1, 1991, codes of ethics as adopted by local governments, including towns, "may contain provisions which require the filing of completed annual statements of financial disclosure with the appropriate body...."

This bill would add a new section 811 to Article 18 of the GML to provide that local governments may adopt their own disclosure rules by January 1, 1991. Section 811 does not set a standard as to how strict those local disclosure rules shall be. The local rules adopted by the governing body can determine: i) who must file disclosure forms; ii) what portions of the forms would be available for public inspection; and iii) what penalties would be provided for violations. Local determination could also provide for what information must be disclosed. The form developed by the local government must simply contain "such financial information as is determined necessary by the local governing body."

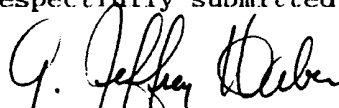
Subdivision two of new section 811 provides that if a local town government (as defined in the legislation) does not adopt its own rules of disclosure, then on or after January 1, 1991, the rules and forms for disclosure as provided for in new section 812 of the GML will be applicable to said local governments. The bill also provides, in amendments to subdivision 3 of section 806 of the GML, that the clerk of each municipality shall file with the temporary state commission on local government ethics: 1) a copy of any code of ethics in effect in the local government; 2), a statement that the municipality has established a board of ethics; 3) a copy of the annual statement of financial disclosure form in effect in the local government; and 4) that it is a municipality which is not subject to the provisions of this Act because it has less than 50,000 inhabitants (and does not elect to subject itself to the provisions of this Act pursuant to GML section 812(2)).

The Association of Towns supports the concept of high ethical standards for public governmental officials. Our concern with this ethics in government legislation is due to the events, in part, which led to its development. In other words, we are concerned that town officials not be painted with the same broad brush which has recently been applied to the conduct and practices of officials at other levels of government.

10109

Since this legislation will permit a town government to prepare and structure its own rules of disclosure -- rules which it feels are appropriate to its own circumstance and situation -- the Association of Towns offers no objection to the approval of this bill.

Respectfully submitted,



G. JEFFREY HABER
Executive Secretary

GJH:dmm

C-813

S. 6442



**THE ORGANIZATION OF NYS
MANAGEMENT CONFIDENTIAL EMPLOYEES**

1092 MADISON AVENUE, ALBANY, NEW YORK 12208 • TELEPHONE (518) 482-7521

August 6, 1987

The Honorable Evan A. Davis
Executive Chamber
State Capitol
Albany, NY 12224

Re: S. 6442
A. 8534

Dear Mr. Davis:

The Organization of New York State Management Confidential Employees, Inc. has reviewed the provisions of S. 6442/A. 8534 and supports the concept of an internal audit and control function in State agencies, authorities, courts and the legislature.

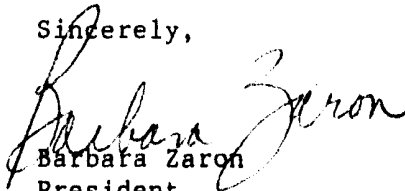
Article 45, S 952 of the bill provides that the position of internal auditor shall be in the exempt class. We are opposed to this provision because it is inconsistent with a career civil service based on merit and fitness, and will work to the detriment of an effective program.

A number of State agencies have in place internal audit operations staffed in large part by competitive class employees. These jobs are performed in accordance with professional auditing standards by employees whose loyalty is to the public service rather than to one individual.

For an internal audit and control program to be effective, there must be a high degree of trust, credibility and confidence in the auditing staff. Such staff must be independent of any political or other pressure that might be brought to produce the desired, rather than actual result.

Experience has shown throughout the years and been reinforced most recently that the best way to ensure honesty and credibility is to appoint people whose merit and fitness have been determined through the competitive process.

Sincerely,


Barbara Zaron
President

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S-6441



NEW YORK PUBLIC INTEREST RESEARCH GROUP, INC.

184 Washington Avenue • Albany, N.Y. 12210 • (518) 436-0876

Offices in: Albany Binghamton, Buffalo, Cortland, Fredonia, Long Island, New Paltz, New York City, Syracuse

July 3, 1987

Evan Davis
Counsel to the Governor
Executive Chambers
State Capitol
Albany, New York 12224

RE: ETHICS IN GOVERNMENT ACT (S. 6441, A. 8528)
MEMO IN SUPPORT

Dear Mr. Davis,

The New York Public Interest Research Group, Inc. (NYPIRG) supports the Ethics In Government Act. We write to underscore the major reforms brought about by the legislation and to raise concerns which should be addressed by your office, the legislative leaders, the Integrity in Government Commission and the Blue Ribbon Commission on Legislative Practices before the law becomes effective in 1989.

This new "Ethics in Government Act" legislation establishes an extensive financial disclosure form for many thousands of government officials, legislators, and employees; a strengthened code of ethics; and two commissions to enforce these provisions. Among the provisions in the "Ethics in Government Act," NYPIRG would single out the following as the most vital reforms:

Conflict of Interest

*Barring state officials, state and legislative employees and legislators from practicing before state agencies in a wide range of matters. (The bill makes important improvements from S. 4661, the Ethics in Government Act which was rejected by the Governor on April 15th. These include: (1) extending the ban on appearing to include "rendering services"; (2) eliminating the exception for appearances in "quasi-judicial" proceedings; and (3) adding the State Attorney-General's office and the Department of Housing and Community Renewal to the ban.)

*Prohibiting political party chairpeople in counties over 300,000 or who earn more than \$30,000 from doing business with state agencies or appearing before these agencies in connection with a wide range of proceedings. Including "county leaders" in the definition of "party chairman" and applying financial disclosure to political party chairpeople.

*Prohibiting New York City political party chairpeople from doing business with or appearing before New York City agencies.

*Including strong new "post-employment" bans on state officials and employees, including a two-year ban on their appearing or rendering services before their former agencies and a permanent ban in cases that were under their active consideration.

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The New York Public Interest Research Group, Inc. (NYPIRG) is a not-for-profit, nonpartisan research and advocacy organization established, directed and supported by New York State college and university students. NYPIRG's staff of lawyers, researchers, scientists and organizers works with students and other citizens, developing citizenship skills and shaping public policy. Consumer protection, energy, fiscal responsibility, political reform and social justice are NYPIRG's principal areas of concern.

Financial Disclosure/Enforcement Commissions

*Establishing two ethics commissions with powers to investigate and punish violations of the conflicts of interest and financial disclosure laws. Providing the State Ethics and Legislative Ethics Commissions with executive directors and authority to receive complaints of violations of the law.

*Creating "advisory councils" to the commissions which have public members and which review requests for deleting or exempting information from financial disclosure forms. (The law permits "reporting persons" to request that information be deleted or exempted from the forms. The advisory councils or commissions must find by majority vote that the information not have a "material bearing on the discharge of the reporting person's official duties." These determinations are subject to final review by the commissions, composed of eight legislators in the case of the Legislative Ethics Commission and five appointees of the Governor in the case of the State Ethics Commission.)

*Requiring that such public members not be state or legislative employees or officials, lobbyists, or political party officers. (The "advisory councils" will have a central role in determining how much information is eventually released to the public and media under this bill. These membership requirements are essential if the public members are to have the confidence of the public. It will await the actual appointments of these members and their performance to know how much information will eventually be publicly disclosed under the bill.)

*Adding financial disclosure requirements for lawyers, real estate brokers and agents, or State Education Department licensed professionals to provide "a general description of ... principle subject matters" of their or their firm's practice.

NYPIRG recommends that the following aspects of the legislation continued to be reviewed by your office, the legislative leaders, the Blue Ribbon Commission on Legislative Practices -- which was appointed by legislative leaders and is comprised of Carol Bellamy, N.Y.U. Professor Robert McKay and former Governor Malcolm Wilson -- and the Moreland Act Commission on Government Integrity, appointed by Governor Cuomo and headed by Fordham Law School Dean John Feerick:

Conflict of Interest

*The ban on appearances does not prohibit appearances by state officials before New York City agencies. Nor does it bar City officials from appearing before State agencies. (These were recommendations of the Sovern Commission.)

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*The "Ethics in Government Act" provides for the state ethics and legislative ethics commissions to impose a civil penalty or refer for prosecution violations for most of the conflict of interest rules under section 73 of the Public Officers law. (page 10, lines 12-27). S. 4661 made these conflicts of interest rules -- which were not as strong generally as in the Ethics in Government Act now before the Governor -- a misdemeanor. As a result of this change, prosecutors will need a "green light" from the ethics commissions before they can bring a criminal case -- where there is no other provision in law for criminal sanctions.

S. 4661, the vetoed legislation, did not place this obstacle in the way of prosecutors. We have been informed that prosecutors have in the past prosecute cases under section 73 conflict of interest laws. As such, this provision is a significant and unfortunate limitation on the authority of independent prosecutors to enforce these laws.

*The Act does not give standards or guidance to an ethics commission on which cases to refer prosecutions for violations of financial disclosure or conflicts rules. Such rules are needed to protect officials from selective enforcement.

*The Act has an inadequate "post-employment ban" for legislative employees. Such employees would be barred from receiving compensation for representing clients on matters on which they personally participated for the remainder of a term in which they left legislative employment (page 8, lines 9-23). If an employee leaves on the last day of a term, they can go to work for private clients on matters in which they personally participated right at the start of a new term -- in a matter of days. The rules in this Act for state officials and employees should clearly apply to legislative employees.

Financial Disclosure/Enforcement Commission

*The Act properly guarantees the tenure -- and thus independence -- of public members on the "public advisory council" to the state ethics commission (page 32, lines 13-19). The governor can only remove such public members for enumerated causes, such as "gross misconduct." There appear to be no similar standards on how and whether public members on the "legislative advisory council" to the legislative ethics commission can be removed.

*It should be made clear that the Act permits those filing disclosure forms to make information on the "category of values or amounts" of income, real estate holdings, etc. public, if they wish. The Act states that such information "shall remain confidential (page 31, lines 22-29; page 38, lines 24-31)." Persons filling out the form should have the right to decide to make all such information public.

108

It is NYPIRG's general view that the public should have access to information on the general range of value of assets of a reporting official. The Act does require officials to indicated "categories" of value, such as "under \$5,000" or "\$20,000 to \$60,000." And such information will be reviewed by the commissions. But public review is equally important. Public disclosure of categories is a highly traditional way to balance the public's need to know with an official's right to privacy. While NYPIRG prefers such information to be public in general, at a minimum "reporting persons" should not be prohibited from requesting that categories of value be disclosed on the forms they file with the ethics commissions.

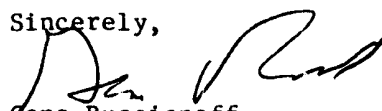
*Does the standard for granting a request for deletions or exemptions -- that the information has no material bearing on the reporting persons official duties -- provide sufficient guidance to the advisory councils and ethics commissions? The formulation for disclosure for Part A of the financial disclosure form in S. 4661. That standard permitted a commission to disclose information if it was not "highly personal in nature," did "not in any way relate to the duties of the position" of the reporting person, and did not "create actual or potential conflict of interest." We, of course, objected to the approach in Part B of that form. There, information was kept from disclosure unless an outside party made a request for the information and a commission found that "the interest disclosed might reasonably be expected to be particularly affected by state agency action."

*Public members on the advisory councils should also have to make financial disclosure.

As you well know, this Act is long and detailed. We will continue to review the legislation and communicate with your office about any additional concerns or questions we have on the Act.

NYPIRG greatly appreciates the hard work of the Governor, the legislative leaders, and respective staffs on this important legislation. We look forward to working with all of you on the continuing effort to develop the best set of ethics rules and enforcement agencies in the country.

Sincerely,



Gene Russianoff
Staff Attorney

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RB

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July 15, 1987

Hon. Mario M. Cuomo
Governor of the State of New York
The State Capital
Executive Chamber
Albany, New York 12224

Re: S. 6441

Dear Governor Cuomo:

I am writing on behalf of the District Attorneys Association to express our views regarding the Ethics in Government Act, S. 6441, which is currently before you. The bill improves upon its predecessor in many respects. Our Association recognizes that those improvements are attributable to your considerable efforts. Nonetheless, we remain concerned that the criminal enforcement provisions of the bill are unwise, indeed unconstitutional. Our specific concerns are these:

1. The bill would make it a misdemeanor to "knowingly and wilfully" violate certain of its substantive ethics provisions. The power of prosecuting attorneys to enforce that criminal sanction, however, is sharply constricted. The bill provides that an Ethics Committee "may ... refer a violation to the

appropriate prosecutor and upon conviction, but only after such referral, such violation shall be punishable as a class A misdemeanor." This referral provision, which conditions criminal liability on the discretionary action of an Ethics Committee, is wholly unprecedented.

Moreover, in our view, the referral provision runs afoul of Article I, Section 6 of the New York State Constitution, which states that the grand jury's power to inquire into wilful misconduct of public officers may "never be suspended or impaired." Those who crafted the referral mechanism were, no doubt, well aware of this constitutional provision. Nothing else could explain the peculiar structure of the referral mechanism -- one which seems to permit an investigation without a referral but which precludes a conviction without referral. The State Constitution, however, cannot be so easily circumvented. We believe that any court that considers the matter will conclude that the grand jury is "impaired" if a charge it wishes to bring cannot be prosecuted to a conviction without the prior approval of an Ethics Committee. Accordingly, the referral mechanism seems both unsound and unconstitutional.

2. In addition, the bill seems designed to make referrals unlikely. It contemplates a Legislative Ethics Committee comprised of eight members, four from each political party, and it provides no tie-breaking mechanism for cases in which four members favor referral and four oppose it. The absence of a tie-breaking provision means that partisan politics can frustrate effective law enforcement. Indeed, the absence of a tie-breaking provision is particularly striking since such a provision exists elsewhere in the bill. For example, if the committee is divided over the propriety of deleting information from a financial disclosure statement, the bill provides that the deciding vote "shall be cast by an advisory member to the committee ... designated by joint nomination of the temporary president of the senate and speaker of the assembly." The failure to provide a similar provision in cases in which a referral vote is deadlocked means that a stalemate is likely to occur in many cases.

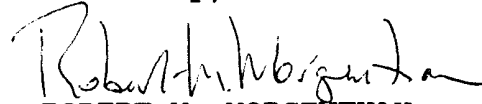
3. Beyond the necessity for referral, there are other ways in which the bill goes far toward trivializing the criminal sanction. For example, the bill provides that whenever a reporting person has filed a disclosure statement that reveals a possible violation of the law, he or she has 15 days to "rectif[y]" the violation. All proceedings relating thereto are to be kept confidential. It is important to appreciate just what this means: If the Committee learns that a reporting person has filed a false disclosure statement "with intent to deceive," that person nonetheless has an opportunity to correct his statement without fear of public scrutiny or sanction. No other law permits a violator such an opportunity to undo his crime with full confidentiality. The result is that serious misconduct will go unpunished.

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4. The bill also seems to weaken existing criminal enforcement for certain governmental misconduct. Consider, the case of People v. Zambutto, 73 A.D. 2d 828 (4th Dept. 1979). There, the defendant, a senior employee of the State Board of Social Welfare, received repairs and improvements on his home, without charge, from a private contractor who did work for the Board. The defendant was convicted under the Public Officers Law for accepting gifts under "circumstances in which it could reasonably be inferred that the gift was intended to influence him ... in the performance of his official duties." Under the pending bill, such a prosecution would be impossible without a referral from an Ethics Committee. As the District Attorneys Association wrote in our letter of April 15, 1987, a bill that weakens existing sanctions "send[s] the wrong message at a time of crisis in public confidence in government." This bill may be sending that wrong message.

We believe that these concerns merit your attention and thank you for the opportunity to express them.

Sincerely,



ROBERT M. MORGENTHAU
District Attorney
New York County

COPIES

PD

S. 6441



New York State
Urban Development
Corporation

1515 Broadway
New York, NY 10036-8960
212/930-9000

TEN-DAY BILL MEMORANDUM

August 5, 1987

TO: EVAN A. DAVIS
COUNSEL TO THE GOVERNOR

FROM: Joanne M. Gentile *JMG*

SUBJECT: S. 6441, A. 8525

RECOMMENDATION: Approval

The New York State Urban Development Corporation ("JDC") strongly approves the above-referenced legislation that has passed both houses of the Legislature.

Government cannot function without the support and respect of its citizens. Unfortunately, in the current climate, government is regarded with suspicion and public officials are too often viewed with distrust and cynicism. This bill is a response to this crisis in confidence.

The bill creates a prohibition against former legislative employees receiving compensation for performing work relating to matters in which they personally participated during the period of government-related employment. This provision is a constructive effort to eliminate the recent upsurge in incidents in which it is perceived that former public servants are trading influence for profit.

The bill also mandates detailed financial disclosure for public servants. Such disclosure seeks to identify instances of potential conflicts of interest between a public officials professional responsibility and business interests. The disclosure will be monitored by a newly created State Ethics Commission. The Commission shall consist of five members appointed by the Governor, with one member nominated by the Comptroller and one nominated by the Attorney General. Within the State Ethics Commission, there shall exist a Public Advisory Council that shall rule on requests for deletions and exemptions from the disclosure requirements.

EVAN A. DAVIS
August 5, 1987
Page 2

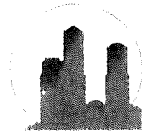
Most important, the bill establishes a Legislative Ethics Committee to review financial disclosure statements, issue advisory opinions, investigate possible violations and enforce the provisions of the bill. This committee shall consist of eight members of the Legislature and shall only be responsible for members of the Legislature, Legislative employees as defined in section seventy-three of the public officers law and candidates for the Legislature.

Finally, the bill amends the general municipal law to enforce the state disclosure requirements on a local level and amends the judiciary law to require disclosure for judges, justices, officers and employees of the courts.

To the extent that this bill addresses the recent conflict of interest problems that have plagued public service, UDC supports its enactment.

JMG/adi





BATTERY PARK CITY AUTHORITY

July 30, 1987

Honorable Evan A. Davis
Counsel to the Governor
State Capitol
Albany, New York 12224

Re: S.6441; A.8528 -- The Ethics
in Government Act

Dear Mr. Davis:

The above-captioned legislation was referred to this Authority for comment.

Analysis:

The legislation enacts the Ethics in Government Act. With respect to public authorities, the bill makes various changes in Section 73 of the Public Officers Law regarding the business and professional activities of authority officials and employees. In particular, the bill:

- expands, in Section 73(7), into a detailed list the outside activities for which an officer or employee is prohibited from receiving "compensation". Such list includes the purchase or sale of realty, goods or services from or to a State agency, as well as matters relating to grants and loans, adopting rules and regulations, rate making, licensing and franchising actions of State agencies;
- amplifies, in Section 73(1)(a), the definition of "compensation" in terms of generally accepted accounting principles -- compensation being the basis for many of the bill's prohibitions on outside activities;
- prohibits a current official or employee, who is a member of an organization which is rendering services with respect to any of the Section 73(7) list of prohibited outside activities, from orally

Honorable Evan A. Davis
July 30, 1987
Page 2

communicating (with or without compensation) with the agency involved as to the merits of the matter; and

- in post-employment situations, prohibits without any time limit, any activity by, or compensation of, an official or employee related to any matter with which such person was directly concerned during his or her period of State employment -- expanding the 2 year limitation on such activity in the existing law.

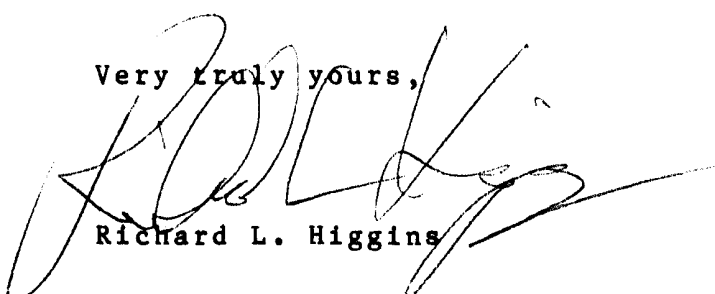
The bill also requires the members and personnel of a public authority in policy-making positions and/or earning at least \$30,000 per year to file a detailed disclosure statement in accordance with procedures established by the legislation and the State Ethics Commission. Provision is made for the Authority to make a determination of which positions involve policy-making functions. Additional provision is made for the Authority to establish further or supplemental disclosure requirements, beyond the legislation's requirements, and for the Authority to provide for additional employment disciplinary measures for failure to disclose.

This legislation establishes standards of conduct as well as financial disclosure procedures applicable to those in State and local public service. Along with the legislation related to systems of internal controls for state agencies and covered authorities (S.6442; A.8534), this legislation should significantly improve the standards for the conduct of public business and should help increase public confidence in New York State and local government.

Recommendation:

The Authority recommends approval of the bill.

Very truly yours,



Richard L. Higgins



new york state
common cause

248 State Street, Albany, New York 12210 (518) 465-4888

S-6441

Robert C. Newman
Chairperson
Paul H. Elisha
Executive Director

Downstate Office
5 Beekman Street, Suite 407
New York, N.Y. 10038
(212) 349-1755
(212) 349-8045

Governor Mario M. Cuomo
Executive Chamber
State Capitol
Albany, New York 12224

July 9, 1987

Dear Governor Cuomo:

I am writing to express this organization's pleasure with the passage of an acceptable Ethics Bill by the State Legislature and to urge you to sign this significant legislation.

The final version of this bill does not go as far as we had hoped, in addressing all those areas in which a critical need for reform was indicated. In realistic terms, however, this must stand as a major accomplishment and you deserve much praise for your persistence in seeking the strongest measure obtainable.

We also believe that previously enacted legislation which now provides funding for the continued existence of the Moreland Act Commission offers an exceptional opportunity to reexamine points at issue which were among those outlined in your initial charge to the Commission and which are still awaiting reform. Specifically, we urge you to recommend the following for consideration as priorities by the Feerick commission:

- 1 - To investigate the effects and propriety of the holding of simultaneous political and governmental offices or positions by state, county and municipal political party officials.
- 2 - To determine the effect of special interest campaign contributions on the electoral process and to propose practical methods for eliminating any deleterious effects they may have, so that the process can be made more equitable, accountable and influence-free.
- 3 - To establish effective standards and methods for controlling the expenditure of time and effort by legislative employees, both on required governmental activity and on directed political activity.

As always, we stand ready to offer whatever organizational resources we may possess, in support of these and other necessary endeavors, to help achieve a more ethical and responsive system of government for New York State.

Respectfully,

Robert C. Newman
Robert C. Newman

S.6441



New York State Association of COUNTIES

150 STATE STREET ALBANY, NEW YORK 12207 (518) 465-1473

PRESIDENT
Sandra Galef
Westchester

July 17, 1987

EXECUTIVE DIRECTOR
AND ASSOCIATE COUNSEL
Edwin L. Crawford

The Honorable Evan A. Davis
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

VICE PRESIDENTS
Henry W. Dwyer
Nassau

Lucille P. Pattison
Dutchess

RE: S. 6441/A.8528

James J. Snyder
Cattaraugus

Dear Mr. Davis:

COUNSEL
Herman S. Geist

This letter is in response to your recent inquiry concerning the above referenced legislation, which recently passed both houses of the Legislature and is now before the Governor for Executive Action.

DIRECTORS
Edmund Armstrong
Greene

The New York State Association of Counties has no position to this legislation.

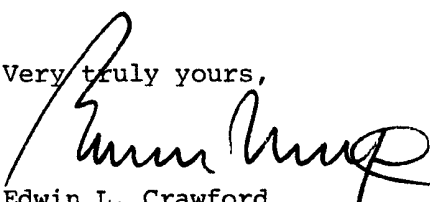
James Brenner
New York City

Please feel free to contact our office if we can be of further assistance.

Margaret B. Buhrmaster
Schenectady

Kindest personal regards.

Howard DeMartini
Suffolk

Very truly yours,

Edwin L. Crawford
Executive Director

Edward J. Gusty
Onondaga

Louis Heimbach
Orange

John J. Kelly
Essex

Sharon Secor
Seneca

ELC:PAB:ms

Richard M. Shanley
Niagara

Beverly Westacott
Broome

TREASURER
Edward T. Stack
Albany

DIRECTOR-AT-LARGE
John Champion

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C-813

SONYMA STATE OF NEW YORK MORTGAGE AGENCY

ROBERT J. MILANO, Chairman
Board of Directors

CHRISTINE A. FLYNN, President
Chief Executive Officer

August 5, 1987

The Honorable Evan A. Davis
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

Re: S. 6441

Dear Mr. Davis:

The State of New York Mortgage Agency has no objection to this bill, entitled the "Ethics in Government Act", which is intended to limit opportunities for abuse of official positions and eliminate any appearance of undue influence. It requires certain individuals, including SONYMA directors, officers and some employees, to file comprehensive financial disclosure statements; prohibits certain activities of current and former government officials; and establishes panels to monitor, investigate and impose sanctions for violations of the Act.

Sincerely,

Jerylle M. Kemp
Vice President/General Counsel

JMK:ra

260 Madison Avenue New York, New York 10016 (212) 340-4200

EQUAL OPPORTUNITY EMPLOYER

EVAN A. DAVIS
August 5, 1987
Page 2

Most important, the bill establishes a Legislative Ethics Committee to review financial disclosure statements, issue advisory opinions, investigate possible violations and enforce the provisions of the bill. This committee shall consist of eight members of the Legislature and shall only be responsible for members of the Legislature, Legislative employees as defined in section seventy-three of the public officers law and candidates for the Legislature.

Finally, the bill amends the general municipal law to enforce the state disclosure requirements on a local level and amends the judiciary law to require disclosure for judges, justices, officers and employees of the courts.

To the extent that this bill addresses the recent conflict of interest problems that have plagued public service, UDC supports its enactment.

JMG/adi

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S-6441

DISTRICT ATTORNEY OF KINGS COUNTY
MUNICIPAL BUILDING
BROOKLYN, N.Y. 11201
(718) 802-2000



ELIZABETH HOLTZMAN
DISTRICT ATTORNEY

July 24, 1987

Honorable Mario M. Cuomo
Governor of the State of New York
The State Capitol
Executive Chamber
Albany, New York 12224

Re: S6441/A8528

Dear Governor Cuomo:

I am writing about the Ethics in Government Act (S6441/A8528) which recently passed both houses of the Legislature.

Although serious flaws remain, this legislation represents a noticeable improvement over existing law because it requires detailed financial disclosure by government officials and will, to some extent, limit state and local officials' dealings for personal profit with government agencies.

The Act is also an improvement in several respects over the bill which you vetoed earlier this year. First, it expands the coverage of the financial disclosure requirements to apply to certain political party officers, judges and local government officials. Second, it deletes a provision which would have restricted a prosecutor's ability to subpoena financial disclosure statements. Finally, it closes a loophole which would have permitted legislators and state officials to appear before state agencies in quasi-judicial proceedings.

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JUL 27 1987
OFFICE OF THE DISTRICT ATTORNEY
KINGS COUNTY


Honorable Mario M. Cuomo
July 24, 1987
Page Two

While there are several defects in the bill before you, there is one provision that is especially troublesome and should be promptly amended. That provision, in essence, bars a criminal prosecution for knowing and intentional violations of the ethics laws unless one of the two newly created ethics committees refers the case to a prosecutor for criminal action. This provision impairs the grand jury's power to investigate official corruption and is thus inappropriate, if not unconstitutional. Because this provision does not take effect until 1989, there is ample time to remedy it by an amendment during the next legislative session.

Since the legislation imposes more stringent disclosure requirements and conflict of interest prohibitions than present law does, the bill ought to become law. There must, however, at a minimum, be an amendment prior to the effective date to restore to the grand jury its constitutional powers.

With best wishes,

Sincerely,



Elizabeth Holtzman
District Attorney

EH:RCL:yf

cc: Hon. Warren Anderson
Hon. Melvin Miller

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S.6441

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New York State
Urban Development
Corporation

1515 Broadway
New York, NY 10036-8960
212/930-9000

TEN-DAY BILL MEMORANDUM

August 5, 1987

TO: EVAN A. DAVIS
COUNSEL TO THE GOVERNOR

FROM: Joanne M. Gentile *JMG*

SUBJECT: S. 6441, A. 8525

RECOMMENDATION: Approval

The New York State Urban Development Corporation ("UDC") strongly approves the above-referenced legislation that has passed both houses of the Legislature.

Government cannot function without the support and respect of its citizens. Unfortunately, in the current climate, government is regarded with suspicion and public officials are too often viewed with distrust and cynicism. This bill is a response to this crisis in confidence.

The bill creates a prohibition against former legislative employees receiving compensation for performing work relating to matters in which they personally participated during the period of government-related employment. This provision is a constructive effort to eliminate the recent upsurge in incidents in which it is perceived that former public servants are trading influence for profit.

The bill also mandates detailed financial disclosure for public servants. Such disclosure seeks to identify instances of potential conflicts of interest between a public officials professional responsibility and business interests. The disclosure will be monitored by a newly created State Ethics Commission. The Commission shall consist of five members appointed by the Governor, with one member nominated by the Comptroller and one nominated by the Attorney General. Within the State Ethics Commission, there shall exist a Public Advisory Council that shall rule on requests for deletions and exemptions from the disclosure requirements.

10123



S.6441

New York State Conference of Mayors and Other Municipal Officials

119 Washington Avenue Albany, New York 12210 (518) 463-1165
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Robert G. Gardner
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Executive Director

Edward C. Farrell

July 14, 1987

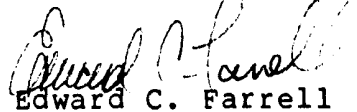
Hon. Evan Davis
Counsel to the Governor
Executive Chamber
State Capitol - Room 225
Albany, New York 12224

RE: S. 6441

Dear Mr. Davis:

In response to your recent inquiry, the Conference of Mayors has reviewed the above-referenced bill and takes no position as to whether or not the Governor should sign the bill into law.

Sincerely,


Edward C. Farrell
Executive Director

ECF/mc

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new york state
common cause

248 State Street, Albany, New York 12210 (518) 465-4888

S. 6441

Robert C. Newman
Chairperson
Paul H. Elisha
Executive Director

Downstate Office
5 Beekman Street, Suite 407
New York, N.Y. 10038
(212) 349-1755
(212) 349-8045

Governor Mario M. Cuomo
Executive Chamber
State Capitol
Albany, New York 12224

July 9, 1987

Dear Governor Cuomo:

I am writing to express this organization's pleasure with the passage of an acceptable Ethics Bill by the State Legislature and to urge you to sign this significant legislation.

The final version of this bill does not go as far as we had hoped, in addressing all those areas in which a critical need for reform was indicated. In realistic terms, however, this must stand as a major accomplishment and you deserve much praise for your persistence in seeking the strongest measure obtainable.

We also believe that previously enacted legislation which now provides funding for the continued existence of the Moreland Act Commission offers an exceptional opportunity to reexamine points at issue which were among those outlined in your initial charge to the Commission and which are still awaiting reform. Specifically, we urge you to recommend the following for consideration as priorities by the Feerick commission:

- 1 - To investigate the effects and propriety of the holding of simultaneous political and governmental offices or positions by state, county and municipal political party officials.
- 2 - To determine the effect of special interest campaign contributions on the electoral process and to propose practical methods for eliminating any deleterious effects they may have, so that the process can be made more equitable, accountable and influence-free.
- 3 - To establish effective standards and methods for controlling the expenditure of time and effort by legislative employees, both on required governmental activity and on directed political activity.

As always, we stand ready to offer whatever organizational resources we may possess, in support of these and other necessary endeavors, to help achieve a more ethical and responsive system of government for New York State.

RCN

Respectfully,
Robert C. Newman
Robert C. Newman



NICHOLAS SCOPPEITA
CONRAD N. KOCH
COMMISSIONERS

WATERFRONT COMMISSION OF NEW YORK HARBOR

42 BROADWAY
NEW YORK, N. Y. 10004
742-9280

5.6441

LEONARD NEWMAN
EXECUTIVE DIRECTOR

July 17, 1987

Honorable Evan A. Davis
Counsel to the Governor
Executive Chamber
Albany, NY 12224

Re: Ethics in Government Act
S.6441 - A.8528


Dear Mr. Davis:

The Waterfront Commission of New York Harbor has been asked to comment on the recently passed "Ethics in Government Act" which is now before the Governor for executive action. The Commission recommends that the Governor approve the legislation since the bill's provisions are designed to promote integrity and ethical conduct and restore public confidence in government.

The Commission does wish to point out, however, that since the Act excludes from its coverage "multi-state authorities" (Section 73(h)(iv) and 73-a(c)(iii)), the Act apparently does not apply to the Waterfront Commission, an instrumentality of the States of New York and New Jersey created by a compact entered into by the two states and consented to by the Congress of the United States. Moreover, this interpretation complies with general legal principles and case law applicable to interstate entities, namely that congressional consent to an interstate compact transforms the agreement of the states into federal law which may not be unilaterally amended by action of one of the compacting states.

Should you require any additional information, please do not hesitate to contact the undersigned.

Very truly yours,


Gerald P. Lally
General Counsel

GPL:ad

AN INSTRUMENTALITY OF THE STATES OF NEW YORK AND NEW JERSEY