

§ 80. Legislative ethics commission; functions, powers and duties; review of financial disclosure statements; advisory opinions; imposition of penalties or other enforcement actions. 1. There is established a legislative ethics commission which shall consist of nine members. Four members shall be members of the legislature and shall be appointed as follows: one by the temporary president of the senate, one by the speaker of the assembly, one by the minority leader of the senate and one by the minority leader of the assembly. The remaining five members shall not be present or former members of the legislature, candidates for member of the legislature, employees of the legislature, political party chairmen as defined in paragraph (k) of subdivision one of section seventy-three of the public officers law, or lobbyists, as defined in section one-c of this chapter, or persons who have been employees of the legislature, political party chairmen as defined in paragraph (k) of subdivision one of section seventy-three of the public officers law, or lobbyists, as defined in section one-c of this chapter in the previous five years, and shall be appointed as follows: one by the temporary president of the senate, one by the speaker of the assembly, one by the minority leader of the senate, one by the minority leader of the assembly, and one jointly by the speaker of the assembly and majority leader of the senate. The commission shall serve as described in this section and have and exercise the powers and duties set forth in this section only with respect to members of the legislature, legislative employees as defined in section seventy-three of the public officers law, candidates for member of the legislature and individuals who have formerly held such positions or who have formerly been such candidates.

2. Members of the legislature who serve on the commission shall each have a two year term concurrent with their legislative terms of office. The members of the commission who are not members of the legislature and who are first appointed by the temporary president of the senate, speaker of the assembly, minority leader of the senate, and minority leader of the assembly shall serve one, two, three and four year terms, respectively. The member of the commission first appointed jointly by the temporary president of the senate and speaker of the assembly shall serve a four year term. Each member of the commission who is not a member of the legislature shall be appointed thereafter for a term of four years.

3. The temporary president of the senate and the speaker of the assembly shall each designate one member of the commission as a co-chairperson thereof. The commission shall meet at least bi-monthly and at such additional times as may be called for by the co-chairpersons jointly or any five members of the commission.

4. Any vacancy occurring on the commission shall be filled within thirty days by the appointing authority.

5. Five members of the commission shall constitute a quorum, and the commission shall have power to act by majority vote of the total number of members of the commission without vacancy.

6. The members of the commission who are not members of the legislature shall be reimbursed for reasonable expenses and receive a per diem allowance in the sum of three hundred dollars for each day spent in the performance of their official duties.

7. The commission shall:

a. Appoint an executive director who shall act in accordance with the policies of the commission, provided that the commission may remove the executive director for neglect of duty, misconduct in office, or inability or failure to discharge the powers or duties of office;

b. Appoint such other staff as are necessary to assist it to carry out

its duties under this section;

c. Adopt, amend, and rescind policies, rules and regulations consistent with this section to govern procedures of the commission which shall not be subject to the promulgation and hearing requirements of the state administrative procedure act;

d. Administer the provisions of this section;

e. Specify the procedures whereby a person who is required to file an annual financial disclosure statement with the commission may request an additional period of time within which to file such statement, due to justifiable cause or undue hardship; such rules or regulations shall provide for a date beyond which in all cases of justifiable cause or undue hardship no further extension of time will be granted;

f. Promulgate guidelines to assist appointing authorities in determining which persons hold policy-making positions for purposes of section seventy-three-a of the public officers law and may promulgate guidelines to assist firms, associations and corporations in separating affected persons from net revenues for purposes of subdivision ten of section seventy-three of the public officers law, and promulgate guidelines to assist any firm, association or corporation in which any present or former statewide elected official, state officer or employee, member of the legislature or legislative employee, or political party chairman is a member, associate, retired member, of counsel or shareholder, in complying with the provisions of subdivision ten of section seventy-three of the public officers law with respect to the separation of such present or former statewide elected official, state officer or employee, member of the legislature or legislative employee, or political party chairman from the net revenues of the firm, association or corporation. Such firm, association or corporation shall not be required to adopt the procedures contained in the guidelines to establish compliance with subdivision ten of section seventy-three of the public officers law, but if such firm, association or corporation does adopt such procedures, it shall be deemed to be in compliance with such subdivision ten;

g. Make available forms for financial disclosure statements required to be filed pursuant to subdivision six of section seventy-three and section seventy-three-a of the public officers law as provided by the joint commission on public ethics;

h. Review financial disclosure statements in accordance with the provisions of this section, provided however, that the commission may delegate all or part of the review function relating to financial disclosure statements filed by legislative employees pursuant to sections seventy-three and seventy-three-a of the public officers law to the executive director who shall be responsible for completing staff review of such statements in a manner consistent with the terms of the commission's delegation;

i. Upon written request from any person who is subject to the jurisdiction of the commission and the requirements of sections seventy-three, seventy-three-a and seventy-four of the public officers law, render formal advisory opinions on the requirements of said provisions. A formal written opinion rendered by the commission, until and unless amended or revoked, shall be binding on the legislative ethics commission in any subsequent proceeding concerning the person who requested the opinion and who acted in good faith, unless material facts were omitted or misstated by the person in the request for an opinion. Such opinion may also be relied upon by such person, and may be introduced and shall be a defense in any criminal or civil action. The joint commission on public ethics shall not investigate an individual

for potential violations of law based upon conduct approved and covered in its entirety by such an opinion, except that such opinion shall not prevent or preclude an investigation of and report to the legislative ethics commission concerning the conduct of the person who obtained it by the joint commission on public ethics for violations of section seventy-three, seventy-three-a or seventy-four of the public officers law to determine whether the person accurately and fully represented to the legislative ethics commission the facts relevant to the formal advisory opinion and whether the person's conduct conformed to those factual representations. The joint commission shall be authorized and shall have jurisdiction to investigate potential violations of the law arising from conduct outside of the scope of the terms of the advisory opinion; and

j. Issue and publish generic advisory opinions covering questions frequently posed to the commission, or questions common to a class or defined category of persons, or that will tend to prevent undue repetition of requests or undue complication, and which are intended to provide general guidance and information to persons subject to the commission's jurisdiction;

k. Develop educational materials and training with regard to legislative ethics for members of the legislature and legislative employees including an online ethics orientation course for newly-hired employees and, as requested by the senate or the assembly, materials and training in relation to a comprehensive ethics training program; and

l. Prepare an annual report to the governor and legislature summarizing the activities of the commission during the previous year and recommending any changes in the laws governing the conduct of persons subject to the jurisdiction of the commission, or the rules, regulations and procedures governing the commission's conduct. Such report shall include: (i) a listing by assigned number of each complaint and report received from the joint commission on public ethics which alleged a possible violation within its jurisdiction, including the current status of each complaint, and (ii) where a matter has been resolved, the date and nature of the disposition and any sanction imposed, subject to the confidentiality requirements of this section. Such annual report shall not contain any information for which disclosure is not permitted pursuant to subdivision twelve of this section.

8. The jurisdiction of the commission to impose penalties when acting pursuant to this section shall continue notwithstanding that a member of the legislature or a legislative employee separates from state service, or a candidate for member of the legislature ceases to be a candidate, provided that such individual has been notified of the alleged violation of law within one year from his or her separation from state service or the termination of his or her candidacy. 9. (a) An individual subject to the jurisdiction of the commission with respect to the imposition of penalties who knowingly and intentionally violates the provisions of subdivisions two through five-a, seven, eight, twelve, fourteen or fifteen of section seventy-three of the public officers law or a reporting individual who knowingly and wilfully fails to file an annual statement of financial disclosure or who knowingly and wilfully with intent to deceive makes a false statement or gives information which such individual knows to be false on such statement of financial disclosure filed pursuant to section seventy-three-a of the public officers law shall be subject to a civil penalty in an amount not to exceed forty thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. Any such individual who

knowingly and intentionally violates the provisions of paragraph a, b, c, d, e, g, or i of subdivision three of section seventy-four of the public officers law shall be subject to a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. Assessment of a civil penalty hereunder shall be made by the commission with respect to persons subject to its jurisdiction. In assessing the amount of the civil penalties to be imposed, the commission shall consider the seriousness of the violation, the amount of gain to the individual and whether the individual previously had any civil or criminal penalties imposed pursuant to this section, and any other factors the commission deems appropriate. For a violation of this section, other than for conduct which constitutes a violation of subdivision twelve, fourteen or fifteen of section seventy-three or section seventy-four of the public officers law, the legislative ethics commission may, in lieu of or in addition to a civil penalty, refer a violation to the appropriate prosecutor and upon such conviction, but only after such referral, such violation shall be punishable as a class A misdemeanor. Where the commission finds sufficient cause, it shall refer such matter to the appropriate prosecutor. A civil penalty for false filing may not be imposed hereunder in the event a category of "value" or "amount" reported hereunder is incorrect unless such reported information is falsely understated. Notwithstanding any other provision of law to the contrary, no other penalty, civil or criminal may be imposed for a failure to file, or for a false filing, of such statement, or a violation of subdivision six of section seventy-three of the public officers law, except that the appointing authority may impose disciplinary action as otherwise provided by law. The legislative ethics commission shall be deemed to be an agency within the meaning of article three of the state administrative procedure act and shall adopt rules governing the conduct of adjudicatory proceedings and appeals taken pursuant to a proceeding commenced under article seventy-eight of the civil practice law and rules relating to the assessment of the civil penalties herein authorized. Such rules, which shall not be subject to the promulgation and hearing requirements of the state administrative procedure act, shall provide for due process procedural mechanisms substantially similar to those set forth in such article three but such mechanisms need not be identical in terms or scope. Assessment of a civil penalty shall be final unless modified, suspended or vacated within thirty days of imposition, with respect to the assessment of such penalty, or unless such denial of request is reversed within such time period, and upon becoming final shall be subject to review at the instance of the affected reporting individuals in a proceeding commenced against the legislative ethics commission, pursuant to article seventy-eight of the civil practice law and rules.

(b) Not later than forty-five calendar days after receipt from the joint commission on public ethics of a written substantial basis investigation report and any supporting documentation or other materials regarding a matter before the commission pursuant to subdivision fourteen-a of section ninety-four of the executive law, unless requested by a law enforcement agency to suspend the commission's action because of an ongoing criminal investigation, the legislative ethics commission shall make public such report in its entirety; provided, however, that the commission may withhold such information for not more than one additional period of the same duration or refer the matter back to the joint commission on public ethics once for additional investigation, in which case the legislative ethics commission shall, upon the termination

of such additional period or upon receipt of a new report by the joint commission on public ethics after such additional investigation, make public the written report and publish it on the commission's website. If the legislative ethics commission fails to make public the written report received from the joint commission in accordance with this paragraph, the joint commission shall release such report publicly promptly and in any event no later than ten days after the legislative ethics commission is required to release such report. The legislative ethics commission shall not refer the matter back to the joint commission on public ethics for additional investigation more than once. If the commission refers the matter back to the joint commission for additional fact-finding, the joint commission's original report shall remain confidential.

10. Upon receipt of a written report from the joint commission on public ethics pursuant to subdivision fourteen-a of section seventy-three of the public officers law, the legislative ethics commission shall commence its review of the matter addressed in such report. No later than ninety days after receipt of such report, the legislative ethics commission shall dispose of the matter by making one or more of the following determinations:

a. whether the legislative ethics commission concurs with the joint commission's conclusions of law and the reasons therefor;

b. whether and which penalties have been assessed pursuant to applicable law or rule and the reasons therefor; and

c. whether further actions have been taken by the commission to punish or deter the misconduct at issue and the reasons therefor.

The commission's disposition shall be reported in writing and published on its website no later than ten days after such disposition unless requested by a law enforcement agency to suspend the commission's action because of an ongoing criminal investigation.

11. If the commission has a reasonable basis to believe that any person subject to the jurisdiction of another state oversight body may have violated section seventy-three or seventy-four of the public officers law, section one hundred seven of the civil service law, or article one-A of this chapter, it shall refer such violation to such oversight body unless the commission determines that such a referral would compromise the prosecution or confidentiality of its proceedings and, if so, shall make such a referral as soon as practicable. The referral by the commission shall include any information relating thereto coming into the custody or under the control of the commission at any time prior or subsequent to the time of the referral.

12. a. Notwithstanding the provisions of article six of the public officers law, the only records of the commission which shall be available for public inspection and copying are:

(1) the terms of any settlement or compromise of a complaint or referral or report which includes a fine, penalty or other remedy reached after the commission has received a report from the joint commission on public ethics pursuant to subdivision fourteen-a of section ninety-four of the executive law;

(2) generic advisory opinions; (3) all reports required by this section; and

(4) all reports received from the joint commission on public ethics pursuant to subdivision fourteen-a of section ninety-four of the executive law and in conformance with paragraph (b) of subdivision nine-b of this section.

b. Notwithstanding the provisions of article seven of the public officers law, no meeting or proceeding of the commission shall be open

to the public, except if expressly provided otherwise by this section or the commission.

13. Within one hundred twenty days of the effective date of this subdivision, the commission shall create and thereafter maintain a publicly accessible website which shall set forth the procedure for filing a complaint with the joint commission on public ethics, and which shall contain any other records or information which the commission determines to be appropriate.

14. This section shall not revoke or rescind any policies, rules, regulations or advisory opinions issued by the legislative ethics committee in effect upon the effective date of this subdivision, to the extent that such regulations or opinions are not inconsistent with any laws of the state of New York. The legislative ethics commission shall undertake a comprehensive review of all such policies, rules, regulations or advisory opinions which will address the consistency of such policies, rules, regulations or advisory opinions with the laws of the state of New York. The legislative ethics commission shall, before April first, two thousand eight, report to the governor and legislature regarding such review and shall propose any regulatory changes and issue any advisory opinions necessitated by such review.

15. Separability clause. If any part or provision of this section or the application thereof to any person is adjudged by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such judgment shall not affect or impair any other part or provision or the application thereof to any other person, but shall be confined to such part or provision.