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## EXEC §94

### Executive Law §94

#### State Ethics Commission; Functions, Powers and Duties

§ 94.\* State ethics commission; functions, powers and duties; review of financial disclosure statements; advisory opinions; investigation and enforcement.

\* NB Effective until September 22, 2007

§ 94.\* Commission on public integrity; functions, powers and duties; review of financial disclosure statements; advisory opinions; investigation and enforcement.

\* NB Effective September 22, 2007

\* 1. There is established within the department of state a state ethics commission which shall consist of five members and shall have and exercise the powers and duties set forth in this section only with respect to statewide elected officials and state officers and employees, as defined in sections seventy-three and seventy-three-a of the public officers law, candidates for statewide elected office, and the political party chairman as that term is defined in section seventy-three-a of the public officers law, and individuals who have formerly held such positions or who have formerly been such candidates.

\* NB Effective until September 22, 2007

\* 1. There is established within the department of state a commission on public integrity which shall consist of thirteen members and shall have and exercise the powers and duties set forth in this section only with respect to statewide elected officials and state officers and employees, as defined in sections seventy-three and seventy-three-a of the public officers law, candidates for statewide elected office, and the political party chairman as that term is defined in section seventy-three-a of the public officers law, lobbyists and the clients of lobbyists as such terms are defined in article one-A

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of the legislative law, and individuals who have formerly held such positions, were lobbyists or clients of lobbyists, as such terms are defined in article one-A of the legislative law, or who have formerly been such candidates. This section shall not revoke or rescind any regulations or advisory opinions issued by the state ethics commission and the temporary lobbying commission in effect upon the effective date of a chapter of the laws of two thousand seven which amended this section to the extent that such regulations or opinions are not inconsistent with any law of the state of New York, but such regulations and opinions shall apply only to matters over which such commissions had jurisdiction at the time such regulations and opinions were promulgated or issued. The commission shall undertake a comprehensive review of all such regulations and opinions, which will address the consistency of such regulations and opinions among each other and with the new statutory language. The 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.

\* NB Effective September 22, 2007

\* 2. The members of the commission shall be appointed by the governor provided, however, that one member shall be appointed on the nomination of the comptroller and one member shall be appointed on the nomination of the attorney general. Of the three members appointed by the governor without prior nomination, no more than two members shall belong to the same political party and at least two members shall not be public officers or employees or hold any public office, elected or appointed. No member shall hold office in any political party or be employed as a lobbyist.

\* NB Effective until September 22, 2007

\* 2. The members of the commission shall be appointed by the governor provided, however, that one member shall be appointed on the nomination of the comptroller, one member shall be appointed on the nomination of the attorney general, one member shall be appointed on the nomination of the temporary president of the senate, one member shall be appointed on the nomination of the speaker of the assembly, one member shall be appointed on the nomination of the minority leader of the senate, and one member shall be appointed on the nomination of the minority leader of the assembly. Of the seven members appointed by the governor without prior nomination, no more than four members shall belong to the same political party and no members shall be public officers or employees or hold any public office, elected or appointed. No member shall be a member of the legislature, a candidate for member of the legislature, an employee of the legislature, a political party chairman as

defined in paragraph (k) of subdivision one of section seventy-three of the public officers law, or a lobbyist as defined in subdivision (a) of section one-c of the legislative law.

\* NB Effective September 22, 2007

\* 3. Members of the commission shall serve for terms of five years; provided, however, that of the members first appointed without prior nomination, one shall serve for one year, one shall serve for three years, and one shall serve for five years, as designated by the governor; the member first appointed on the nomination of the comptroller shall serve for four years and the member first appointed on the nomination of the attorney general shall serve for two years.

\* NB Effective until September 22, 2007

\* 3. Members of the commission shall serve for terms of five years; provided, however, that of the members first appointed without prior nomination, one shall serve for one year, one shall serve for two years, one shall serve for three years, and one shall serve for four years, as designated by the governor; the members first appointed on the nominations of the comptroller and the temporary president of the senate shall serve for four years and the members first appointed on the nominations of the attorney general and the speaker of the assembly shall serve for two years.

\* NB Effective September 22, 2007

\* 4. The governor shall designate the chairman of the commission from among the members thereof, who shall serve as chairman at the pleasure of the governor. The chairman or any three members of the commission may call a meeting.

\* NB Effective until September 22, 2007

\* 4. The governor shall designate the chairman of the commission from among the members thereof, who shall serve as chairman at the pleasure of the governor. The chairman or any seven members of the commission may call a meeting.

\* NB Effective September 22, 2007

\* 5. Any vacancy occurring on the commission shall be filled within sixty days of its occurrence, by the governor, in the same manner as the member whose vacancy is being filled was appointed. A person appointed to fill a vacancy occurring other than by expiration of a term of office shall be appointed for the unexpired term of the member he succeeds.

\* NB Effective until September 22, 2007

\* 5. Any vacancy occurring on the commission shall be filled within sixty days of its occurrence, by the governor, in the same manner as the member whose vacancy is being filled

was appointed. A person appointed to fill a vacancy occurring other than by expiration of a term of office shall be appointed for the unexpired term of the member he succeeds.

\* NB Effective September 22, 2007

\* 6. Three 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.

\* NB Effective until September 22, 2007

\* 6. Seven 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.

\* NB Effective September 22, 2007

\* 7. Members of the commission may be removed by the governor for substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of office or violation of this section, after written notice and opportunity for a reply.

\* NB Effective until September 22, 2007

\* 7. Members of the commission may be removed by the governor for substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of office or violation of this section, after written notice and opportunity for a reply.

\* NB Effective September 22, 2007

\* 8. The members of the commission shall not receive compensation but shall be reimbursed for reasonable expenses incurred in the performance of their official duties.

\* NB Effective until September 22, 2007

\* 8. The members of the commission shall not receive compensation but shall be reimbursed for reasonable expenses incurred in the performance of their official duties.

\* NB Effective September 22, 2007

9. The commission shall: (a) Appoint an executive director who shall act in accordance with the policies of the commission. The commission may delegate authority to the executive director to act in the name of the commission between meetings of the commission provided such delegation is in writing and the specific powers to be delegated are enumerated;

(b) Appoint such other staff as are necessary to carry out its duties under this section;

(c) Adopt, amend, and rescind rules and regulations to govern procedures of the commission, which shall include, but not be

limited to, the procedure 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;

(d) Adopt, amend, and rescind rules and regulations to assist appointing authorities in determining which persons hold policy-making positions for purposes of section seventy-three-a of the public officers law;

(e) Make available forms for annual statements of financial disclosure required to be filed pursuant to section seventy-three-a of the public officers law;

(f) Review financial disclosure statements in accordance with the provisions of this section, provided however, that the commission may delegate all or part of this review function 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;

(g) Receive complaints and referrals alleging violations of section seventy-three, seventy-three-a or seventy-four of the public officers law, article one-A of the legislative law or section one hundred seven of the civil service law;

(h) Permit any person subject to the jurisdiction of the commission who is required to file a financial disclosure statement to request the commission to delete from the copy thereof made available for public inspection and copying one or more items of information which may be deleted by the commission upon a finding by the commission that the information which would otherwise be required to be made available for public inspection and copying will have no material bearing on the discharge of the reporting person's official duties. If such request for deletion is denied, the commission, in its notification of denial, shall inform the person of his or her right to appeal the commission's determination pursuant to its rules governing adjudicatory proceedings and appeals adopted pursuant to subdivision thirteen of this section;

(i) Permit any person subject to the jurisdiction of the commission who is required to file a financial disclosure statement to request an exemption from any requirement to report one or more items of information which pertain to such person's spouse or unemancipated children which item or items may be exempted by the commission upon a finding by the commission that the reporting individual's spouse, on his or her own behalf or on behalf of an unemancipated child,

objects to providing the information necessary to make such disclosure and that the information which would otherwise be required to be reported will have no material bearing on the discharge of the reporting person's official duties. If such request for exemption is denied, the commission, in its notification of denial, shall inform the person of his or her right to appeal the commission's determination pursuant to its rules governing adjudicatory proceedings and appeals adopted pursuant to subdivision thirteen of this section;

(j) Advise and assist any state agency in establishing rules and regulations relating to possible conflicts between private interests and official duties of present or former statewide elected officials and state officers and employees;

(k) Permit any person who has not been determined by his or her appointing authority to hold a policy-making position but who is otherwise required to file a financial disclosure statement to request an exemption from such requirement in accordance with rules and regulations governing such exemptions. Such rules and regulations shall provide for exemptions to be granted either on the application of an individual or on behalf of persons who share the same job title or employment classification which the commission deems to be comparable for purposes of this section. Such rules and regulations may permit the granting of an exemption where, in the discretion of the commission, the public interest does not require disclosure and the applicant's duties do not involve the negotiation, authorization or approval of:

- (i) contracts, leases, franchises, revocable consents, concessions, variances, special permits, or licenses as defined in section seventy-three of the public officers law;
- (ii) the purchase, sale, rental or lease of real property, goods or services, or a contract therefor;
- (iii) the obtaining of grants of money or loans; or
- (iv) the adoption or repeal of any rule or regulation having the force and effect of law;

\* (l) Prepare an annual report to the governor and the legislature summarizing the activities of the commission and recommending changes in the laws governing the conduct of statewide elected officials, state officers and employees and political party chairs; and

\* NB Effective until September 22, 2007

\* (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 referral received 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, provided, however, that such annual report shall not contain any information for which disclosure is not permitted pursuant to subdivision seventeen of this section; and

\* NB Effective September 22, 2007

(m) Determine a question common to a class or defined category of persons or items of information required to be disclosed, where determination of the question will prevent undue repetition of requests for exemption or deletion or prevent undue complication in complying with the requirements of such section.

10. The commission, or the executive director and staff of the commission if responsibility therefor has been delegated, shall inspect all financial disclosure statements filed with the commission to ascertain whether any person subject to the reporting requirements of section seventy-three-a of the public officers law has failed to file such a statement, has filed a deficient statement or has filed a statement which reveals a possible violation of section seventy-three, seventy-three-a or seventy-four of the public officers law.

11. If a person required to file a financial disclosure statement with the commission has failed to file a disclosure statement or has filed a deficient statement, the commission shall notify the reporting person in writing, state the failure to file or detail the deficiency, provide the person with a fifteen day period to cure the deficiency, and advise the person of the penalties for failure to comply with the reporting requirements. Such notice shall be confidential. If the person fails to make such filing or fails to cure the deficiency within the specified time period, the commission shall send a notice of delinquency: (a) to the reporting person; (b) in the case of a statewide elected official, to the temporary president of the senate and the speaker of the assembly; and (c) in the case of a state officer or employee, to the appointing authority for such person. Such notice of delinquency may be sent at any time during the reporting person's service as a statewide elected official, state officer or employee, political party chair or while a candidate for statewide office, or within one year after termination of such service or candidacy. The jurisdiction of the commission, when acting pursuant to subdivision thirteen of this section with respect to financial disclosure, shall continue notwithstanding that the reporting person separates from state service, or ceases to hold office as a statewide elected official or political party chair, or ceases to be a candidate, provided the commission

notifies such person of the alleged failure to file or deficient filing pursuant to this subdivision.

12. (a) If the commission receives a sworn complaint alleging a violation of section seventy-three, seventy-three-a or seventy-four of the public officers law, section one hundred seven of the civil service law or article one-A of the legislative law by a person or entity subject to the jurisdiction of the commission, or if a reporting individual has filed a statement which reveals a possible violation of these provisions, or if the commission determines on its own initiative to investigate a possible violation, the commission shall notify the individual in writing, describe the possible or alleged violation of such laws and provide the person with a fifteen day period in which to submit a written response setting forth information relating to the activities cited as a possible or alleged violation of law. If the commission thereafter makes a determination that further inquiry is justified, it shall give the individual an opportunity to be heard. The commission shall also inform the individual of its rules regarding the conduct of adjudicatory proceedings and appeals and the due process procedural mechanisms available to such individual. If the commission determines at any stage of the proceeding, that there is no violation or that any potential conflict of interest violation has been rectified, it shall so advise the individual and the complainant, if any. All of the foregoing proceedings shall be confidential.

(b) If the commission determines that there is reasonable cause to believe that a violation has occurred, it shall send a notice of reasonable cause: (i) to the reporting person; (ii) to the complainant if any; (iii) in the case of a statewide elected official, to the temporary president of the senate and the speaker of the assembly; and (iv) in the case of a state officer or employee, to the appointing authority for such person.

\* (c) The jurisdiction of the commission when acting pursuant to this section shall continue notwithstanding that a statewide elected official or a state officer or employee separates from state service, or a political party chair ceases to hold such office, or a candidate ceases to be a candidate, provided that the commission notifies such individual of the alleged violation of law pursuant to paragraph (a) of this subdivision within one year from his or her separation from state service or his or her termination of party service or candidacy. Nothing in this section shall serve to limit the jurisdiction of the commission in enforcement of subdivision eight of section seventy-three of the public officers law.

\* NB Effective until September 22, 2007

\* (c) The jurisdiction of the commission when acting pursuant

to this section shall continue notwithstanding that a statewide elected official or a state officer or employee separates from state service, or a political party chair ceases to hold such office, or a candidate ceases to be a candidate, or a lobbyist or client of a lobbyist ceases to act as such, provided that the commission notifies such individual or entity of the alleged violation of law pursuant to paragraph (a) of this subdivision within one year from his or her separation from state service or his or her termination of party service or candidacy, or from his, her or its last report filed pursuant to article one-A of the legislative law. Nothing in this section shall serve to limit the jurisdiction of the commission in enforcement of subdivision eight of section seventy-three of the public officers law.

\* NB Effective September 22, 2007

13. An individual subject to the jurisdiction of the commission who knowingly and intentionally violates the provisions of subdivisions two through five, seven, eight, twelve or fourteen through seventeen of section seventy-three of the public officers law, section one hundred seven of the civil service 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 fraudulent omission 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. An individual who knowingly and intentionally violates the provisions of paragraph b, c, d 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. An individual who knowingly and intentionally violates the provisions of paragraph a, e or g 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 the value of any gift, compensation or benefit received as a result of such violation. An individual subject to the jurisdiction of the commission who knowingly and willfully violates article one-A of the legislative law shall be subject to civil penalty as provided for in that article. 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 subdivision, other than for conduct which constitutes a violation of section one hundred seven of the civil service law, subdivisions twelve or fourteen through seventeen of section seventy-three or section seventy-four of the public officers law or article one-A of the legislative law, the commission may, in lieu of a civil penalty, refer a violation to the appropriate prosecutor and upon such conviction, such violation shall be punishable as a class A misdemeanor. 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 section seventy-three of the public officers law, except that the appointing authority may impose disciplinary action as otherwise provided by law. The commission may refer violations of this subdivision to the appointing authority for disciplinary action as otherwise provided by law. The 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 and commission denials of requests for certain deletions or exemptions to be made from a financial disclosure statement as authorized in paragraph (h) or paragraph (i) of subdivision nine of this section. Such rules, which shall not be subject to the approval requirements of the state administrative procedure act, shall provide for due process procedural mechanisms substantially similar to those set forth in article three of the state administrative procedure act but such mechanisms need not be identical in terms or scope. Assessment of a civil penalty or commission denial of such a request 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 commission, pursuant to article seventy-eight of the civil practice law and rules.

13-a. If the commission has a reasonable basis to believe that any person subject to the jurisdiction of the legislative ethics commission may have violated any provisions of section seventy-three or seventy-four of the public officers law, it shall refer such violation to the legislative ethics

commission unless the commission determines that such a referral would compromise the prosecution or confidentiality of its investigations and, if so, shall make such a referral as soon as practicable. The referral by the commission to the legislative ethics 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.

14. A copy of any notice of delinquency or notice of reasonable cause sent pursuant to subdivisions eleven and twelve of this section shall be included in the reporting person's file and be available for public inspection and copying.

\* 15. Upon written request from any person who is subject to the requirements of sections seventy-three, seventy-three-a or seventy-four of the public officers law, the commission shall render advisory opinions on the requirements of said provisions. An opinion rendered by the commission, until and unless amended or revoked, shall be binding on the 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. Such requests shall be confidential but the commission may publish such opinions provided that the name of the requesting person and other identifying details shall not be included in the publication.

\* NB Effective until September 22, 2007

\* 15. 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 or seventy-four of the public officers law, the commission shall render advisory opinions on the requirements of said provisions. An opinion rendered by the commission, until and unless amended or revoked, shall be binding on the 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. Such requests shall be confidential but the commission may publish such opinions provided that the name of the requesting person and other identifying details shall not be included in the publication.

\* NB Effective September 22, 2007

16. In addition to any other powers and duties specified by

law, the commission shall have the power and duty to:

(a) Promulgate rules concerning restrictions on outside activities and limitations on the receipt of gifts and honoraria by persons subject to its jurisdiction, provided, however, a violation of such rules in and of itself shall not be punishable pursuant to subdivision thirteen of this section unless the conduct constituting the violation would otherwise constitute a violation of this section; and

(b) Conduct training programs in cooperation with the governor's office of employee relations to provide education to individuals subject to its jurisdiction; and

(c) Administer and enforce all the provisions of this section; and

(d) Conduct any investigation necessary to carry out the provisions of this section. Pursuant to this power and duty, the commission may administer oaths or affirmations, subpoena witnesses, compel their attendance and require the production of any books or records which it may deem relevant or material;

16-a. 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 commission, and which shall contain the documents identified in subdivision seventeen of this section, other than financial disclosure statements, and any other records or information which the commission determines to be appropriate.

17. \* (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 information set forth in an annual statement of financial disclosure filed pursuant to section seventy-three-a of the public officers law except the categories of value or amount, which shall remain confidential, and any other item of information deleted pursuant to paragraph (h) of subdivision nine of this section;

(2) notices of delinquency sent under subdivision eleven of this section;

(3) notices of reasonable cause sent under paragraph (b) of subdivision twelve of this section;

(4) notices of civil assessments imposed under this section which shall include a description of the nature of the alleged wrongdoing, the procedural history of the complaint, the findings and determinations made by the commission, and any sanction imposed; and

(5) the terms of any settlement or compromise of a complaint

or referral which includes a fine, penalty or other remedy.

\* NB Effective until September 22, 2007

\* (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 information set forth in an annual statement of financial disclosure filed pursuant to section seventy-three-a of the public officers law except the categories of value or amount, which shall remain confidential, and any other item of information deleted pursuant to paragraph (h) of subdivision nine of this section;

(2) notices of delinquency sent under subdivision eleven of this section;

(3) notices of reasonable cause sent under paragraph (b) of subdivision twelve of this section;

(4) notices of civil assessments imposed under this section which shall include a description of the nature of the alleged wrongdoing, the procedural history of the complaint, the findings and determinations made by the commission, and any sanction imposed;

(5) the terms of any settlement or compromise of a complaint or referral which includes a fine, penalty or other remedy; and

(6) those required to be held or maintained publicly available pursuant to article one-A of the legislative law.

\* NB Effective September 22, 2007

\* (b) Notwithstanding the provisions of article seven of the public officers law, no meeting or proceeding, including any such proceeding contemplated under paragraph (h) or (i) of subdivision nine of this section, of the commission shall be open to the public, except if expressly provided otherwise by the commission.

\* NB Effective until September 22, 2007

\* (b) Notwithstanding the provisions of article seven of the public officers law, no meeting or proceeding, including any such proceeding contemplated under paragraph (h) or (i) of subdivision nine of this section, of the commission shall be open to the public, except if expressly provided otherwise by the commission or as is required by article one-A of the legislative law.

\* NB Effective September 22, 2007

(c) Pending any application for deletion or exemption to the commission, all information which is the subject or a part of the

application shall remain confidential. Upon an adverse determination by the commission, the reporting individual may request, and upon such request the commission shall provide, that any information which is the subject or part of the

application remain confidential for a period of thirty days following notice of such determination. In the event that the reporting individual resigns his office and holds no other office subject to the jurisdiction of the commission, the information shall not be made public and shall be expunged in its entirety.

18. If any part or provision of this section or the application thereof to any person or organization 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 or organization, but shall be confined in its operation to such part or provision.

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