



Scorecard of the Ethics Reform Provisions of 2015

Comparison of Governor Cuomo’s Initial Five-Point Reform Proposals, the Enacted Law, and Citizen Union’s Positions

	Governor’s 5-Point Ethics Reform Proposed in Preliminary Budget and 30-Day Amendment	Enacted Law	Citizens Union Recommendations
1. OUTSIDE INCOME a. <u>DISCLOSURE</u>	<p>30 DAY AMENDMENT</p> <ul style="list-style-type: none"> • A public official who personally provides services, or works as a member or employee of a firm that provides services, must identify each client to whom the official personally provided services, or who was referred to firm by the official, and from whom the official or firm earned \$5K or more. • The official must identify the services actually provided to the client. An illustrative list is provided of examples of descriptions of “services actually provided.” • With respect to referrals, the official must identify the amount received for the referral. • Certain practice areas where information is sensitive are completely exempt from the disclosure requirements. • No member of the legislature or legislative employee shall receive compensation for rendering services in connection with any proposed or pending bill in the legislature. • No member of the legislature shall receive compensation for referring a client in connection with lobbying or advocating on behalf of a bill to a firm with which the legislator has a relationship as an employee or member. 	<p>Same as proposed 30-Day Amendment except for certain alterations and deletions:</p> <p>Alterations:</p> <ul style="list-style-type: none"> • Officials who did not provide any services to clients but were compensated by a firm must describe the services provided to the firm and identify the amount received for the services. • Officials can seek exemptions for individual clients from either the Office of Court Administration or JCOPE. OCA and JCOPE are to consider listed factors but are not required to weigh the public interest in disclosure against the client’s interest in confidentiality. • Officials must disclose the name of “each client or customer known to the reporting individual to whom the reporting individual provided services: (A) who paid the reporting individual in excess of [\$5K] for such services; or (B) who had been billed with the knowledge of the reporting individual excess of [\$5K] by the firm . . . for the official’s services.” (Citizens Union has not determined the effect of this new language but understands that in the view of the governor’s office it adds value.) <p>Deletions:</p> <ul style="list-style-type: none"> • Removes the prohibition on compensation for referring a client in connection with lobbying to a firm with which the legislator has a relationship as an employee or member. (We advocated <i>strengthening</i> this provision to prohibit compensation for referring a lobbyist to <i>any</i> entity with which the legislator has a business relationship.) • Strips out an agreement reached by the governor and the assembly to empower prosecutors to prosecute the filing of fraudulent financial statements without the approval of JCOPE. 	<p>Not Adopted:</p> <p>Require full disclosure of <i>all</i> sources of outside income by improving governor’s original proposal to:</p> <ul style="list-style-type: none"> • Eliminate the “personal services loophole” by requiring officials to identify all clients to whom the official’s firm provided services related to government action, whether or not the official personally provided services to the client. • Lower the triggering figure from \$5,000 to \$2,500, that is, require officials to identify all clients from whom the official or firm earned \$2,500. • Prohibit compensation for referring a lobbying client to any business entity with which the official had a business relationship. • Require public disclosure in an electronic format permitting independent analysis.

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1. OUTSIDE INCOME b. PAY <u>COMMISSION AND INCOME CAP</u>	ARTICLE VII BILL (Preliminary Executive Budget) Establish a quadrennial pay commission to determine executive and legislative compensation. <u>Key Features</u> <ul style="list-style-type: none"> The commission shall consist of three members, one, the chair, appointed by the governor, and one each, respectively, by the temporary president of the senate and the assembly speaker. The commission shall establish a two-tiered level of pay for legislators; the first, for members who agree to forego outside income, and the second, lower, for members with outside incomes. The commission shall consider whether there should be a cap on legislators' outside income, and may recommend imposing a cap on legislators' outside income as a condition of getting the second, lower, tier of pay. 	Folds the compensation commission into the existing quadrennial judicial compensation commission, and deletes the concepts of a two-tiered level of pay and a cap on legislators' outside income. <u>Key Features</u> <ul style="list-style-type: none"> The commission shall consist of seven members; three appointed by the governor, one each by temp. president of the senate and the assembly speaker, two by the chief judge, one of whom shall serve as chair. Recommendations of the commission shall have the force of law unless modified by statute prior to a certain date. 	Establish a quadrennial compensation commission to determine salaries of legislators and statewide elected officials. <u>Key Feature Adopted:</u> <ul style="list-style-type: none"> Recommendations of the commission shall have the force of law unless modified by statute prior to a certain date. <u>Key Feature Partially Adopted:</u> <ul style="list-style-type: none"> The commission shall consist of 14 members; six appointed by the governor, one by the attorney general, one by the comptroller, two by the temporary president of the of the senate, two by the assembly speaker, and one each by the minority leaders of the two chambers. Cap outside income, increase salary, and extend application of all rules to executive branch. <u>Not Adopted:</u> <ul style="list-style-type: none"> Cap outside income earned by legislators. A cap of 25% or more could be acceptable depending on the scope of a salary increase. Increase the salary of legislators by a substantial amount. The cost of living has risen 40% since the last salary increase. Apply all compensation reforms to the governor and statewide elected officials.
2. PENSION FORFEITURE	30-DAY AMENDMENT <ul style="list-style-type: none"> Calls for a constitutional amendment to expand pension forfeiture law to apply to public officials who were participants in the state pension or retirement system prior to enactment of the Public Integrity Reform Act of 2011. 	The full legislature did not complete passage of the necessary constitutional amendment legislation. <ul style="list-style-type: none"> The senate introduced and passed a needed resolution to amend the state constitution. The assembly did not pass a resolution and will take the matter up soon after it returns. The legislature did amend the existing statute to apply pension forfeiture law retroactively to public officials who entered the system prior to 2011. The law already gives the court discretion over whether to impose forfeiture. 	<u>Partially Adopted:</u> <ul style="list-style-type: none"> Pension forfeiture should feature several safeguards including judicial discretion to determine whether forfeiture is appropriate, a limitation to specifically enumerated offences, and a limitation on the covered officers to elected officials, agency heads and judges.
3. PER DIEMS	30-DAY AMENDMENT <ul style="list-style-type: none"> Legislators shall receive reimbursement for travel expenses for lodging, meals, and incidentals that are actually incurred and for which receipts and other appropriate documents are submitted. 	<ul style="list-style-type: none"> The law jettisons the reimbursement approach for an approach supported by Citizens Union – per diems retained but an electronic system of verification installed. The two houses will make present all per diem documentation to the public on their websites. 	<u>Adopted:</u> Retain the per diem system but reform it by adding a system of verification that: <ul style="list-style-type: none"> Requires legislators to verify their presence in Albany on days for which they claim per diem payments, and Presents verification in such a way as to be viewed easily by the public.

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<p>4.PERONSAL USE OF CAMPAIGN FUNDS</p>	<p>ARTICLE VII BILL (Preliminary Executive Budget)</p> <ul style="list-style-type: none"> • Adds to existing law a definition of a “lawful” personal use of campaign funds as one “that is directly related to promoting the nomination or election of a candidate or the execution of duties associated with the holding of a public office or party position.” • Adds prohibition of using campaign funds to pay interest on money loaned to the campaign by the candidate. • Defines “personal use” expenditures as expenditures “that are exclusively for the personal benefit of the candidate or any other individual, and that are used to fulfill any commitment, obligation, or expense that would exist irrespective of the candidate’s election campaign or execution of the duties of public office.” (This adopts the test used by the Federal Elections Commission and the NYC Campaign Finance Board known as the “irrespective test”: If the expense would exist even in the absence of the candidacy, then the personal use ban applies.) • Further defines personal use as including: <ul style="list-style-type: none"> • household items, supplies, expenditures including mortgage, rent or utility payments on the family home not incurred as a result of the campaign or the person’s execution of duties of office. If the person uses property for both personal and campaign use, any payment in excess of the fair market value of the amount paid for campaign use is personal use. • mortgage, rent or utility payments on non-residential property not used for campaign purposes • clothing, other than items used in the campaign • tuition payments • childcare costs • dues at a country club, health club or recreational facility unless they are part of a specific fundraising event that takes place on the organization’s premises • compensation to a person whose services are not solely for campaign purposes • compensation to a family member unless for bona fide services. If a family member provides services to a campaign, any compensation in excess of the fair market value of the services provided is personal use. • admission to a sporting event other form of 	<p>The enacted law waters down the governor’s original proposal with several deletions and alterations.</p> <p><u>Deletions</u></p> <ul style="list-style-type: none"> • Eliminates the definition of a lawful personal use of campaign funds. • Eliminates the “irrespective test.” • Strips “child care costs” from the definition of personal use. • Makes two significant deletions in the travel provision. First, it deletes the word “solely” in the phrases “unless used solely for campaign purposes or in connection with official duties.” Second, it deletes clarification that all incremental expenses in travel resulting from personal activities are to be considered “personal use.” <p><u>Alterations</u></p> <ul style="list-style-type: none"> • Broadens allowable use of campaign funds for clothing to include items used in the execution of the duties of public office or party position. • Broadens allowable use of funds for dues at a country club or other recreational facility. In the proposal it’s limited to the expense of a specific fundraising event at the facility. Under the new law funds may also be used for “expenses associated with a political campaign or the holding of public office or party position that takes place on the organization’s premises.” • Changes the allowable use of campaign funds for an admission to a sporting event other form of entertainment. In the proposal the use is permissible if the event is “part of a campaign or officeholder activity.” Under the enacted law, it is permissible if it is “part of, or in connection with, a campaign or is related to the holding of public office or party position.” 	<p><u>Not Adopted:</u></p> <p>Impose stricter, clearer, limits on the personal use of campaign funds than were present in the governor’s original proposal, including:</p> <ul style="list-style-type: none"> • Prohibit elected officials from using campaign funds to pay attorneys’ fees and costs of defending against civil and criminal investigations or prosecutions alleging violations of state and federal law, unless the expenditure is exclusively related to the candidate’s campaign. • Define all household expenditures as personal use expenditures even if a portion of a household is used for campaign activities. • Define all clothing purchases as personal used expenditures, including clothing used in the campaign.

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	<p>entertainment unless such event is part of a campaign or officeholder activity</p> <ul style="list-style-type: none"> • payment of fines/penalties assessed pursuant this section of the law or In connection with a criminal conviction or by JCOPE • travel expenses, including car purchases and leases, unless used for solely campaign purposes or in connection with official duties; if a candidate uses campaign funds to pay for travel that involves both personal and campaign activities, the incremental expense that result from personal activities shall be considered for personal use • any other expenditure designated by the board of elections as constituting a personal use 		
<p>5.CAMPAIGN FINANCE REFORM</p>	<p>ARTICLE VII BILL (Preliminary Executive Budget)</p> <ul style="list-style-type: none"> • Establish a public campaign finance system covering primary and general elections for governor, lieutenant governor, attorney general, state comptroller, senators and assembly members. • Subject limited liability companies (LLCS) to corporate contribution limits, and lowers corporate contribution limits from \$5,000 to \$1,000 in the aggregate in any calendar year. <p>30-DAY AMENDMENT</p> <ul style="list-style-type: none"> • Amend the definition “independent expenditure” to include an expenditure on a communication made within sixty days before a general or special election or thirty days before a primary election that includes or references a clearly identified candidate. 	<ul style="list-style-type: none"> • Enacted law on independent expenditures is same as the proposed law except that it adds an exception for 501(c)(3) organizations. • The public financing system, the remedy for the LLC loophole, and the lowered corporate contribution limit were removed from the enacted law. 	<p>Not Adopted:</p> <ul style="list-style-type: none"> • Comprehensive campaign finance reform, including public matching, stronger enforcement, and closing of loopholes. • On the limited liability loophole, Citizens Union supports closing this completely by subjecting LLCs to the contribution limit imposed on corporations and treating related LLCs and their common managing member as a single source for purposes of contribution limits.

BEYOND THE GOVERNOR’S 5-POINT ETHICS PLAN – ADDITIONAL ETHICS REFORMS IN THE FY 2015-2016 BUDGET

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	Reform Proposed in Preliminary Budget and 30-Day Amendment	Enacted Law	Citizens Union Recommendations
6. JCOPE REFORM	<ul style="list-style-type: none"> • None proposed. 	<ul style="list-style-type: none"> • Directs appointment of a review commission by May 1, 2015, to evaluate the performance of JCOPE and the legislative ethics commission, and to issue a report by Nov. 1, 2015. This is belated action: the existing statute required appointment by June 1, 2014, and the report by March 1, 2015. • Increases JCOPE funding from \$4.5 million to \$5.6 million. \$1.2 million of the appropriation may be used only to administer and enforce ethics reforms enacted in this budget bill. 	<p>Adopted:</p> <ul style="list-style-type: none"> • Immediate appointment of a review commission • Increase JCOPE’s budget from its current \$4.5 million <p>Not Adopted:</p> <ul style="list-style-type: none"> • Reform JCOPE’s voting rules to prevent minority blocs from stopping investigations and to allow greater disclosure of its vote tallies • Provide independent budgeting • Grant JCOPE authority to hold enforcement hearings and to make findings of fact and conclusions of law.
7. LUMP SUMS REFORM	<ul style="list-style-type: none"> • The 30-Day Amendment required that legislators directing appropriations from 12 lump sum funds (out of a total of 66 lump sum pots in the budget) affirm that the appropriation was for a lawful, public purpose, that the legislator had not and would not receive and financial benefit, that there were no conflicts of interest, and that the legislator was in compliance with all financial disclosure requirements in the public officers law. No such disclosure was required for the 54 other lump sum funds in the budget or for executive-sponsored lump sum pots. 	<ul style="list-style-type: none"> • The requirement of an affirmation was stripped out of the final budget bills. 	<p>Not Adopted:</p> <ul style="list-style-type: none"> • Comprehensive, online disclosure of all lump sums in an electronic database; and • Application of the governor’s requirement of an affirmation to all state elected officials directing lump sum appropriations, not just legislators, and to apply the requirement to all lump sums authorized in the budget, not the select few designated for the requirement in the governor’s proposed budget.