

GOVERNOR'S PROGRAM BILL
2013

MEMORANDUM

AN ACT to amend the criminal procedure law, in relation to the prosecution of misconduct by public servants, and in relation to including corrupting the government within the definition of a designated offense; to amend the penal law, in relation to establishing the crime of corrupting the government, requires the intent to influence within the crime of bribery, and expands the crime of bribe receiving; to amend the legislative law, in relation to lobbying; to amend the state finance law, in relation to cancellation and disqualification of certain contracts; to amend the civil practice law and rules, in relation to including the crime of public corruption within the term of preconviction forfeiture crime; to amend the public officers law, in relation to persons deemed incapable of holding a civil office; to amend the real property tax law, in relation to certain exemption limitations; to amend the general municipal law, in relation to limitations on empire zone designation; to amend the tax law, in relation to certain tax credit limitations; and to repeal section 195.20 of the penal law relating to defrauding the government

Purpose:

Preventing public corruption is essential to ensure that government works for the people. Currently, New York State's laws defining public corruption are obsolete and far less effective than federal statutes for prosecuting individuals who commit public corruption crimes. This bill, to be known as The Public Trust Act, would establish a new class of public corruption crimes and expand the current definitions of public corruption offenses to enable prosecutors to hold accountable those who violate public trust. It will also enhance penalties for offenders.

Among other things, this bill would create a new article of the Penal Law, Article 496 "Corrupting the Government," that would both enhance penalties for existing crimes when committed against public entities and create new crimes against public entities. Commission of these crimes would subject offenders to various criminal and non-criminal consequences, including a bar on holding any elected or civil office, lobbying, contracting, receiving state funding, or doing business with the state, directly or through an organization.

Summary of Provisions:

I. Enhanced Penalties for Existing Crimes

A. Official Misconduct

This bill would make the crime of official misconduct (current § 195.20 of the Penal Law) a class C, D, or E felony, depending on the severity of the misconduct, rather than a misdemeanor offense, as follows:

- Official misconduct in the third degree, for any benefit, regardless of value: class E felony
- Official misconduct in the second degree, where the benefit gained from such misconduct is valued in excess of \$1000.00: class D felony
- Official misconduct in the first degree, where the benefit gained from such misconduct is valued in excess of \$3,000.00: class C felony

B. Corrupting the Government, Enhancements When the State is the Victim of the Crime

The Public Trust Act also creates a new Article 496 of the Penal Law, "Corrupting the Government," which will include the crimes of "corrupting the government" and "public corruption."

1. A person would be guilty of the lowest level crime of corrupting the government if he or she:

engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud the state or one or more political subdivisions of the state or one or more governmental instrumentalities within the state, or to obtain property, services or other resources from such state, political subdivision or governmental instrumentality by false or fraudulent pretenses, representations or promises.

The degree of crimes depend on whether or not the person or persons obtain property and/or the value of property, services or other resources, and the amount of such gain:

- Fourth degree, basic offense: class E felony
 - Third degree, in excess of \$1,000.00: class D felony
 - Second degree, in excess of \$5,000.00: class C felony
 - First degree, in excess of \$10,000: class B felony
2. The crime of "public corruption" would increase penalties for specific existing crimes in cases where the victim is a public entity. The crime would be deemed one category higher than the offense type or offense level of the specified offense. Thus, a class A misdemeanor would become an E felony, an E felony would become a D

felony, and so on. These enhancements would apply whether or not the offender is a public official.

The specific existing crimes affected are those defined by the following provisions of the Penal Law:

- § 155.25 (petit larceny)
- § 155.30 (grand larceny, fourth degree)
- § 155.35 (grand larceny, third degree)
- § 155.40 (grand larceny, second degree)
- § 155.42 (grand larceny, first degree)
- § 156.05 (unauthorized use of a computer)
- § 165.05 (unauthorized use of a vehicle in the third degree)
- § 165.06 (unauthorized use of a vehicle in the second degree)
- § 165.08 (unauthorized use of a vehicle in the first degree)
- § 470.05 (money laundering in the third degree)
- § 470.15 (money laundering in the second degree)
- § 470.20 (money laundering in the first degree)

C. Non-Criminal Consequences

1. In addition, the following penalties would be imposed on anybody convicted of corrupting the government, public corruption and official misconduct:
 - A court could impose a fine of up to three times the profit or other gain from the crime and forfeiture of proceeds from the crime.
 - The Tax Law would be amended to permit automatic offset by the State for any amount for which an individual is convicted of defrauding or stealing from a public entity.

II. **Bribery**

A. Establishment of New Crime: Failure to Report Bribery

This Act would create the class A misdemeanor of "failure to report bribery," which would mandate that a public servant report attempts to bribe that individual, or any other bribery or attempted bribery of another public servant of which that individual is aware.

B. Overhaul of Bribery Statute

The bill would amend the statutory definition of bribery crimes—bribery, bribe receiving and bribe giving and receiving for public office. Thus, "a person is guilty of bribery in the first degree when he or she confers, or offers or agrees to confer: any benefit upon a public servant with the intent to influence such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant." The law would no longer require proof of an agreement or understanding between the

parties, conforming New York's law to federal law. Severity of the crime of bribery would be as follows:

- Third degree, an offer or agreement to confer a benefit in excess of \$1,000.00: class D felony
- Second degree, an offer or agreement to confer a benefit greater than \$5,000.00: class C felony
- First degree, an offer or agreement to confer a benefit greater than \$10,000: class B felony

The current structure of the law for accepting election contributions and payment of lobbying expenses will remain in place so that a public servant and a person could be convicted of bribery or bribe receiving if any election contribution or a lobbying expense was paid in agreement for the performance of an act by a public servant.

III. Protecting the Public: Investigation and Post-Conviction

A. Investigation

1. The legislation would impose the same statute of limitations, and related tolling provisions, on both public servants and those persons acting in concert with a public servant to commit misconduct in public office. Currently, the statute of limitations tolls for public officials but not those acting in concert with them who are not public officials.
2. All offenses described in new Article 496 and official misconduct in the third, second and first degrees, as defined in §§ 195.00, 195.01, and 195.02 respectively of the Penal Law, would become designated offenses under Criminal Procedure Law § 700.05, "Eavesdropping and Video Surveillance Warrants."
3. For the first time, a witness who testifies before a grand jury investigating fraud on the government or misconduct, nonfeasance or neglect in public office by a public servant would receive "use" immunity, not "transactional" immunity for statements that witness gives under oath. This means that the witness, who may or may not also be part of the criminal transaction under investigation, may still be prosecuted for his or her role if the People develop evidence other than, and independent of, the evidence given by the witness. This important tool in fighting crime would conform New York practice to federal practice.
4. The bill would add new offenses to the set of crimes that constitute a basis for enterprise corruption charges.
5. The bill would amend civil forfeiture pre-conviction provisions to permit forfeiture of gain when the new public corruption and official misconduct crimes are charged.

B. Post-Conviction

To further protect the public, the following collateral consequences would flow to an individual convicted of any of the bribery, ~~official misconduct~~ or public corruption crimes:

1. A convicted offender would be barred from registering as a lobbyist.
2. A convicted offender would be prohibited from serving in a civil office.
3. A convicted entity (or corporations which employ an individual convicted of such offense in fiduciary position) would be disqualified from receiving tax credits, real estate tax benefits, and other benefits, such as those associated with Empire Zone designation.
4. The State Finance Law would be amended to disqualify individual and corporate offenders from bidding on and obtaining State contracts and to allow specific consideration by the State of any other crimes when determining whether an entity is a "responsible" bidder, and to provide that a conviction for crimes set forth in the Public Trust Act would be grounds for cancellation of State contracts.
5. Convicted offenders would be automatically disqualified from participating as Medicaid, EI or Workers' Compensation providers.

Existing Law:

For the crimes of petit larceny, grand larceny, unauthorized use of a computer, unauthorized use of a vehicle, and money laundering, the same penalties apply no matter who the victim of the crime is.

Conviction for crimes involving public corruption does not disqualify an offender from holding civil office or debarment from state contracting.

No crime of failure to report bribery exists in current law.

New York's bribery laws require a prosecutor to establish evidence of an agreement or understanding between the parties to a bribe as a necessary element of any bribery related offense.

There is only one level of crime of defrauding the government regardless of the amount defrauded, an E felony, and such fraud must involve \$1000.00 or more.

Justification:

The abuses of public office and defrauding or stealing from the State for personal gain are serious and undermine the public's confidence in government. New York's Penal Law must adequately deter such behavior, and penalties for public corruption must reflect the seriousness of the violations of the public trust and the harm done to the State that result from an individual's disregard for the great responsibility that comes with public office. The provisions of this bill do just that by enhancing penalties for crimes that victimize the State and New Yorkers as taxpayers and providing law enforcement with the tools to effectively investigate and prosecute such crimes.

Legislative History:

This is a new bill.

Budget Implications:

There is no anticipated impact on State or local finances.

Effective Date:

The provisions of this bill would take effect on the thirtieth day after it has become law and would apply to crimes committed on or after that date.