

STATE OF NEW YORK

1282

2019-2020 Regular Sessions

IN ASSEMBLY

January 14, 2019

Introduced by M. of A. CARROLL, ORTIZ, D'URSO, SCHIMMINGER, STIRPE,
M. G. MILLER, WOERNER, JAFFEE, EPSTEIN, THIELE, SANTABARBARA,
PHEFFER AMATO, MONTESANO, FAHY -- Multi-Sponsored by -- M. of A. COOK,
GOTTFRIED, PAULIN -- read once and referred to the Committee on
Governmental Operations

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY

proposing that the constitution be amended by adding a new article V-A;
in relation to state government integrity

Section 1. Resolved (if the Senate concur), That the constitution be
amended by adding a new article V-A to read as follows:

ARTICLE V-A

STATE GOVERNMENT INTEGRITY

Sec.

1. Declarations of the people.

2. New York state government integrity commission.

3. Additional powers of the commission.

4. Funding of the commission.

5. State code of ethics.

6. Recommending revisions of campaign contribution limits.

7. Transparency.

Section 1. a. The people of New York expect officers and employees of the state to observe laws, rules and regulations that specify high standards of ethical conduct designed to avoid the reality and appearance of corruption, conflict of interest, self-dealing and breach of the public trust. Equally they expect that candidates for state office and others seeking to influence state elections to observe laws, rules and regulations designed to regulate actual and potential corruption and conflicts of interest by regulating the influence of money in politics and making transparent the financing and expenditures of efforts to influence voters. To protect the integrity and freedom from corruption of the use of state power to enact laws, establish rules and regulations, and contract for goods and services funded in whole or in part

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD89014-02-9

1 with state taxes and other revenues, the people of New York expect
2 observance of laws, rules and regulations that regulate lobbying, lobby-
3 ists and government procurement. To ensure the appropriate workplace
4 conduct of state officers and employees and those who interact with such
5 officers and employees while dealing with the state and its instrumen-
6 talities, the people of New York expect that all such persons will
7 observe laws, rules and regulations setting standards of appropriate and
8 non-discriminatory workplace behavior.

9 b. Achieving this goal requires an independent and non-partisan agency
10 with jurisdiction over matters pertaining to both the legislative and
11 executive branches of government and that has the needed powers to
12 train, advise, interpret, adopt rules and regulations, investigate,
13 conduct fair hearings that afford due process and impose appropriate
14 sanctions on a consistent basis so that, with fair and equal application
15 of the law, no person or entity, no matter what their status, influence
16 or role in government, can place themselves above the law or suffer
17 detriment due to any lack of such status, influence or role.

18 § 2. a. There shall be a New York state government integrity commis-
19 sion. The commission shall, on an independent and non-partisan basis,
20 receive, initiate, investigate and determine complaints with respect to
21 the matters specified in section one of this article. This jurisdiction
22 shall be in addition to and not in derogation of the investigatory,
23 disciplinary, vendor qualification or law enforcement authority of any
24 other person or entity and of the right of an aggrieved person to seek
25 civil redress in accordance with law. The commission may in its
26 discretion decline to initiate, or suspend initiation of proceedings, or
27 otherwise adjust its procedures, in view of such other proceedings
28 undertaken or able to be undertaken by such other person or entity.

29 b. When, after hearing, the commission has determined that the
30 respondent has violated a law, rule or regulation within the commis-
31 sion's jurisdiction to enforce, the commission may impose any civil
32 sanction authorized by law and/or refer the matter for criminal prose-
33 cution. The commission may also caution, admonish or censure such
34 respondent or, in the case of a non-elected state officer or employee,
35 suspend, demote or remove such respondent from office or employment
36 after such adjudicatory process that substantially complies with the
37 terms of any relevant collective bargaining agreement. In deciding the
38 severity of the sanction, the commission shall consider to what extent
39 the violation is inadvertent, isolated and/or of insubstantial conse-
40 quence on the one hand or willful, repeated, causing actual public harm
41 or risk of public harm and/or otherwise egregious on the other. Determi-
42 nations, other than a determination to refer for criminal prosecution,
43 shall be subject to judicial review in accordance with law.

44 c. The commission shall consist of nine members, of whom two shall be
45 appointed jointly by the governor, the attorney general and the comp-
46 troller, at least one of whom shall not be, or within the prior five
47 years shall not have been, enrolled in the same political party as the
48 governor, one jointly by the leaders in each house of the legislature of
49 the party conferences whose candidate for governor in the most recent
50 gubernatorial election received the largest number of votes, one jointly
51 by the leaders in each house of the legislature of the party conferences
52 whose candidate for governor in the most recent gubernatorial election
53 received the second largest number of votes, and five jointly by the
54 chief judge of the state of New York and the presiding justices of each
55 of the appellate divisions, no more than three of whom shall be, or
56 within the prior five years shall not have been, enrolled in the same

1 political party. No member of the commission shall have held office in
2 any political party organization, have been a state officer or employee
3 or have been engaged as a lobbyist within three years of appointment or
4 at any time during their term. The chair shall be elected by the commis-
5 sion members from among its members. Commission members shall be reim-
6 bursed for their actual expenses and paid a per diem salary to be fixed
7 by law but at least a per diem amount equal to the annual salary paid to
8 a justice of the supreme court divided by two hundred twenty. A member
9 may be removed for cause on application to the court of appeals made by
10 a majority vote of the full membership of the commission.

11 d. The persons first appointed by the governor, the attorney general
12 and the comptroller shall have respectively three and four-year terms as
13 those officials shall designate. The persons first appointed by the
14 chief judge of the state of New York and the presiding justices of the
15 appellate divisions shall have respectively one, two, three, three, and
16 four-year terms as that judge and those justices shall designate. The
17 person first appointed jointly by the legislative leaders in each house
18 of the legislature of the party conferences whose candidate for governor
19 received the largest number of votes shall have a one-year term. The
20 person first appointed jointly by the legislative leaders in each house
21 of the legislature of the party conferences whose candidate for governor
22 received the second largest number of votes shall have a two-year term.
23 Each member of the commission shall be appointed thereafter for a term
24 of four years.

25 e. The organization and procedure of the commission shall be as
26 provided by law provided that the commission shall act by majority vote
27 of its membership in attendance and constituting a quorum and determine
28 violations based on a preponderance of the evidence except that any
29 order of censure or removal shall be based on clear and convincing
30 evidence and shall be approved by a majority of all the members of the
31 commission. The commission may establish its own rules and procedures
32 not inconsistent with law and due process. Those rules shall bar ex
33 parte communications of any kind or substance, direct or indirect,
34 between members of the commission and their appointing authority and
35 such rule shall bind both the member, the commission staff, the appoint-
36 ing authority and the staff, agents and representatives of the appoint-
37 ing authority. The commission shall be empowered to designate one or
38 more of its members or any other persons as hearing officers to hear and
39 report concerning any matter before the commission.

40 § 3. a. The commission may appoint an executive director, who may
41 appoint staff, and one or more deputy directors with such duties and
42 powers as the commission may fix. No person who would be disqualified
43 from being a member of the commission may be appointed as executive
44 director except that a person employed at the commission shall not be
45 disqualified by reason of that employment.

46 b. The commission and its designated hearing officers shall have the
47 power to administer oaths, compel the attendance of witnesses and issue
48 subpoenas.

49 c. The commission shall assure the effective enforcement and adminis-
50 tration of the state ethics laws including the code of ethics, laws
51 providing for disclosure of financial and other interests by state offi-
52 cers and employees, the laws regulating lobbying and lobbyists and the
53 laws concerning campaign finance. The commission shall take care that
54 laws respecting procurement of goods and services by the state are
55 faithfully observed as are laws respecting workplace behavior. This
56 authority shall include the power and duty to interpret laws adminis-

1 tered by the commission, to train all persons within the commission's
2 jurisdiction in compliance with the laws, rules and regulations adminis-
3 tered or enforced by the commission and to issue and interpret rules and
4 regulations that are not in conflict with law.

5 d. The commission may make a criminal prosecution referral to a
6 district attorney, the attorney general or a United States attorney.

7 e. The commission, after notice and opportunity for public comment,
8 may issue advisory opinions or bulletins which will have such protective
9 effect on those who act in compliance therewith as is specified in the
10 opinion or bulletin. It shall also establish an office of ethics and
11 lobbying guidance to give prompt, non-precendential informal advice to
12 persons whose conduct it oversees. Persons receiving such informal
13 advice may rely on that advice absent misrepresentation of material
14 facts to the office of ethics and lobbying guidance and such advice
15 shall be protected as an attorney-client communication.

16 § 4. The state shall annually appropriate an amount adequate to
17 support the commission's discharge of its fiduciary duty to the people.
18 In no event shall the appropriation for the work of the commission be
19 less than ten percent of the appropriation to the state law department.

20 § 5. a. The commission shall periodically review the state code of
21 ethics and may propose revisions and amendments to the code. The state
22 code of ethics, and any revision or amendment thereto, shall be drafted
23 and construed to eliminate conduct that creates an appearance of
24 corruption, conflicts of interest that materially impair the performance
25 of official duties and breaches of the public trust including the misuse
26 of official position or the abuse of official authority for personal
27 gain.

28 b. The state code of ethics shall provide that it shall be the ethical
29 duty of any person or entity within the jurisdiction of the commission
30 to promptly report to the commission information not protected by the
31 attorney-client or prosecutorial investigative privilege about activity
32 known to be in violation of the state code of ethics or other law which
33 any person or entity has engaged in with respect to activity that is
34 within the jurisdiction of the commission. There shall be no retali-
35 ation against a person or entity making such a report in good faith on
36 information and belief, and any person aggrieved by such retaliation may
37 bring a civil action for compensatory and exemplary damages.

38 c. The state code of ethics shall provide that no person within the
39 jurisdiction of the commission shall commit an act of sexual harassment
40 while serving in his or her official capacity and no such person serving
41 in a supervisory capacity shall suffer an act of sexual harassment to
42 occur without taking care that there be due consequences in accordance
43 with law. The commission may by rule define the conduct that constitutes
44 an act of sexual harassment and shall establish a unit responsible for
45 sexual harassment complaints and investigations.

46 § 6. The commission may recommend to the legislature limits for all
47 categories of campaign contributions to candidates and political organ-
48 izations that in its judgment are low enough to prevent an elected offi-
49 cial from being so beholden to a campaign contributor as to materially
50 impair such official's exercise of independent policy judgment in the
51 interests of the public and his or her constituents.

52 § 7. The commission shall be subject to all transparency and public
53 access laws subject to such reasonable exceptions for pending confiden-
54 tial investigations as shall be provided by law. The legislative branch
55 shall be subject to laws providing for transparency to the same extent
56 as is the executive branch.

1 § 8. Within ninety days of the effective date of this article the
2 legislature shall make and the governor shall approve the necessary
3 changes to law to transfer the functions performed by the joint commis-
4 sion on public ethics and the legislative ethics commission to the
5 commission.

6 § 2. Resolved (if the Senate concur), That the foregoing amendment be
7 referred to the first regular legislative session convening after the
8 next succeeding general election of members of the assembly, and, in
9 conformity with section 1 of article 19 of the constitution, be
10 published for 3 months previous to the time of such election.