S T A T E O F N E W Y O R K

8930

2009-2010 Regular Sessions

I N A S S E M B L Y

June 16, 2009

Introduced by M. of A. GIGLIO -- read once and referred to the Committee on Governmental Operations

AN ACT to establish the commission on official conduct, providing for its powers, duties and functions, and providing for the transfer of the functions, powers and duties of the commission on public integrity, the office of the state inspector general and the former temporary state commission of investigation to the commission on official conduct; to amend the civil service law, the legislative law and the racing, pari-mutuel wagering and breeding law, in relation to the commission on public integrity; to amend the executive law and the public authorities law, in relation to the state inspector general; to amend the criminal procedure law, the executive law and the public officers law, in relation to the former temporary state commission of investigation; to repeal section 94 of the executive law relating to the commission on public integrity; to repeal article 4-A of the executive law and subdivision 68 of section 2.10 of the criminal procedure law relating to the office of the state inspector general; and to repeal chapter 989 of the laws of 1958, relating to creating a temporary state commission of investigation, relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "commission on official conduct act".

S 2. Definitions. As used in this act, the following terms shall mean:

(a) "Commission" means the commission on official conduct established by section three of this act.

(b) "Executive director" means the executive director of the commission, appointed pursuant to section four of this act.

(c) "Covered agency" means all executive branch agencies, departments, divisions, officers, boards and commissions, public authorities (other than multi-state or multi-national authorities) and public benefit

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

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corporations, the heads of which are appointed by the governor, and which do not have their own inspector general by statute.

S 3. Commission on official conduct; established. (a) There is hereby established, as an independent state agency, the commission on official conduct. The commission shall consist of 5 members appointed as follows:

(1) one member appointed by the chief judge of the court of appeals, who shall serve as the chair of the commission;

(2) one member appointed by the presiding justice of the appellate division in the first department;

(3) one member appointed by the presiding justice of the appellate division in the second department;

(4) one member appointed by the presiding justice of the appellate division in the third department; and

(5) one member appointed by the presiding justice of the appellate division in the fourth department.

(b) Each member of the commission shall serve a term of 5 years commencing on the first of January of the calendar year in which the vacancy in such office occurs; provided, however, that for the members initially appointed as members, the member appointed by the presiding justice in the fourth department shall serve a term of 1 year, the member appointed by the presiding justice in the second department shall serve a term of 2 years, the member appointed by the presiding justice in the third department shall serve a term of 3 years, the member appointed by the presiding justice in the first department shall serve a term of 4 years and the member appointed by the chief judge of the court of appeals shall serve a term of 5 years.

Any vacancy occurring in the membership of the commission shall be filled within 60 days of its occurrence 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 to the unexpired term of the member he or she replaces.

(c) Four 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.

(d) The members of the commission shall receive no compensation for their services, but shall be allowed their actual and necessary expenses incurred in the performance of their duties pursuant to this act.

(e) Members of the commission may be removed by the chief judge of the court of appeals for substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of office or violation of the provisions of this act, after written notice and opportunity to be heard by the court of appeals.

S 4. Executive director and staff. (a) The commission shall appoint and employ an executive director who shall serve a term of 6 years. Any vacancy in the office of executive director shall be filled within 10 days of its occurrence. A person appointed to fill a vacancy in the office of executive director occurring other than by expiration of a term of office shall be appointed to the unexpired term of the executive director he or she replaces.

(b) The executive director shall act in accordance with the policies, rules and regulations of the commission. He or she shall act in the name of the commission pursuant to the specific powers delegated by the commission to the office of executive director.

(c) The commission shall appoint and employ such other staff and investigators as shall be necessary to carry out its powers and duties pursuant to this act.

(d) The executive director, staff members and investigators may be removed by the commission for substantial neglect of duty, gross misconduct in office, inability to perform their duties or violation of the provisions of this act, after written notice and opportunity to be heard.

S 5. Powers and duties. The commission shall have the power and duty to:

(a) fix the compensation of the executive director, staff members and investigators;

(b) request and receive, and shall utilize and be provided with such facilities, resources and data of any court, department, division, board, bureau, commission or agency of the state or any political subdivision thereof, or of any public authority or public benefit corporation, as it may reasonably request to properly carry out its powers and duties pursuant to this act;

(c) adopt, amend and rescind rules and regulations to govern the procedures of the commission and to implement the provisions of this act;

(d) adopt, amend and rescind rules and regulations to assist appointing authorities in determining which persons hold policy-making positions for the purposes of section 73-a of the public officers law;

(e) make available forms for annual statements of financial disclosure required to be filed pursuant to section 73-a of the public officers law;

(f) review financial disclosure statements filed pursuant to section 73-a of the public officers law;

(g) receive and investigate complaints and referrals alleging violations of section 73, 73-a or 74 of the public officers law, article 1-A of the legislative law, or section 107 of the civil service law;

(h) permit any person required to file a financial disclosure statement pursuant to section 73-a of the public officers law to delete from the copy thereof made available for public inspection such information as shall be determined by the commission will have no material bearing on the discharge of the reporting person's official duties;

(i) grant any person required to file a financial disclosure statement pursuant to section 73-a of the public officers law, an additional period of time within which to file such statement due to justifiable cause or undue hardship;

(j) permit any person required to file a financial disclosure statement pursuant to section 73-a of the public officers law to delete such information pertaining to such person's spouse or unemancipated children as shall be found by the commission will have no material bearing on the discharge of the reporting person's official duties;

(k) advise and assist any state agency in establishing rules and regulations relating to possible conflicts between private interests and official duties of present and former state officers and employees;

(l) 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 be granted an exemption from such filing requirement. The commission may grant such an exemption where the public interest does not require disclosure and the applicant's duties do not involve negotiation, authorization or approval of:

(1) contracts, leases, franchises, revocable consents, concessions, variances, special permits or licenses as defined in section 73 of the public officers law,

(2) the purchase, sale, rental or lease of real property, goods or services, or a contract therefor,

(3) the obtaining of grants of money or loans, or

(4) the adoption or repeal of any rule or regulation having the force and effect of law;

(m) determine questions 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 provisions of this act;

(n) upon written request from a person subject to the requirements of section 73, 73-a or 74 of the public officers law, render an advisory opinion on the requirements of such provisions;

(o) promulgate rules concerning restrictions on outside activities and limitations or the receipt of gifts and honoraria;

(p) conduct training programs, in cooperation with the governor's office of employee relations, to provide instruction to persons subject to its jurisdiction;

(q) administer and enforce all provisions of this act;

(r) conduct any investigation necessary to carry out the provisions of this act;

(s) receive and investigate complaints from any source, or upon its own initiative, concerning allegations of corruption, fraud, criminal activity, conflicts of interest or abuse in any covered agency;

(t) inform the heads of covered agencies of such allegations and the progress of investigations related thereto, unless special circumstances require confidentiality;

(u) determine with respect to such allegations whether disciplinary action, civil or criminal prosecution, or further investigation by an appropriate federal, state or local agency is warranted, and to assist in such investigations;

(v) prepare and release to the public written reports of such investigations, as appropriate and to the extent permitted by law, subject to redaction to protect the confidentiality of witnesses. The release of all or portions of such reports may be deferred to protect the confidentiality of ongoing investigations;

(w) review and examine periodically the policies and procedures of covered agencies with regard to the prevention and detection of corruption, fraud, criminal activity, conflicts of interest or abuse;

(x) recommend remedial acts to prevent or eliminate corruption, fraud, criminal activity, conflicts of interest or abuse in covered agencies;

(y) establish programs for training state officers and employees regarding the prevention and elimination of corruption, fraud, criminal activity, conflicts of interest or abuse in covered agencies;

(z) subpoena and enforce the attendance of witnesses;

(aa) administer oaths or affirmations and examine witnesses under oath;

(bb) require the production of any books and papers deemed relevant or material to any investigation, examination or review;

(cc) examine and copy or remove documents or records of any kind prepared, maintained or held by any covered agency;

(dd) require any officer or employee in a covered agency to answer questions concerning any matter related to the performance of his or her official duties. No statement or other evidence derived therefrom may be used against such officer or employee in any subsequent criminal prosecution other than for perjury or contempt arising from such testimony.

The refusal of any officer or employee to answer questions shall be cause for removal from office or employment, or other appropriate penalty;

(ee) monitor the implementation by covered agencies of any recommendations made by the commission;

(ff) perform any other functions that are necessary or appropriate to fulfill the provisions of this act;

(gg) conduct investigations in connection with:

(1) the faithful execution and enforcement of the laws of the state, with particular reference but not limited to organized crime and racketeering,

(2) the conduct of public officers and public employees, and of officers and employees of public benefit corporations and public authorities, and

(3) any matter concerning the public peace, public safety and public justice;

(hh) at the direction of the governor, conduct investigations and otherwise assist the governor in connection with:

(1) the removal of public officers by the governor,

(2) the making of recommendations by the governor to any other person or body, with respect to the removal of public officers, and

(3) the making of recommendations by the governor to the legislature with respect to changes in or additions to existing provisions of law required for the more effective enforcement of the law;

(ii) at the direction or request of the governor or the head of any department, board, bureau, commission or other agency of the state, investigate the management or affairs of any such department, board, bureau, commission or other agency;

(jj) upon the request of district attorneys and other law enforcement officers, cooperate with, advise and assist them in the performance of their official powers and duties;

(kk) cooperate with departments and officers of the United States government in the investigation of violations of the federal laws within this state;

(ll) examine into matters relating to law enforcement extending across the boundaries of the state into other states, and may consult and exchange information with officers and agencies of other states with respect to law enforcement problems of mutual concern to this and other states;

(mm) whenever it shall appear to the commission that there is cause for the prosecution for a crime or for the removal of a public officer for misconduct, refer the evidence of such crime or misconduct to the officials authorized to conduct the prosecution or to remove the public officer;

(nn) keep the public informed as to the operations of organized crime and problems of law enforcement in the state; and

(oo) exercise any and all powers of the former commission on public integrity and the former office of the state inspector general as they existed immediately prior to the effective date of this act, and exercise any and all powers of the former temporary state commission of investigation as they existed on March 30, 2009.

S 6. Financial disclosure. (a) The commission shall inspect all financial disclosure statements filed with the commission to ascertain whether any person subject to the reporting requirements of section 73-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 73, 73-a or 74 of the public officers law.

(b) 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: (1) to the reporting person; (2) in the case of a statewide elected official, to the temporary president of the senate and the speaker of the assembly; and (3) 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 (d) 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.

(c)(1) If the commission receives a sworn complaint alleging a violation of section 73, 73-a or 74 of the public officers law, section 107 of the civil service law or article 1-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.

(2) 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.

(3) The jurisdiction of the commission when acting pursuant to this act 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 one 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 1-A of the legislative law. Nothing in this section shall serve to limit the jurisdiction of the commission in enforcement of subdivision 8 of section 73 of the public officers law.

(d) An individual subject to the jurisdiction of the commission who knowingly and intentionally violates the provisions of subdivisions 2 through 5, 7, 8, 12 or 14 through 17 of section 73 of the public officers law, section 107 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 73-a of the public officers law shall be subject to a civil penalty in an amount not to exceed $40,000 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 3 of section 74 of the public officers law shall be subject to a civil penalty in an amount not to exceed $10,000 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 3 of section 74 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 1-A of the legislative law shall be subject to civil penalty as provided for in that article. Assessment of a civil penalty pursuant to this section 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 107 of the civil service law, subdivisions 12 or 14 through 17 of section 73 or section 74 of the public officers law or article 1-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 pursuant to this section in the event a category of "value" or "amount" reported pursuant to this section 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 73 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 section 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

3 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 78 of the civil practice law and rules relating to the assessment of the civil penalties authorized by this subdivision and commission denials of requests for certain deletions or exemptions to be made from a financial disclosure statement as authorized by this act. 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 3 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 78 of the civil practice law and rules.

(e) 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 73 or 74 of the public officers law, it may refer such violation to the legislative ethics commission. 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.

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

S 7. Website. Within one hundred twenty days of the effective date of this section, 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 section eight of this act, other than financial disclosure statements, and any other records or information which the commission determines to be appropriate.

S 8. Public access to records. (a) Notwithstanding the provisions of article 6 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 73-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 this act;

(2) notices of delinquency sent under subdivision (b) of section six of this act;

(3) notices of reasonable cause sent under paragraph two of subdivision (c) of section six of this act;

(4) notices of civil assessments imposed under this act 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 1-A of the legislative law.

(b) 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 or her 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.

S 9. Responsibilities of covered agencies, state officers and employees. (a) Every state officer or employee in a covered agency shall report promptly to the commission any information concerning corruption, fraud, criminal activity, conflicts of interest or abuse by another state officer or employee relating to his or her office or employment, or by a person having business dealings with a covered agency relating to those dealings. The knowing failure of any officer or employee to so report shall be cause for removal from office or employment or other appropriate penalty. Any officer or employee who acts pursuant to this subdivision by reporting to the commission improper governmental action as defined in section 75-b of the civil service law shall not be subject to dismissal, discipline or other adverse personnel action.

(b) The head of any covered agency shall advise the governor within ninety days of the issuance of a report by the commission as to the remedial action that the agency has taken in response to any recommendation for such action contained in such report.

S 10. Confidentiality. Any person conducting or participating in any examination or investigation who shall disclose to any person other than the commission or an officer having the power to appoint one or more of the commissioners the name of any witness examined, or any information obtained or given upon such examination or investigation, except as directed by the commission, shall be guilty of a misdemeanor.

S 11. Evidence to be impounded. Upon the application of the commission, the executive director or a duly authorized member of its staff, the supreme court or a justice thereof may impound any exhibit marked in evidence in any public or private hearing held in connection with an investigation conducted by the commission, and may order such exhibit to be retained by, or delivered to and placed in the custody of, the commission. When so impounded such exhibit shall not be taken from the custody of the commission, except upon further order of the court or a justice thereof made upon five days notice to the commission or upon its application or with its consent.

S 12. Immunity from prosecution. In any investigation or hearing conducted by the commission pursuant to this act, relating to any crime or offense with respect to which, by express provision of statute, a competent authority is authorized to confer immunity; the commission may confer immunity in accordance with the provisions of section 50.20 of the criminal procedure law, but only after affording the attorney general and the appropriate district attorney the opportunity to be heard in respect to any objections which they may have to the granting of such immunity.

S 13. Transfer of functions, powers and duties. All functions, powers, duties and obligations of the former commission on public integrity and

the former office of the state inspector general are hereby transferred to the commission.

S 14. Transfer of employees. (a) Upon transfer of the functions of the former commission on public integrity and the former office of the state inspector general to the commission, provisions shall be made for the transfer to the commission of those employees of such former agencies who were engaged in carrying out the functions transferred by this act in accordance with section 70 of the civil service law or, where not subject to the civil service law, the provisions of such section 70 shall be deemed applicable, except where the context clearly requires otherwise. Any such employee who, at the time of such transfer, has a temporary or provisional appointment shall be transferred subject to the same right of removal, examination or termination as though such transfer had not been made except to the extent such rights are modified by a collective bargaining agreement. Employees holding permanent appointments in competitive class positions who are not transferred pursuant to this section shall have their names entered upon an appropriate preferred list for reinstatement pursuant to the civil service law.

(b) A transferred employee shall remain in the same collective bargaining unit as was the case prior to his or her transfer; successor employees to the positions held by such transferred employees shall, consistent with the provisions of article 14 of the civil service law, be included in the same unit as their predecessors. Employees other than management or confidential persons (as defined in article 14 of the civil service law), serving positions in newly created titles shall be assigned to the appropriate bargaining unit. Nothing contained in this section shall be construed to affect:

(1) the rights of employees pursuant to a collective bargaining agreement;

(2) the representational relationships among employee organizations or the bargaining relationships between the state and an employee organization; or

(3) existing law with respect to an application to the public employment relations board, provided, however, that the merger of such negotiating units of employees shall be effected only with the consent of the recognized and certified representative of such units and of the department of law.

S 15. Transfer of records. All books, papers and property of the former commission on public integrity and the former office of the state inspector general are to be delivered to the commission at such place and time, and in such manner as the commission shall require.

S 16. Continuity of authority. For the purpose of succession to all functions, powers, duties and obligations of the former commission on public integrity and the former office of the state inspector general transferred to and assumed by the commission, such commission shall continue the operation thereof as if performed by such former agencies.

S 17. Completion of unfinished business. Any business or other matter undertaken or commenced by the former commission on public integrity and the former office of the state inspector general pertaining to or connected with the functions, powers, duties and obligations transferred and assigned to the commission and pending on the effective date of this section shall be conducted and completed by the commission in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by such former agencies.

S 18. Continuation of rules and regulations. All rules, regulations, acts, orders, determinations and decisions of the former commission on

public integrity and the former office of the state inspector general in force at the time of such transfer and assumption, shall continue in force and effect as rules, regulations, acts, orders, determinations and decisions of the commission until duly modified or abrogated.

S 19. Terms occurring in laws, contracts and other documents. Whenever the former commission on public integrity or the former office of the state inspector general is referred to or designated in any law, contract or document pertaining to the functions, powers, obligations and duties transferred and assigned pursuant to this act, such reference or designation shall be deemed to refer to the commission.

S 20. Existing rights and remedies preserved. No existing right or remedy of any character shall be lost, impaired or affected by reason of any transfer or assignment pursuant to this act.

S 21. Pending actions or proceedings. No action or proceeding pending upon the effective date of this section relating to the functions, powers and duties of the former commission on public integrity and the former office of the state inspector general transferred to the commission, brought by or against any such former agency, shall be affected by any provision of this act, but the same may be prosecuted or defended in the name of the commission. In all such actions and proceedings, the commission, upon application to the court, shall be substituted as a party.

S 22. Transfer of appropriations heretofore made. Subject to the approval of the director of the division of the budget, all appropriations and reappropriations heretofore made to the former commission on public integrity and the former office of the state inspector general for the purposes and functions transferred pursuant to this act to the commission, to the extent of remaining unexpended or unencumbered balance thereof, whether allocated or unallocated, and whether obligated or unobligated, are hereby transferred to and made available for use and expenditure by the commission for the same purposes for which originally appropriated or reappropriated and shall be payable on vouchers certified or approved by the executive director on audit and warrant of the comptroller. Payments for liabilities for expenses of personal services, maintenance and operation heretofore incurred by and for liabilities incurred and to be incurred in completing the affairs of the former commission on public integrity and the former office of the state inspector general with respect to the powers, duties and functions transferred in this act, shall also be made on vouchers or certificates approved by the executive director on audit and warrant of the comptroller.

S 23. Transfer of assets and liabilities. All assets and liabilities of the former commission on public integrity and the former office of the state inspector general are hereby transferred to and assumed by the commission.

S 24. The commission is hereby directed to immediately take any and all actions necessary to enable it to assume all powers, duties and functions of the former commission on public integrity, the former office of the state inspector general and the former temporary state commission of investigation within 90 days of the effective date of this act.

S 25. Subdivision 5 of section 107 of the civil service law, as amended by chapter 14 of the laws of 2007, is amended to read as follows:

5. Violation of this section. Complaints alleging a violation of this section by a statewide elected official or a state officer or employee,

as defined in section seventy-three of the public officers law, may be directed to the commission on [public integrity] OFFICIAL CONDUCT.

S 26. Section 94 of the executive law is REPEALED.

S 27. Subdivision (f) of section 1-c of the legislative law, as amended by chapter 14 of the laws of 2007, is amended to read as follows:

(f) The term "commission" shall mean the commission on [public integrity created by section ninety-four of the executive law] OFFICIAL CONDUCT.

S 28. Subdivision 3 of section 212 of the racing, pari-mutuel wagering and breeding law, as amended by chapter 18 of the laws of 2008, is amended to read as follows:

3. Such members, except as otherwise provided by law, may engage in private or public employment, or in a profession or business. The board, its members, officers and employees shall be subject to the provisions of sections seventy-three and seventy-four of the public officers law. No former trustee or officer of a non-profit racing association known as The New York Racing Association, Inc. or its predecessor, no current director or officer of a franchised corporation or any individual registered with the [New York] commission on [public integrity] OFFICIAL CONDUCT shall be appointed as members to the board nor shall any member of the board have any direct or indirect interest in any racehorse, thoroughbred racing or pari-mutuel wagering business, video lottery terminal facility or any development at any racing facility.

S 29. Article 4-A of the executive law is REPEALED.

S 30. Subdivision 3 of section 63 of the executive law, as amended by chapter 766 of the laws of 2005, is amended to read as follows:

3. Upon request of the governor, comptroller, secretary of state, commissioner of transportation, superintendent of insurance, superintendent of banks, commissioner of taxation and finance, commissioner of motor vehicles, or the [state inspector general] COMMISSION ON OFFICIAL CONDUCT, or the head of any other department, authority, division or agency of the state, investigate the alleged commission of any indictable offense or offenses in violation of the law which the officer making the request is especially required to execute or in relation to any matters connected with such department, and to prosecute the person or persons believed to have committed the same and any crime or offense arising out of such investigation or prosecution or both, including but not limited to appearing before and presenting all such matters to a grand jury.

S 31. Section 2350-dd of the public authorities law, as added by chapter 762 of the laws of 2005, is amended to read as follows:

S 2350-dd. Jurisdiction of [state inspector general] COMMISSION ON OFFICIAL CONDUCT. The agency is subject to the jurisdiction of the [office of the state inspector general] COMMISSION ON OFFICIAL CONDUCT.

S 32. Subdivision 3 of section 2.10 of the criminal procedure law, as added by chapter 843 of the laws of 1980, is amended to read as follows:

3. [Investigators] THE EXECUTIVE DIRECTOR AND INVESTIGATORS of the [office of the state] commission [of investigation] ON OFFICIAL CONDUCT.

S 33. Subdivision 68 of section 2.10 of the criminal procedure law, as added by chapter 168 of the laws of 2000, is REPEALED.

S 34. Subdivision 3 of section 70-a of the executive law, as added by chapter 1003 of the laws of 1970, is amended to read as follows:

3. The deputy attorney general in charge of the organized crime task force may request and shall receive from the division of state police, the state department of taxation and finance, the state department of

labor, the [temporary state] commission [of investigation] ON OFFICIAL CONDUCT, and from every department, division, board, bureau, commission or other agency of the state, or of any political subdivision thereof, cooperation and assistance in the performance of his duties. Such deputy attorney general may provide technical and other assistance to any district attorney or other local law enforcement official requesting such assistance in the investigation or prosecution of organized crime cases.

S 35. Subdivision 9 of section 835 of the executive law, as amended by chapter 602 of the laws of 2008, is amended to read as follows:

9. "Qualified agencies" means courts in the unified court system, the administrative board of the judicial conference, probation departments, sheriffs' offices, district attorneys' offices, the state department of correctional services, the state division of probation, the department of correction of any municipality, the insurance frauds bureau of the state department of insurance, the office of professional medical conduct of the state department of health for the purposes of section two hundred thirty of the public health law, the child protective services unit of a local social services district when conducting an investigation pursuant to subdivision six of section four hundred twenty-four of the social services law, the office of Medicaid inspector general, the [temporary state] commission [of investigation] ON OFFICIAL CONDUCT, the criminal investigations bureau of the banking department, police forces and departments having responsibility for enforcement of the general criminal laws of the state and the Onondaga County Center for Forensic Sciences Laboratory when acting within the scope of its law enforcement duties.

S 36. Subdivision 8 of section 92 of the public officers law, as amended by chapter 336 of the laws of 1992, is amended to read as follows:

(8) Public safety agency record. The term "public safety agency record" means a record of the commission of correction, the [temporary state] commission [of investigation] ON OFFICIAL CONDUCT, the department of correctional services, the division for youth, the division of parole, the crime victims board, the division of probation and correctional alternatives or the division of state police or of any agency or component thereof whose primary function is the enforcement of civil or criminal statutes if such record pertains to investigation, law enforcement, confinement of persons in correctional facilities or supervision of persons pursuant to criminal conviction or court order, and any records maintained by the division of criminal justice services pursuant to sections eight hundred thirty-seven, eight hundred thirty-seven-a, eight hundred thirty-seven-b, eight hundred thirty-seven-c, eight hundred thirty-eight, eight hundred thirty-nine, eight hundred forty-five, and eight hundred forty-five-a of the executive law and by the department of state pursuant to section ninety-nine of the executive law.

S 37. Chapter 989 of the laws of 1958, creating a temporary state commission of investigation, is REPEALED.

S 38. This act shall take effect on the first of January next succeeding the date on which it shall have become a law, provided that sections six through twenty-three and sections twenty-five through thirty-seven of this act shall take effect on the first of April next succeeding the date on which it shall have become a law.