STATE OF NEW YORK

10651

IN ASSEMBLY

May 10, 2018

Introduced by M. of A. CARROLL -- 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 with state taxes and other revenues, the people of New York expect observance of laws, rules and regulations that regulate lobbying, lobbyists and government procurement. To ensure the appropriate workplace conduct of state officers and employees and those who interact with such officers and employees while dealing with the state and its instrumentalities, the people of New York expect that all such persons will observe laws, rules and regulations setting standards of appropriate and non-discriminatory workplace behavior.

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

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

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

b. When, after hearing, the commission has determined that the respondent has violated a law, rule or regulation within the commission's jurisdiction to enforce, the commission may impose any civil sanction authorized by law and/or refer the matter for criminal prosecution. The commission may also caution, admonish or censure such respondent or, in the case of a non-elected state officer or employee, suspend, demote or remove such respondent from office or employment after such adjudicatory process that substantially complies with the terms of any relevant collective bargaining agreement. In deciding the severity of the sanction, the commission shall consider to what extent the violation is inadvertent, isolated and/or of insubstantial consequence on the one hand or willful, repeated, causing actual public harm or risk of public harm and/or otherwise egregious on the other. Determinations, other than a determination to refer for criminal prosecution, shall be subject to judicial review in accordance with law except that determinations to admonish, censure or remove an official elected to office by vote of the people shall be subject to being disapproved or reduced by a majority of the members of either house of the legislature voting promptly and separately. If the determination is one of admonition or censure, that determination shall be subject to being increased to censure or removal on the vote of two-thirds of the members of both houses of the legislature voting promptly and separately.

c. The commission shall consist of nine members, of whom two shall be appointed jointly by the governor, the attorney general and the comptroller, at least one of whom shall not be, or within the prior five years shall not have been, enrolled in the same political party as the governor, one jointly by the leaders in each house of the legislature of the party conferences whose candidate for governor in the most recent gubernatorial election received the largest number of votes, one jointly by the leaders in each house of the legislature of the party conferences whose candidate for governor in the most recent gubernatorial election received the second largest number of votes, and five jointly by the chief judge of the state of New York and the presiding justices of each of the appellate divisions, no more than three of whom shall be, or within the prior five years shall not have been, enrolled in the same political party. No member of the commission shall have held office in

any political party organization, have been a state officer or employee or have been engaged as a lobbyist within three years of appointment or at any time during their term. The chair shall be elected by the commission members from among its members. Commission members shall be reimbursed for their actual expenses and paid a per diem salary to be fixed by law but at least a per diem amount equal to the annual salary paid to a justice of the supreme court divided by two hundred twenty. A member may be removed for cause on application to the court of appeals made by a majority vote of the full membership of the commission.

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

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

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

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

c. The commission shall assure the effective enforcement and administration of the state ethics laws including the code of ethics, laws providing for disclosure of financial and other interests by state officers and employees, the laws regulating lobbying and lobbyists and the laws concerning campaign finance. The commission shall take care that laws respecting procurement of goods and services by the state are faithfully observed as are laws respecting workplace behavior. This authority shall include the power and duty to interpret laws administered by the commission, to train all persons within the commission's

jurisdiction in compliance with the laws, rules and regulations administered or enforced by the commission and to issue and interpret rules and regulations that are not in conflict with law.

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

e. The commission, after notice and opportunity for public comment, may issue advisory opinions or bulletins which will have such protective effect on those who act in compliance therewith as is specified in the opinion or bulletin. It shall also establish an office of ethics guidance to give informal advice to persons whose conduct it oversees.

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

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

b. The state code of ethics shall provide that it shall be the ethical duty of any person or entity within the jurisdiction of the commission to promptly report to the commission activity known to be in violation of the state code of ethics or other law engaged in with respect to activity that is within the jurisdiction of the commission. There shall be no retaliation against a person or entity making such a report in good faith on information and belief, and any person aggrieved by such retaliation may bring a civil action for compensatory and exemplary damages.

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

§ 6. The commission may recommend to the legislature limits for all categories of campaign contributions to candidates and political organizations that in its judgment are low enough to prevent an elected official from being so beholden to a campaign contributor as to materially impair such official's exercise of independent policy judgment in the public interest.

§ 7. The commission shall be subject to all transparency and public access laws subject to such reasonable exceptions for pending confidential investigations as shall be provided by law. The legislative branch shall be subject to laws providing for transparency to the same extent as is the executive branch.

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