

# STATE OF NEW YORK

7337

## IN SENATE

January 8, 2018

Introduced by Sen. SERINO -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the public officers law, in relation to establishing a joint commission on public transparency and sexual harassment

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The public officers law is amended by adding a new section  
2 75-b to read as follows:

3 § 75-b. Commission on public transparency and sexual harassment. 1.  
4 When used in this section the following terms shall have the following  
5 meanings:

6 (a) "statewide elected official" shall mean the governor, lieutenant  
7 governor, comptroller, or attorney general;

8 (b) "state officer or employee" shall mean:

9 (i) heads of state departments and their deputies and assistants who  
10 serve at the discretion of the statewide elected official; and

11 (ii) officers and employees of statewide elected officials who serve  
12 at the discretion of the statewide elected official;

13 (c) "legislative employee" shall mean any officer or employee of the  
14 legislature; and

15 (d) "legislative member" shall mean a senator or member of the assem-  
16 bly.

17 2. There is hereby established within the department of state a  
18 commission on public transparency and sexual harassment which shall  
19 consist of eleven members and shall have and exercise the powers and the  
20 duties set forth in this section with respect to statewide elected offi-  
21 cials, state officers and employees, legislative employees, and legisla-  
22 tive members. This section shall not be deemed to have revoked or  
23 rescinded any regulations or advisory opinions issued by the legislative  
24 ethics commission, the commission on public integrity, the state ethics  
25 commission, or the state office for human rights in effect upon the  
26 effective date of this section to the extent that such regulations or  
27 opinions are not inconsistent with any law of this state, but such regu-  
28 lations and opinions shall apply only to matters over which such commis-

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

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1 sions had jurisdiction at the time such regulations and opinions were  
2 promulgated or issued. The commission shall undertake a comprehensive  
3 review of the current sexual harassment policies in the legislature and  
4 executive agencies. The commission shall, before February first, two  
5 thousand nineteen, report to the governor and the legislature regarding  
6 this review and recommendations for any regulatory or statutory guidance  
7 for consistency and transparency.

8 3. The commission shall consist of eleven members of whom three shall  
9 be appointed by the governor, four by the chief judge of the court of  
10 appeals, and one each by the speaker of the assembly, the temporary  
11 president of the senate, the minority leader of the senate, and the  
12 minority leader of the assembly. Of the three members appointed by the  
13 governor, no more than two shall be enrolled in the same political  
14 party, and two shall be attorneys admitted to practice law in this  
15 state. Of the four members appointed by the chief judge of the court of  
16 appeals, no more than two shall be enrolled in the same political party,  
17 two shall be attorneys licensed to practice law in this state, and two  
18 shall not be attorneys. No member of the commission shall hold any  
19 office in any political party. Members of the commission shall be  
20 appointed based on their actual experience in the establishment of  
21 institutional policies, sexual harassment claims, and legal matters  
22 regarding sexual harassment issues, sex crimes, and reporting. Appoint-  
23 ing authorities shall coordinate appointments to include, but not be  
24 limited to, an attorney actually employed in the area of sexual harass-  
25 ment litigation and similar legal matters who has demonstrated outstand-  
26 ing service and contributions to this legal area, a human resources or  
27 labor relations representative who has demonstrated actual service in  
28 the establishment of effective sexual harassment policies in the work-  
29 place, a member of law enforcement who has work experience in relation  
30 to sex crimes and harassment, and a member of the judicial branch who  
31 has had experience in the consideration of civil claims related to sexu-  
32 al harassment and sex discrimination. In the event that a vacancy arises  
33 with respect to a member of the commission first appointed pursuant to  
34 this section by a legislative leader, the legislative leaders of the  
35 same political party in the same house shall appoint a member to fill  
36 such vacancy irrespective of whether that legislative leader's political  
37 party is in the majority or minority. No individual shall be eligible  
38 for appointment as a member of the commission who currently or within  
39 the last three years is or has been a member of the New York state  
40 legislature or has been a legislative employee, or a statewide officer  
41 or elected official or a commissioner of an executive agency appointed  
42 by the governor, or has held judicial office. Members of the commission  
43 shall be residents of the state.

44 4. Members of the commission shall serve for terms of five years;  
45 provided, however, that of the members first appointed by the governor,  
46 one shall serve for one year, one shall serve for two years, and one  
47 shall serve for three years, as designated by the governor; the members  
48 first appointed by the temporary president of the senate and by the  
49 speaker of the assembly shall serve for four years and the members first  
50 appointed by the minority leaders of the senate and the assembly shall  
51 serve for two years.

52 5. Members of the commission shall designate a chair from the member-  
53 ship thereof for a term of two years or until his or her term expires,  
54 whichever period is shorter. The chair or a member of the commission may  
55 call a meeting.

6. Any vacancy occurring on the commission shall be filled within thirty 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 for the unexpired term of the member he or she succeeds.

7. Members of the commission may be removed by the appointing authority solely for substantial neglect of duty, gross misconduct in office, violation of the confidentiality, inability to discharge the powers or duties of office or a violation of this section, after written notice and opportunity for a reply.

8. Members of the commission shall be reimbursed for all reasonable expenses actually and necessarily incurred by him or her in the performance of his or her duties under this section.

9. Eight members shall constitute a quorum.

10. The commission shall:

(a) adopt, amend and rescind rules and regulations defining sexual harassment for state agencies, offices, and branches of government and develop recommendations for the uniform distribution of the definitions and policies developed pursuant to this section;

(b) make available forms for complaints of sexual harassment and sex discrimination involving statewide elected officials, state officers or employees, legislative members and employees;

(c) review sexual harassment filing procedures in accordance with the provisions of this section;

(d) receive complaints and referrals alleging violations of section two hundred ninety-six of the executive law, or provisions of article one hundred thirty of the penal law by a statewide elected official, a state officer or employee, legislative employee or legislative member;

(e) immediately report any allegations that, if true, would constitute a crime, to law enforcement for investigation;

(f) for all other matters the commission shall determine whether a complaint is "founded" or "unfounded" and shall issue a recommendation, in accordance with the confidentiality provisions contained in this section and consistent with all other laws, including awards to crime victims under article twenty-two of the executive law, to the appointing authority as to the basis of the claims, recommendations for appropriate resolution, and whether the commission approves of the use of public monies, including funds of the legislature, to resolve specific claims raised by the claimant. The recommendations of the commission shall be fully and properly considered by the appointing authority but shall not be binding. There shall be a rebuttable presumption assumed by the commission that any statewide elected official, state officer or employee, or legislative member or employee who makes a good faith effort at reporting or addressing sexual harassment shall not be held individually liable under any claim or settlement;

(g) prepare an annual report to the governor and the legislature summarizing the activities of the commission during the previous year including, but not limited to, (i) an accounting of founded and unfounded claims of sexual harassment organized by legislative branch and executive office or agency, and (ii) where a matter has been resolved, the date and nature of the disposition and any sanctions or recommendations of the commission, subject to the confidentiality requirements of this section;

(h) provide notification to any person who has filed a sexual harassment claim of the determination of the commission's review as well as

1 the individual's right to appeal the commission's determination pursuant  
2 to subdivision twelve of this section;

3 (i) appoint an executive director who shall act in accordance with the  
4 policies of the commission. The appointment and removal of the executive  
5 director shall be made solely by a vote of a majority of the commission,  
6 which majority shall include at least one member appointed by the gover-  
7 nor from each of the two major political parties, and one member  
8 appointed by a legislative leader from each of the two major political  
9 parties. The commission may delegate authority to the executive director  
10 to act in the name of the commission between meetings of the commission  
11 provided such delegation is in writing, the specific powers to be deleg-  
12 ated are enumerated, and the commission shall not delegate any decisions  
13 specified in this section that require a vote of the commission. The  
14 executive director shall be appointed without regard to political affil-  
15 iation and solely on the basis of fitness to perform the duties assigned  
16 by this article, and shall be a qualified, independent professional. The  
17 commission may remove the executive director for neglect of duty,  
18 misconduct in office, violation of the confidentiality, or inability or  
19 failure to discharge the powers or duties of office, including the fail-  
20 ure to follow the lawful instructions of the commission;

21 (j) review and approve a staffing plan provided and prepared by the  
22 executive director which shall contain, at a minimum, a list of the  
23 various units and divisions as well as the number of positions in each  
24 unit, titles and their duties, and salaries, as well as the various  
25 qualifications for each position including, but not limited to, educa-  
26 tion and prior experience for each position;

27 (k) appoint such other staff as are necessary to carry out its duties  
28 under this section; and

29 (l) develop and administer an online sexual harassment orientation  
30 course to be made available across the legislative and executive branch-  
31 es for the purposes of a uniform and consistent policy across govern-  
32 ment.

33 11. (a) When an individual becomes a member or staff of the commis-  
34 sion, that individual shall be required to sign a non-disclosure state-  
35 ment.

36 (b) Except as otherwise required or provided by law, testimony  
37 received or any other information obtained by a commissioner or staff of  
38 the commission shall not be disclosed by any such individual to any  
39 person or entity outside the commission during the pendency of any  
40 matter. Any confidential communication to any person or entity outside  
41 the commission related to the matters before the commission may occur  
42 only as authorized by the commission.

43 (c) The commission shall establish procedures necessary to prevent the  
44 unauthorized disclosure of any information received by any member of the  
45 commission or staff of the commission. Any breaches of confidentiality  
46 shall be investigated by the inspector general and appropriate action  
47 shall be taken. Any commissioner or person employed by the commission  
48 who intentionally and without authorization releases confidential infor-  
49 mation received by the commission shall be guilty of a class A misdemea-  
50 nor.

51 12. The commission shall be deemed to be an agency of the state within  
52 the meaning of article three of the state administrative procedure act  
53 and shall adopt rules governing the conduct of adjudicatory proceedings  
54 and appeals taken pursuant to a proceeding commenced under article  
55 seventy-eight of the civil practice law and rules relating to the  
56 assessment of penalties or findings authorized in this section. Such

1 rules, which shall not be subject to the approval requirements of the  
2 state administrative procedure act, shall provide for due process proce-  
3 dural mechanisms substantially similar to those set forth in article  
4 three of the state administrative procedure act but such mechanisms need  
5 not be identical in terms of scope.

6 § 2. This act shall take effect immediately and shall apply to settle-  
7 ments entered into on and after such date.