STATE OF NEW YORK

7848--A

IN SENATE

March 4, 2018

Introduced by Sens. YOUNG, PHILLIPS, MURPHY, AKSHAR, BONACIC, FLANAGAN, FUNKE, GALLIVAN, GOLDEN, GRIFFO, HANNON, HELMING, JACOBS, LANZA, LARKIN, LAVALLE, LITTLE, MARCELLINO, MARCHIONE, O'MARA, RANZENHOFER, RITCHIE, ROBACH, SEWARD, TEDISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the state finance law, in relation to prevention of sexual harassment by state contractors (Part A); to amend the general business law, in relation to mandatory arbitration clauses (Part B); to amend the executive law and the public officers law, in relation to individual liability for sexual harassment (Part C); to amend the the civil practice law and rules and the general municipal law, in relation to the entering of confidential settlements (Part D); to amend the public officers law and the executive law, in relation to sexual harassment violations and establishing a unit to receive and investigate such claims (Part E); to amend the executive law, the legislative law, the judiciary law, the general municipal law and the public authorities law, in relation to uniform standards for sexual harassment policies for all branches of state and local governments (Part F); and to amend the labor law, in relation to the prevention of sexual harassment in the workplace (Part G)

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

Section 1. This act enacts into law major components of legislation which are necessary to combat sexual harassment in the workplace. Each component is wholly contained within a Part identified as Parts A through G. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it

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

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is found. Section three of this act sets forth the general effective date of this act.

PART A

Section 1. The state finance law is amended by adding a new section 148 to read as follows:

§ 148. Prevention of sexual harassment by state contractors. 1. Definitions. As used in this section, the following terms shall have the following meanings unless otherwise specified:

a. "State agency" means (1) (a) any state department, office, bureau, division, committee, council, or (b) any division, board, office, committee, council, commission or bureau of any state department, or (c) the state university of New York and the city university of New York, including all their constituent units except community colleges and the independent institutions operating statutory or contract colleges on behalf of the state, or (d) a board or commission, a majority of whose members are appointed by the governor; and (2) a "state authority", as defined in subdivision one of section two of the public authorities law.

b. "Sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature if such conduct is made either explicitly or implicitly a term or condition of employment, or submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment, or such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

c. "Contract" means any contract or other agreement for "government procurement" as such term is defined in subdivision (e) of section one hundred thirty-nine-k of the state finance law, including an amendment, extension, renewal, or change order to an existing contract (other than amendments, extensions, renewals, or change orders that are authorized and payable under the terms of the contract as it was finally awarded or approved by the comptroller, as applicable), for an article of procurement. Grants, article eleven-B contracts, program contracts between not-for-profit organizations, as defined in article eleven-B of the state finance law, and the unified court system, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders, contracts governing organ transplants, contracts allowing for state participation in a trade show, and eminent domain transactions shall not be deemed contracts.

2. Every state contractor to whom any contract shall be let shall have in place an anti-sexual harassment policy consistent with current state and federal statutory provisions. Such sexual harassment policy shall be widely distributed and made available to every employee and included in every new employee orientation.

3. Every state contractor to whom a contract is let shall conduct appropriate yearly anti-sexual harassment training. Such training shall be no less than two hours in length and interactive and shall (i) define sexual harassment; (ii) provide examples of conduct that would be defined as unlawful sexual harassment; (iii) include but not be limited to information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment; and (iv) inform employees of their rights of redress and the availability and forms of complaint resolution assistance.

4. A clause shall be inserted in all contracts hereafter made or awarded by the state, or by any state agency, requiring a contractor to whom any contract shall be let, granted or awarded, as required by law, to certify to the office of general services not later than June thirtieth of each year during the term of the contract that (i) such contractor has adopted an anti-sexual harassment policy; (ii) such policy has been delivered to each new employee; (iii) such policy has been widely distributed and made available to all employees; and (iv) anti-sexual harassment training has been conducted.

5. If any contractor fails to certify pursuant to subdivision four of this section, such contractor shall have sixty days to cure such defect. If after sixty days the defect has not been cured, the contractor shall be prohibited from obtaining any additional state government contracts until the defect is cured. The office of general services shall prepare and deliver to the governor, the temporary president of the senate and the speaker of the assembly an annual report in September of each year which identifies the number of contractors who, as of September of each year have failed to comply with subdivision four of this section and are prohibited from obtaining any additional state government contracts.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.

PART B

Section 1. The general business law is amended by adding a new section 398-f to read as follows:

§ 398-f. Mandatory arbitration clauses; prohibited. 1. Definitions. As used in this section:

a. The term "employer" shall have the same meaning as provided in subdivision five of section two hundred ninety-two of the executive law.

b. The term "sexual harassment" shall have the same meaning as provided in subdivision thirty-five of section two hundred ninety-two of the executive law.

c. The term "prohibited clause" shall mean any clause or provision in any contract which requires as a condition of the enforcement of the contract or obtaining remedies under the contract that the parties submit to mandatory arbitration to resolve any allegation or claim of an unlawful discriminatory practice of sexual harassment.

d. The term "mandatory arbitration clause" shall mean a term or provision contained in a written contract which requires the parties to such contract to submit any matter thereafter arising under such contract to arbitration prior to the commencement of any legal action to enforce the provisions of such contract and which also further provides language to the effect that the facts found or determination made of the arbitrator or panel of arbitrators in its application to a party alleging an unlawful discriminatory practice based on sexual harassment shall be final and not subject to independent court review.

e. The term "arbitration" shall mean the use of a decision making forum conducted by an arbitrator or panel of arbitrators within the meaning and subject to the provisions of article seventy-five of the civil practice law and rules.

2. a. Prohibition. No written contract, entered into on or after the effective date of this section shall contain a prohibited clause as defined in paragraph c of subdivision one of this section.

b. Exceptions. Nothing contained in this section shall be construed to impair or prohibit an employer from incorporating a non-prohibited

clause or other mandatory arbitration provision within such contract, that the parties agree upon.

c. Mandatory arbitration clause null and void. The provisions of such a mandatory arbitration clause shall be null and void. The inclusion of such clause in a written contract shall not serve to impair the enforceability of any other provision of such contract.

3. Where there is a conflict between any collective bargaining agreement and this section, such agreement shall be controlling.

§ 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.

PART C

Section 1. Section 292 of the executive law is amended by adding a new subdivision 35 to read as follows:

35. The term "sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature if such conduct is made either explicitly or implicitly a term or condition of employment, or submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment, or such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment, even if the complaining individual is not the intended target of the sexual harassment.

§ 2. The executive law is amended by adding a new section 296-d to read as follows:

§ 296-d. Sexual harassment relating to non-employees. 1. An employer may be held liable for the acts of non-employees, with respect to "sexual harassment" as such term is defined in subdivision thirty-five of section two hundred ninety-two of this article when the employer, its agents or supervisors knew or should have known that its contractor, vendor, consultant or other person providing services pursuant to a contract in the workplace or employees of such contractor, vendor, consultant or other person providing services pursuant to a contract in the workplace was subjected to "sexual harassment" as such term is defined in subdivision thirty-five of section two hundred ninety-two of this article by an employee and the employer fails to take immediate and appropriate corrective action. In reviewing cases involving the acts of non-employees, the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of those non-employees shall be considered.

2. Employers shall take all reasonable steps to prevent sexual harassment from occurring.

§ 3. The executive law is amended by adding a new section 656 to read as follows:

§ 656. Individual liability for sexual harassment. a. For the purposes of this section, "sexual harassment" shall include unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when: (i) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (ii) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (iii) such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

b. The office of employee relations shall review each proposed agreed judgment, stipulation, decree, agreement to settle, assurance of discontinuance or other agreement to resolve any internal complaint, complaint to the United States equal employment opportunity commission or New York division of human rights, or other complaint filed by an employee of a "state agency" as such term is defined by section one hundred forty-eight of the state finance law, that has not been filed in state or federal court, if the act or omission from which such complaint arose involved sexual harassment. The office of employee relations shall not approve such agreement to the extent such agreement includes a proposal for the state to indemnify and save harmless an employee for the employee's individual liability with respect to any portion of the judgement, stipulation, decree, agreement to settle, assurance of discontinuance or other agreement that is based upon an allegation of sexual harassment.

§ 4. Section 17 of the public officers law is amended by adding a new subdivision 12 to read as follows:

12. (a) For the purposes of this section, "sexual harassment" shall include unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when: (i) submission to such conduct is made either explicitly or implicitly a term of condition of an individual's employment; (ii) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (iii) such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(b) Notwithstanding any provision of this article or law, the state shall not indemnify and save harmless an employee in the amount of any final judgment obtained against such employee in any state or federal court, or in the amount of any settlement of a claim, of such employee or officer's intentional wrongdoing where there is a finding or admission of sexual harassment in any legal proceeding, subject to a proceeding before a court of competent jurisdiction. Nothing shall prohibit the provisional indemnification for the purpose of an award to the damaged party.

§ 5. Section 17 of the public officers law is amended by adding a new subdivision 13 to read as follows:

13. Any payment to any complainant shall be subject to the state receiving in writing an executed document providing the state with all subrogation rights of the claimant to costs or damages from any responsible party. The state shall at a minimum within thirty days commence an immediate separate summary action or proceeding against the appropriate party to recoup such public monies expended.

§ 6. Subdivision 3 of section 17 of the public officers law is amended by adding a new paragraph (e) to read as follows:

(e) Notwithstanding any other law to the contrary, for any claim or cause of action, whether arising under common law, equity, or any provision of law, the factual foundation for which involves sexual harassment as such term is defined in subdivision thirty-five of section two hundred ninety-two of the executive law, in resolving, by agreed judgment, stipulation, decree, agreement to settle, assurance of discontinuance or otherwise, no state agency or employee acting in their official capacity shall have the authority to include or agree to include in such resolution any term or condition that would prevent the disclosure of any or all factual information related to the action unless the condition of confidentiality is the complainant's preference. Any such condition must be provided to the complainant, who shall have twenty-one

days to consider the condition. If after twenty-one days, such condition is the complainant's preference, such preference shall be memorialized in an agreement signed by the complainant.

§ 7. Paragraph (d) of subdivision 4 of section 18 of the public officers law is relettered paragraph (e) and a new paragraph (d) is added to read as follows:

(d)(i) For the purposes of this section, "sexual harassment" shall include unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when: (A) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (B) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (C) such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(ii) No public entity shall indemnify or save harmless an employee with respect to the amount of any final judgment obtained against such employee in any state or federal court, or in the amount of any settlement of a claim, of such employee or officer's intentional wrongdoing where there is a finding or admission of sexual harassment in any legal proceeding, subject to a proceeding before a court of competent jurisdiction. Nothing shall prohibit the provisional indemnification for the purpose of an award to the damaged party.

(iii) Any payment to any complainant shall be subject to the public entity receiving in writing an executed document providing the public entity with all subrogation rights of the claimant to costs or damages from any responsible party. The public entity shall at a minimum within thirty days commence an immediate separate summary action or proceeding against the appropriate party to recoup such public monies expended.

§ 8. This act shall take effect immediately.

PART D

Section 1. The civil practice law and rules is amended by adding a new section 5003-b to read as follows:

§ 5003-b. Actions for sexual harassment. With respect to all actions to recover damages for sexual harassment, as defined in section three hundred ninety-eight-f of the general business law, no court shall accept any settlement, including any confidentiality agreement or provision that would prevent the disclosure of any or all factual information related to the action unless the condition of confidentiality is the complainant's preference and the court has considered the potential impact on the public and finds that the complainant's preference is not a result of intimidation, coercion, retaliation, or threats directed at the complainant. Any such condition must be provided in writing to the complainant and to the court for consideration. If the court determines that any or all of the factual information related to the action shall not be disclosed, the preference shall be memorialized in an agreement signed by the complainant. Provided, however, subject to the provisions of the domestic relations law, a settlement agreement may include a confidentiality provision only if such provision is approved by the court for good cause in an open proceeding.

§ 2. The general municipal law is amended by adding a new section 70-b to read as follows:

§ 70-b. Confidential settlements. a. For the purposes of this section, sexual harassment includes unwelcome sexual advances, requests for sexu-

al favors, and other verbal or physical conduct of a sexual nature when: (i) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (ii) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (iii) such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

b. Notwithstanding any other law to the contrary, for any claim or cause of action, whether filed or unfiled, actual or potential, and whether arising under common law, equity, or any provision of law, the factual foundation for which involves sexual harassment, in resolving, by agreed judgment, stipulation, decree, agreement to settle, assurance of discontinuance or otherwise, every county, city, town, village, school district and other political subdivision, official or employee acting in their official capacity shall not have the authority to include or agree to include in such resolution any term or condition that would prevent the disclosure of any or all factual information related to the action unless the condition of confidentiality is the complainant's preference. Any such condition must be provided to the complainant, who shall have twenty-one days to consider the condition. If after twenty-one days, such condition is the complainant's preference, such preference shall be memorialized in an agreement signed by the complainant.

§ 3. This act shall take effect immediately.

PART E

Section 1. Subdivision 3 of section 74 of the public officers law is amended by adding a new paragraph j to read as follows:

j. No officer or employee of a state agency, member of the legislature or legislative employee shall commit an act of sexual harassment while serving in his or her official capacity. For the purposes of this section, "sexual harassment" shall include unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual or such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostel, or offensive working environment.

§ 2. Subdivision 4 of section 74 of the public officers law, as amended by chapter 14 of the laws of 2007, is amended to read as follows:

4. a. Violations. In addition to any penalty contained in any other provision of law any such officer, member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law. Any such individual who knowingly and intentionally violates the provisions of paragraph b, c, d or i of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. Any such individual who knowingly and intentionally violates the provisions of paragraph a, e or g of subdivision three of this section 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.

b. Sexual harassment violations. In addition to any penalty contained in any other provision of law any such officer, member or employee who shall violate the provisions of paragraph j of subdivision three of this section shall be subject to a civil penalty of up to ten thousand dollars, and may be subject to proceedings for suspension or removal from office or employment by the appropriate administrative action, which shall conform to any applicable collective bargaining agreement or law.

§ 3. Subdivision 9 of section 94 of the executive law is amended by adding a new paragraph (o) to read as follows:

(o) Establish a unit to receive and investigate complaints of sexual harassment that constitute violations of paragraph j of subdivision three of section seventy-four of the public officers law. Such unit shall maintain a phone number to receive complaints, and post such number and instructions for filing a complaint of sexual harassment on the commission's publicly accessible website.

§ 4. Subdivision 13 of section 94 of the executive law is amended by adding a new paragraph (d) to read as follows:

(d) For an alleged violation of paragraph j of subdivision three of section seventy-four of the public officers law, filing a complaint shall not constitute an election of remedies. An individual shall not be required to exhaust other available administrative remedies to file a complaint. Neither the filing of a complaint at the conclusion of any investigation by the commission shall restrict a complainant's right to bring a separate action administratively or in a court of law. Notice to any complainant shall be provided upon the closure of any investigation. However, the individual shall notify the commission of any separate administrative action or action in the court of law relating to the same complaint. The commission may stay the matter before it pending the determination/conclusion of the separate action.

§ 5. This act shall take effect immediately.

PART F

Section 1. The executive law is amended by adding a new section 655 to read as follows:

§ 655. Sexual harassment prevention policy. a. Notwithstanding any other provision of law to the contrary, the office of employee relations shall develop a sexual harassment prevention policy, applicable to each agency, office or department, which shall include information relating to how and with whom to file a complaint; the investigation procedures and a standard complaint form. The sexual harassment prevention policy shall include, but not be limited to, the following elements:

(i) Definitions. For the purposes of this section, the following terms shall have the following meanings:

(A) "sexual harassment" shall include unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose of effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(B) "employee" shall include any agency, office or department employee, applicant, intern, fellow, volunteer or other individual paid or unpaid involved in the operation of the agency, office or department, contractor, vendor or consultant or employee of any contractor, vendor or consultant in the workplace of any agency, office or department.

(ii) Instructions to file a complaint. (A) Complaints may be filed by an employee to any supervisor, managerial employee, personnel administrator, or affirmative action administrator. Any supervisory or managerial employee who observes or otherwise becomes aware of conduct of a sexually harassing nature, must report such conduct as set forth in the complaint procedure so that it can be investigated. If the office of employment relations otherwise becomes aware of conduct of a sexually harassing nature, it shall ensure an investigation is opened immediately.

(B) A standard complaint form. A standard complaint form shall be available to every employee in the new employee orientation material and on the agency, office, or department's intranet. If an employee makes an oral complaint, the person receiving such complaint shall encourage the employee to fill out a standard complaint form. If the employee does not fill out the complaint form, the person receiving the complaint shall fill out such form based on the oral reporting.

(iii) Investigation procedure. (A) The office of employee relations shall designate an individual to investigate complaints of sexual harassment for each agency, office, and department. Upon receipt of a complaint of sexual harassment, a supervisor, managerial employee, personnel administrator, or affirmative action administrator shall immediately report such complaint to the designated individual, who shall open an investigation. The designated individual shall ensure that he or she does not have a conflict of interest in the allegations in the complaint, and if there is any suspected conflict of interest, the individual shall immediately notify the office of employee relations, which shall designate a new individual to conduct the investigation.

(B) An investigation into a complaint of sexual harassment shall take no more than ninety days from the filing of the complaint. If additional time is needed to complete an investigation due to its complexity, a request for an extension may be submitted to the office of employee relations.

(C) Any complaint of sexual harassment will be kept confidential, including the identity of the complainant, witnesses and the identity of the alleged harasser to the extent practicable during the course of the investigations.

(D) Any appropriate remedial steps may be taken to prevent intimidation, retaliation, or coercion of the complainant by the alleged harasser. Such steps may include, but not be limited to, preventing the alleged harasser from contacting the complainant or from discussing the substance of the complaint with the complainant, or removing the alleged harasser from the workplace.

(E) Such procedures shall also include, at a minimum:

(1) the development of a preliminary investigation plan, which shall include at a minimum:

(I) an examination of: the circumstances surrounding the allegations; the employment history of the parties; the place, date, location, time, and duration of the incident in question; and prior relevant incidents or allegations, whether reported or unreported;

(II) identification of the complainant, alleged harasser, and any relevant witnesses;

(III) identification and communication of any legal hold request on any relevant documents, emails or phone records to legal counsel; and

(IV) a determination of any necessary site visits;

(2) an interview of the complainant, where necessary;

(3) an interview of the alleged harasser, where necessary, which shall conform to the requirements of any applicable collective bargaining agreement or law; and

(4) any other relevant information relating to the allegations.

(iv) Completion of the investigation. (A) After the completion of an investigation, the individual who conducted the investigation shall draft a report, using a standard format developed by the office of employee relations. Such report shall contain, at minimum, a summary of relevant documents; a list of all individuals interviewed and a summary of their statements; a timeline of events; a summary of prior relevant incidents; and an analysis of the allegations and evidence.

(B) The report shall be submitted to the counsel at the agency, office, or department for review and recommendation. No more than thirty days after the completion of such investigation, a legal determination shall be issued. If there is a determination that the complaint or a component of such complaint is substantiated, appropriate administrative action shall be taken, which shall conform to any applicable collective bargaining agreement or law.

b. Such policy shall also include, but not be limited to the following:

(i) Contain a statement that sexual harassment is unlawful pursuant to state and federal civil rights laws, and shall be prohibited conduct in all state agencies, offices, and departments;

(ii) Contain a statement that retaliation against a complainant, witness or any other individual participating in the investigation process is unlawful and will not be tolerated;

(iii) Contain a statement that employees also have the right to file a complaint with the United States equal employment opportunity commission, and the New York division of human rights;

(iv) Contain a statement that employees of state entities also have a right to file a complaint with the joint commission on public ethics, which shall include the contact information for employees to use to file such a complaint;

(v) Copies of the sexual harassment policy, as well as directions for filing a complaint, shall be distributed to all employees of state agencies, offices, departments, including the executive department upon commencing employment and annually thereafter; and

(vi) Provisions for appropriate annual interactive training for all employees of state agencies, offices, and departments, including the executive department.

c. Nothing in this section shall grant any additional legal rights to any employee and nothing herein abrogates compliance with any law, rule, or regulation that grants rights to an employee. Where there is a conflict between any collective bargaining agreement and this section, such agreement shall be controlling.

§ 2. Section 80 of the legislative law is amended by adding a new subdivision 8-a to read as follows:

8-a. The legislative ethics commission shall receive and investigate complaints of "sexual harassment" as such term is defined in section seventy-four of the public officers law, received from any "employee" as such term is defined by section eighty-one of this article.

a. Standard complaint form. The legislative ethics commission shall ensure that a standard complaint form is available to every employee of the legislature. If an employee makes an oral complaint, the person receiving such complaint shall encourage the employee to fill out a standard complaint form. If the employee does not fill out the complaint form, the person shall fill out such form based on the oral reporting.

b. Investigation procedure. Upon the receipt of a complaint based on sexual harassment the executive director of the legislative ethics commission or his or her designee shall designate an individual to investigate the complaint of sexual harassment. The designated individual shall ensure that he or she does not have a conflict of interest in the allegations in the complaint, and if there is any conflict of interest, the legislative ethics commission shall immediately notify the legislature and the legislative ethics commission shall designate another individual to conduct the investigation. Notice shall be provided to the persons involved.

c. (i) The complainant shall be notified of the statutory period in which to file a complaint with the United States equal opportunity commission and the New York state division of human rights.

(ii) An investigation into a complaint of sexual harassment shall take no more than ninety days from the filing of the complaint. If additional time is needed to complete an investigation due to its complexity, the time may be extended an additional ten days at the discretion of the legislative ethics commission.

(iii) Any complaint of sexual harassment will be kept confidential, including the identity of complainant, witnesses and the identity of the alleged harasser to the extent practicable during the course of the investigations.

(d) Completion of the investigation. (i) After the completion of an investigation, the individual who conducted the investigation shall draft a report, using a standard format developed by the legislative ethics commission. Such report shall contain, at a minimum, a summary of relevant documents; a list of all individuals interviewed and a summary of their statements; a timeline of events; a summary of prior relevant incidents; and an analysis of the allegations and evidence.

(ii) No more than thirty days after the completion of such investigation, a legal determination shall be issued. If there is a determination that the complaint or a component of such complaint is substantiated, appropriate administrative action shall be taken, which shall conform to any applicable collective bargaining agreement or law.

§ 3. Article 5 of the legislative law is amended by adding a new section 81 to read as follows:

§ 81. Sexual harassment prevention policy. 1. Notwithstanding any other provision of law to the contrary, each house of the legislature shall develop a sexual harassment prevention policy, applicable to members of the legislature and all legislative employees, which shall include investigation procedures and a standard complaint form. The sexual harassment prevention policy shall include, but not be limited to, the following elements:

(a) Definitions. The following terms shall have the following meanings:

(i) "sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of such conduct, explicitly or implicitly, affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or

offensive work environment without regard to actual economic injury to or discharge of the individual.

(ii) "employee" shall include any legislative employee, applicant, intern, fellow, volunteer or other individual paid or unpaid involved in the operation of the legislature, contractor, vendor or consultant or employee of any contractor, vendor or consultant in the workplace of the legislature.

(b) Instructions to file a complaint. (i) Complaints may be filed by an employee to any supervisor, managerial employee, personnel administrator, affirmative action administrator or the legislative ethics commission. Any supervisory or managerial employee who observes or otherwise becomes aware of conduct of a sexually harassing nature, shall report such conduct as set forth in the complaint procedure so that it can be investigated.

(ii) A standard complaint form. A standard complaint form shall be available to every employee of the legislature. If an employee makes an oral complaint, the person receiving such complaint shall encourage the employee to fill out a standard complaint form. If the employee does not fill out the complaint form, the person receiving such complaint shall fill out such form based on the oral reporting.

(c) Investigation procedure. (i) The legislature shall designate an independent attorney specializing in employment law to investigate complaints based on sexual harassment. Notice shall be provided to the persons involved. The complainant shall also be notified of the statutory period in which to file a complaint with the United States equal opportunity commission and the New York state division of human rights and the right to file their complaint with the legislative ethics commission, and the joint commission on public ethics.

(ii) An investigation into a complaint of sexual harassment shall take no more than ninety days from the filing of the complaint. If the independent attorney conducting the investigation needs additional time to complete an investigation due to its complexity, the time may be extended an additional ten days at the discretion of the retained attorney. The parties involved shall be notified of the extension by the chief personnel officer or his or her designee and shall again be advised of the statutory period to file a complaint with the United States equal employment opportunity commission and the New York State division of human rights and their right to file their complaint with the legislative ethics commission, and the joint commission on public ethics.

(iii) Any complaint of sexual harassment will be kept confidential, including the identity of complainant, witnesses and the identity of the alleged harasser to the extent practicable during the course of the investigations.

(iv) Any appropriate remedial steps shall be taken to prevent intimidation, retaliation, coercion or threats or promises of retaliation directed at the complainant or others including any potential witness or other party, by the alleged harasser or anyone acting on the harasser's behalf. Such steps may include, but not be limited to, preventing the alleged harasser from contacting the complainant or from discussing the substance of the complaint with the complainant.

(v) Such procedures shall also include, at a minimum:

(A) the development of a preliminary investigation plan, which shall include at a minimum:

(1) an examination of: the circumstances surrounding the allegations; the employment history of the parties; the place, date, location, time,

and duration of the incident in question; and prior relevant incidents or allegations;

(2) identification of the complainant, alleged harasser, and any relevant witnesses;

(3) identification and communication of any legal hold request on any relevant documents, emails or phone records to legal counsel; and

(4) a determination of any necessary site visits;

(B) an interview of the complainant, where necessary;

(C) an interview of the alleged harasser, where necessary, which shall conform to the requirements of any applicable collective bargaining agreement or law; and

(D) any other relevant information relating to the allegations.

(d) Completion of the investigation. (i) After the completion of an investigation, the individual who conducted the investigation shall draft a report, using a standard format developed by the legislature. Such report shall contain, at a minimum, a summary of relevant documents; a list of all individuals interviewed and a summary of their statements; a timeline of events; a summary of prior relevant incidents; and an analysis of the allegations and evidence.

(ii) The report shall contain a legal recommendation and be completed no more than thirty days after the completion of such investigation. If there is a determination that the complaint or a component of such complaint is substantiated in whole or in part, appropriate administrative action shall be taken, which shall conform to any applicable collective bargaining agreement or law.

2. Such policy shall also include, but not be limited to the following:

(a) Contain a statement that sexual harassment is unlawful pursuant to state and federal civil rights laws, and shall be prohibited conduct in the legislature;

(b) Contain a statement that retaliation against a complainant, witness or any other individual participating in the investigation process is unlawful and will not be tolerated;

(c) Contain a statement that employees also have the right to file a complaint with the legislative ethics commission, the United States equal employment opportunity commission, and the New York division of human rights and the statutory periods within which such complaints shall be filed;

(d) Contain a statement that employees of state entities also have a right to file a complaint with the joint commission on public ethics, which shall include the contact information for employees to use to file such a complaint;

(e) Copies of the sexual harassment policy, as well as directions for filing a complaint, shall be distributed to the members of the legislature and to all employees of the legislature upon commencing employment and annually thereafter; and

(f) Provisions for appropriate annual interactive training for all members of the legislature and employees of the legislature.

3. Nothing in this section shall grant any additional legal rights to any employee and nothing in this section abrogates compliance with any law, rule, or regulation that grants rights to an employee. Where there is a conflict between any collective bargaining agreement and this section, such agreement shall be controlling.

§ 4. The judiciary law is amended by adding a new section 219-d to read as follows:

§ 219-d. Sexual harassment prevention policy. 1. Notwithstanding any other provision of law to the contrary, the office of court administration shall develop a sexual harassment prevention policy, applicable to the judiciary and all judiciary employees, which shall include investigation procedures and a standard complaint form. The sexual harassment prevention policy shall include, but not be limited to, the following elements:

(a) Definitions. For the purposes of this section, the following terms shall have the following meanings:

(i) "sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of such conduct, explicitly or implicitly, affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment without regard to actual economic injury to or discharge of the individual.

(ii) "employee" shall include any employee, applicant, intern, fellow, volunteer or other individual paid or unpaid involved in the operation of the judiciary, contractor, vendor or consultant, or employee of any contractor, vendor or consultant in the work place of the judiciary.

(b) Instructions to file a complaint. (i) Complaints may be filed by an employee to any supervisor, managerial employee, personnel administrator, or affirmative action administrator. Any supervisory or managerial employee who observes or otherwise becomes aware of conduct of a sexually harassing nature, must report such conduct as set forth in the complaint procedure so that it can be investigated. If the office of court administration otherwise becomes aware of conduct of a sexually harassing nature, it shall ensure an investigation is opened immediately.

(ii) A standard complaint form. A standard complaint form shall be available to every employee in the judiciary. If an employee makes an oral complaint, the person receiving such complaint shall encourage the employee to fill out a standard complaint form. If the employee does not fill out the complaint form, the person receiving such complaint shall fill out such form based on the oral reporting.

(c) Investigation procedure. (i) The office of court administration shall designate an individual to investigate complaints of sexual harassment. Upon receipt of a complaint of sexual harassment, a supervisor, managerial employee, personnel administrator, or affirmative action administrator shall immediately report such complaint to the designated individual, who shall open an investigation. The designated individual shall ensure that he or she does not have a conflict of interest in the allegations in the complaint, and if there is any conflict of interest, the individual shall immediately notify the office of court administration, which shall designate a new individual to conduct the investigation.

(ii) An investigation into a complaint of sexual harassment shall take no more than ninety days from the filing of the complaint. If additional time is needed to complete an investigation due to its complexity, a request for an extension may be submitted to the office of court administration.

(iii) Any complaint of sexual harassment will be kept confidential, including the identity of the complainant, witnesses and the identity of the alleged harasser to the extent practicable during the course of the investigations.

(iv) Any appropriate remedial steps may be taken to prevent intimidation, retaliation, or coercion of the complainant by the alleged harasser. Such steps may include, but not be limited to, preventing the alleged harasser from contacting the complainant or from discussing the substance of the complaint with the complainant.

(v) Such procedures shall also include, at a minimum:

(A) the development of a preliminary investigation plan, which shall include at a minimum:

(1) an examination of: the circumstances surrounding the allegations; the employment history of the parties; the place, date, location, time, and duration of the incident in question; and prior relevant incidents or allegations, whether reported or unreported;

(2) identification of the complainant, alleged harasser, and any relevant witnesses;

(3) identification and communication of any legal hold request on any relevant documents, emails or phone records to legal counsel; and

(4) a determination of any necessary site visits;

(B) an interview of the complainant, where necessary;

(C) an interview of the alleged harasser, where necessary, which shall conform to the requirements of any applicable collective bargaining agreement or law; and

(D) any other relevant information relating to the allegations.

(d) Completion of the investigation. (i) After the completion of an investigation, the individual who conducted the investigation shall draft a report, using a standard format developed by the office of court administration. Such report shall contain, at a minimum, a summary of relevant documents; a list of all individuals interviewed and a summary of their statements; a timeline of events; a summary of prior relevant incidents; and an analysis of the allegations and evidence.

(ii) The report shall be submitted to an individual designated by the office of court administration to review the report and make a legal recommendation. No more than thirty days after the completion of such investigation, a legal determination shall be issued. If there is a determination that the complaint or a component of such complaint is substantiated, appropriate administrative action shall be taken, which shall conform to any applicable collective bargaining agreement or law.

2. Such policy shall also include, but not be limited to the following:

(a) Contain a statement that sexual harassment is unlawful pursuant to state and federal civil rights laws, and shall be prohibited conduct in the judiciary;

(b) Contain a statement that retaliation against a complainant, witness or any other individual participating in the investigation process is unlawful and will not be tolerated;

(c) Contain a statement that employees also have the right to file a complaint with the United States equal employment opportunity commission, and the New York division of human rights;

(d) Contain a statement that employees of state entities also have a right to file a complaint with the joint commission on public ethics, which shall include the contact information for employees to use to file such a complaint;

(e) Copies of the sexual harassment policy, as well as directions for filing a complaint, shall be distributed to all employees of the office of court administration upon commencing employment and annually thereafter; and

(f) Provisions for appropriate annual interactive training for all employees of the judiciary.

3. Nothing in this section shall grant any additional legal rights to any employee and nothing in this section abrogates compliance with any law, rule, or regulation that grants rights to an employee. Where there is a conflict between any collective bargaining agreement and this section, such agreement shall be controlling.

§ 5. The general municipal law is amended by adding a new section 686 to read as follows:

§ 686. Sexual harassment prevention policy. 1. Notwithstanding any other provision of law to the contrary, every county, city, town, village, school district and other political subdivision shall require its legal counsel to develop a sexual harassment prevention policy, applicable to all employees of such political subdivision, which shall include investigation procedures and a standard complaint form. The sexual harassment prevention policy shall include, but not be limited to, the following elements:

(a) Definitions. For the purposes of this section, the following terms shall have the following meanings:

(i) "sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of such conduct, explicitly or implicitly, affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment without regard to actual economic injury to or discharge of the individual.

(ii) "employee" shall include any employee, applicant, intern, fellow volunteer or other individual involved in the operation of the county, city, town, village, school district or other political subdivision, or contractor of every county, city, town, village, school district and other political subdivision or any employee, contractor, vendor or consultant or employee of any contractor, vendor or consultant in the workplace of every county, city, town, village, school district and other political subdivision.

(b) Instructions to file a complaint. (i) Complaints may be filed by an employee with any supervisor, managerial employee, personnel administrator, or affirmative action administrator. Any supervisory or managerial employee who observes or otherwise becomes aware of conduct of a sexually harassing nature, must report such conduct as set forth in the complaint procedure so that it can be investigated. If the legal counsel of the county, city, town, village, school district or other political subdivision becomes aware of conduct of a sexually harassing nature, it shall ensure an investigation is opened immediately.

(ii) A standard complaint form. A standard complaint form shall be available to every employee in every county, city, town, village, school district or other political subdivision. If an employee makes an oral complaint, the person receiving such complaint shall encourage the employee to fill out a standard complaint form. If the employee does not fill out the complaint form, the person receiving such complaint shall fill out such form based on the oral reporting.

(c) Investigation procedure. (i) The legal counsel shall designate an individual or office to investigate complaints of sexual harassment. Upon receipt of a complaint of sexual harassment, a supervisor, managerial employee, personnel administrator, or affirmative action administrator shall immediately report such complaint to the designated individual, who shall open an investigation. The designated individual shall

ensure that he or she does not have a conflict of interest in the allegations in the complaint, and if there is any conflict of interest, the individual shall immediately notify the legal counsel, which shall designate a new individual to conduct the investigation.

(ii) An investigation into a complaint of sexual harassment shall take no more than ninety days from the filing of the complaint. If additional time is needed to complete an investigation due to its complexity, a request for an extension may be submitted to the legal counsel.

(iii) Any complaint of sexual harassment will be kept confidential, including the identity of complainant, witnesses and the identity of the alleged harasser to the extent practicable during the course of the investigations.

(iv) Any appropriate remedial steps may be taken to prevent intimidation, retaliation, or coercion of the complainant by the alleged harasser. Such steps may include, but not be limited to, preventing the alleged harasser from contacting the complainant or from discussing the substance of the complaint with the complainant.

(v) Such procedures shall also include, at a minimum:

(1) the development of a preliminary investigation plan, which shall include at a minimum:

(I) an examination of: the circumstances surrounding the allegations; the employment history of the parties; the place, date, location, time, and duration of the incident in question; and prior relevant incidents or allegations, whether reported or unreported;

(II) identification of the complainant, alleged harasser, and any relevant witnesses;

(III) identification and communication of any legal hold request on any relevant documents, emails or phone records to legal counsel; and

(IV) a determination of any necessary site visits;

(2) an interview of the complainant, where necessary;

(3) an interview of the alleged harasser, where necessary, which shall conform to the requirements of any applicable collective bargaining agreement or law; and

(4) any other relevant information relating to the allegations.

(d) Completion of the investigation. (i) After the completion of an investigation, the individual who conducted the investigation shall draft a report, using a standard format developed by the legal counsel. Such report shall contain, at minimum, a summary of relevant documents; a list of all individuals interviewed and a summary of their statements; a timeline of events; a summary of prior relevant incidents; and an analysis of the allegations and evidence.

(ii) The report shall be submitted to an individual designated by the legal counsel to review the report and make a legal recommendation. No more than thirty days after the completion of such investigation, a legal determination shall be issued. If there is a determination that the complaint or a component of such complaint is substantiated, appropriate administrative action shall be taken, which shall conform to any applicable collective bargaining agreement or law.

2. Such policy shall also include, but not be limited to the following:

(a) Contain a statement that sexual harassment is unlawful pursuant to state and federal civil rights laws, and shall be prohibited conduct;

(b) Contain a statement that retaliation against a complainant, witness or any other individual participating in the investigation process is unlawful and will not be tolerated;

(c) Contain a statement that employees also have the right to file a complaint with the United States equal employment opportunity commission, and the New York division of human rights;

(d) Copies of the sexual harassment policy, as well as directions for filing a complaint, shall be distributed to all employees of every county, city, town, village, school district or other political subdivision upon commencing employment and annually thereafter; and

(e) Provisions for appropriate annual interactive training for all employees of the political subdivision.

3. Nothing in this section shall grant any additional legal rights to any employee and nothing in this section abrogates compliance with any law, rule, or regulation that grants rights to an employee. Where there is a conflict between any collective bargaining agreement and this section, such agreement shall be controlling.

§ 6. The public authorities law is amended by adding a new section 2854 to read as follows:

§ 2854. Sexual harassment prevention policy. 1. Notwithstanding any other provision of law to the contrary, every state and local authority shall require its legal counsel to develop a sexual harassment prevention policy, applicable to all employees of such authority, which shall include investigation procedures and a standard complaint form. The sexual harassment prevention policy shall include, but not be limited to, the following elements:

(a) Definitions. For the purposes of this section, the following terms shall have the following meanings:

(i) "sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of such conduct, explicitly or implicitly, affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment without regard to actual economic injury to or discharge of the individual.

(ii) "employee" shall include any employee, applicant, intern, fellow, volunteer or other individual involved in the operation of the state or local authority or contractor of every state and local authority, or any employee, contractor, vendor or consultant or employee of any contractor, vendor or consultant in the workplace of the authority.

(b) Instructions to file a complaint. (i) Complaints may be filed by an employee with any supervisor, managerial employee, personnel administrator, or affirmative action administrator. Any supervisory or managerial employee who observes or otherwise becomes aware of conduct of a sexually harassing nature, must report such conduct as set forth in the complaint procedure so that it can be investigated. If the legal counsel becomes aware of conduct of a sexually harassing nature, it shall ensure an investigation is opened immediately.

(ii) A standard complaint form. A standard complaint form shall be available to every employee of every state and local authority. If an employee makes an oral complaint, the person receiving such complaint shall encourage the employee to fill out a standard complaint form. If the employee does not fill out the complaint form, the person receiving such complaint shall fill out such form based on the oral reporting.

(c) Investigation procedure. (i) The legal counsel shall designate an individual to investigate complaints of sexual harassment for the authority. Upon receipt of a complaint of sexual harassment, a supervisor, managerial employee, personnel administrator, or affirmative action administrator shall immediately report such complaint to the designated

individual, who shall open an investigation. The designated individual shall ensure that he or she does not have a conflict of interest in the allegation in the complaint, and if there is any conflict of interest, the individual shall immediately notify the legal counsel, which shall designate a new individual to conduct the investigation.

(ii) An investigation into a complaint of sexual harassment shall take no more than ninety days from the filing of the complaint. If additional time is needed to complete an investigation due to its complexity, a request for an extension may be submitted to the authority.

(iii) Any complaint of sexual harassment will be kept confidential, including the identity of the complainant, witnesses and the identity of the alleged harasser to the extent practicable during the course of the investigations.

(iv) Any appropriate remedial steps may be taken to prevent intimidation, retaliation, or coercion of the complainant by the alleged harasser. Such steps may include, but not be limited to, preventing the alleged harasser from contacting the complainant or from discussing the substance of the complaint with the complainant.

(v) Such procedures shall also include, at a minimum:

(A) the development of a preliminary investigation plan, which shall include at a minimum:

(1) an examination of: the circumstances surrounding the allegations; the employment history of the parties; the place, date, location, time, and duration of the incident in question; and prior relevant incidents or allegations, whether reported or unreported;

(2) identification of the complainant, alleged harasser, and any relevant witnesses;

(3) identification and communication of any legal hold request on any relevant documents, emails or phone records to legal counsel; and

(4) a determination of any necessary site visits;

(B) an interview of the complainant, where necessary;

(C) an interview of the alleged harasser, where necessary, which shall conform to the requirements of any applicable collective bargaining agreement or law;

(D) any other relevant information relating to the allegations.

(d) Completion of the investigation. (i) After the completion of an investigation, the individual who conducted the investigation shall draft a report, using a standard format developed by the legal counsel. Such report shall contain, at minimum, a summary of relevant documents; a list of all individuals interviewed and a summary of their statements; a timeline of events; a summary of prior relevant incidents; and an analysis of the allegations and evidence.

(ii) The report shall be submitted to an individual designated to review the report and make a legal recommendation. No more than thirty days after the completion of such investigation, a legal determination shall be issued. If there is a determination that the complaint or a component of such complaint is substantiated, appropriate administrative action shall be taken, which shall conform to any applicable collective bargaining agreement or law.

2. Such policy shall also include, but not be limited to the following:

(a) Contain a statement that sexual harassment is unlawful pursuant to state and federal civil rights laws, and shall be prohibited conduct;

(b) Contain a statement that retaliation against a complainant, witness or any other individual participating in the investigation process is unlawful and will not be tolerated;

(c) Contain a statement that employees also have the right to file a complaint with the United States equal employment opportunity commission, and the New York division of human rights;

(d) Contain a statement that employees of state entities also have a right to file a complaint with the joint commission on public ethics, which shall include the contact information for employees to use to file such a complaint;

(e) Copies of the sexual harassment policy, as well as directions for filing a complaint, shall be distributed to all employees of the authority upon commencing employment and annually thereafter; and

(f) Provisions for appropriate annual interactive training for all employees of the authority.

3. Nothing in this section shall grant any additional legal rights to any employee and nothing in this section abrogates compliance with any law, rule, or regulation that grants rights to an employee. Where there is a conflict between any collective bargaining agreement and this section, such agreement shall be controlling.

§ 7. This act shall take effect one year after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.

PART G

Section 1. The labor law is amended by adding a new section 44 to read as follows:

§ 44. Prevention of sexual harassment. 1. The department shall produce a strong model management policy defining and prohibiting sexual harassment in the workplace. Such model policy shall (a) define sexual harassment and provide examples of conduct that would be defined as unlawful sexual harassment; (b) include but not be limited to information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment; and (c) inform employees of their rights of redress and the availability and forms of complaint resolution assistance available.

Such model policy shall clearly state that sexual harassment is considered a form of employee misconduct and that sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue.

2. The department shall produce a model training program to prevent sexual harassment in the workplace. (a) Such model training program shall be interactive and no less than two hours in length and include (i) a definition of sexual harassment; (ii) examples of conduct that would be defined as unlawful; and (iii) information concerning the federal and state statutory provisions concerning sexual harassment and remedies available to victims of sexual harassment.

(b) Such department shall also include information in such model program specifically addressing conduct by supervisors as both participants in a general training program and in a supervisor-specific program to prevent sexual harassment in the workplace.

3. The department shall consult with the division of human rights in the production of the information set forth under this section.

4. The commissioner shall promulgate regulations allowing for the distribution of the information set forth in this section and promoting

the availability of the information set forth in this section to employers and the public.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.

§ 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 3. This act shall take effect immediately provided, however, that the applicable effective date of Parts A through G of this act shall be as specifically set forth in the last section of such Parts.