

# STATE OF NEW YORK

8309

## IN SENATE

April 30, 2018

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

### 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 Assembly 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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1 b. Achieving this goal requires an independent and non-partisan agency  
2 with jurisdiction over matters pertaining to both the legislative and  
3 executive branches of government and that has the needed powers to  
4 train, advise, interpret, adopt rules and regulations, investigate,  
5 conduct fair hearings that afford due process and impose appropriate  
6 sanctions on a consistent basis so that, with fair and equal application  
7 of the law, no person or entity, no matter what their status, influence  
8 or role in government, can place themselves above the law or suffer  
9 detriment due to any lack of such status, influence or role.

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

21 b. When, after hearing, the commission has determined that the  
22 respondent has violated a law, rule or regulation within the commis-  
23 sion's jurisdiction to enforce, the commission may impose any civil  
24 sanction authorized by law and/or refer the matter for criminal prose-  
25 cution. The commission may also caution, admonish or censure such  
26 respondent or, in the case of a non-elected state officer or employee,  
27 suspend, demote or remove such respondent from office or employment  
28 after such adjudicatory process that substantially complies with the  
29 terms of any relevant collective bargaining agreement. In deciding the  
30 severity of the sanction, the commission shall consider to what extent  
31 the violation is inadvertent, isolated and/or of insubstantial conse-  
32 quence on the one hand or willful, repeated, causing actual public harm  
33 or risk of public harm and/or otherwise egregious on the other. Determi-  
34 nations, other than a determination to refer for criminal prosecution,  
35 shall be subject to judicial review in accordance with law except that  
36 determinations to admonish, censure or remove an official elected to  
37 office by vote of the people shall be subject to being disapproved or  
38 reduced by a majority of the members of either house of the legislature  
39 voting promptly and separately. If the determination is one of admoni-  
40 tion or censure, that determination shall be subject to being increased  
41 to censure or removal on the vote of two-thirds of the members of both  
42 houses of the legislature voting promptly and separately.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 § 7. The commission shall be subject to all transparency and public  
47 access laws subject to such reasonable exceptions for pending confiden-  
48 tial investigations as shall be provided by law. The legislative branch  
49 shall be subject to laws providing for transparency to the same extent  
50 as is the executive branch.

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