

STATE OF NEW YORK

1282--A

2019-2020 Regular Sessions

IN ASSEMBLY

January 14, 2019

Introduced by M. of A. CARROLL, ORTIZ, D'URSO, SCHIMMINGER, STIRPE, M. G. MILLER, WOERNER, JAFFEE, EPSTEIN, THIELE, SANTABARBARA, PHEFFER AMATO, MONTESANO, FAHY, BUTTENSCHON, L. ROSENTHAL, SALKA, LUPARDO, McMAHON, SEAWRIGHT, McDONALD, FRONTUS, GALEF, RICHARDSON, STEC, TAGUE, QUART, LAWRENCE, MOSLEY -- Multi-Sponsored by -- M. of A. BUCHWALD, COOK, DINOWITZ, GOTTFRIED, PAULIN -- read once and referred to the Committee on Governmental Operations -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

1 Section 1. Resolved (if the Senate concur), That the constitution be
2 amended by adding a new article V-A to read as follows:

ARTICLE V-A

STATE GOVERNMENT INTEGRITY

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4
5 Section 1. a. The people of New York expect officers and employees of
6 the state to observe laws, rules and regulations that specify high stan-
7 dards of ethical conduct designed to avoid the reality and appearance of
8 corruption, conflict of interest, self-dealing and breach of the public
9 trust. Equally they expect that candidates for state office and others
10 seeking to influence state elections to observe laws, rules and regu-
11 lations designed to regulate actual and potential corruption and
12 conflicts of interest by regulating the influence of money in politics
13 and making transparent the financing and expenditures of efforts to
14 influence voters. To protect the integrity and freedom from corruption
15 of the use of state power to enact laws, establish rules and regu-
16 lations, and contract for goods and services funded in whole or in part
17 with state taxes and other revenues, the people of New York expect
18 observance of laws, rules and regulations that regulate lobbying, lobby-
19 ists and government procurement. To ensure the appropriate workplace

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

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1 conduct of state officers and employees and those who interact with such
2 officers and employees while dealing with the state and its instrumen-
3 talities, the people of New York expect that all such persons will
4 observe laws, rules and regulations setting standards of appropriate and
5 non-discriminatory workplace behavior.

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

15 § 2. a. There shall be a New York state government integrity commis-
16 sion. The commission shall, on an independent and non-partisan basis:
17 (i) receive, initiate, investigate and determine complaints with respect
18 to laws, rules and regulations prohibiting unethical behavior, includ-
19 ing, conflict of interest, self-dealing and breach of the public trust;
20 (ii) administer and enforce laws, rules and regulations providing for
21 the disclosure of financial and other interests by state government
22 officers and employees; (iii) administer and enforce laws, rules and
23 regulations relating to abuse of official position, including through
24 discrimination and discriminatory and retaliatory harassment, by state
25 government officers and employees; (iv) administer and enforce laws,
26 rules and regulations regulating the influence of money in politics
27 including those providing for the disclosure of receipts and expendi-
28 tures by candidates and political parties; (v) administer and enforce
29 laws, rules and regulations relating to public financing of political
30 campaigns; (vi) administer and enforce laws, rules and regulations that
31 regulate lobbying and lobbyists; and (vii) receive, initiate, investi-
32 gate and determine complaints that laws, rules and regulations related
33 to government procurement are not being faithfully executed. This
34 jurisdiction shall be in addition to and not in derogation of the inves-
35 tigatory, disciplinary, vendor qualification or law enforcement authori-
36 ty of any other person or entity and of the right of an aggrieved person
37 to seek civil redress in accordance with law. The commission may in its
38 discretion decline to initiate, or suspend initiation of proceedings, or
39 otherwise adjust its procedures, in view of such other proceedings
40 undertaken or able to be undertaken by such other person or entity.

41 b. When, after hearing, the commission has determined that the
42 respondent has violated a law, rule or regulation within the commis-
43 sion's jurisdiction to enforce, the commission may impose any civil
44 sanction authorized by law and/or refer the matter for criminal prose-
45 cution. The commission may also caution, admonish or censure such
46 respondent or, in the case of a non-elected state officer or employee,
47 suspend, demote or remove such respondent from office or employment
48 after such adjudicatory process that substantially complies with the
49 terms of any relevant collective bargaining agreement. In deciding the
50 severity of the sanction, the commission shall consider to what extent
51 the violation is inadvertent, isolated and/or of insubstantial conse-
52 quence on the one hand or willful, repeated, causing actual public harm
53 or risk of public harm and/or otherwise egregious on the other. Determi-
54 nations, other than a determination to refer for criminal prosecution,
55 shall be subject to judicial review in accordance with law. If it finds

1 such a violation it may also issue a cease and desist order and seek
2 judicial enforcement of that order in accordance with law.

3 c. The commission shall consist of thirteen members, appointed as
4 follows: (i) two shall be appointed by the governor, at least one of
5 whom shall be, or within the prior five years shall have been, enrolled
6 in a different major political party than the governor; (ii) one shall
7 be appointed by each of the leaders in each house of the legislature of
8 the party conferences whose candidate for governor in the most recent
9 gubernatorial election received the largest and second largest number of
10 votes; and (iii) seven jointly by the chief judge of the state of New
11 York and the presiding justices of each of the appellate divisions,
12 three of whom shall be, and within the prior five years shall have been,
13 enrolled in each of the two majority political parties and one of whom
14 shall not be, and shall not within the past five years have been
15 enrolled in any political party. The chief judge shall request the pres-
16 ident and immediate past president of the state bar jointly to propose
17 seven persons for each of two appointments to the commission who as a
18 group of seven would be eligible for such appointment and two of those
19 appointed jointly by the chief judge and the presiding justices shall be
20 drawn from these two lists. No member of the commission shall have held
21 office in any political party organization, have been a state officer or
22 employee or have been engaged as a lobbyist within three years of
23 appointment or at any time during their term. The chair shall be elected
24 by the commission members from among its members. Commission members
25 shall be reimbursed for their actual expenses and paid a per diem salary
26 to be fixed by law but at least a per diem amount equal to the annual
27 salary paid to a justice of the supreme court divided by two hundred
28 twenty. A member may be removed for cause on application to the court of
29 appeals made by a majority vote of the full membership of the commis-
30 sion.

31 d. The persons first appointed by the governor shall have respectively
32 three and four-year terms as the governor shall designate. The persons
33 first appointed jointly by the chief judge of the state of New York and
34 the presiding justices of the appellate divisions shall have respective-
35 ly one, two, two, three, three, four, and four-year terms as that judge
36 and those justices shall designate. The person first appointed by the
37 legislative leaders in each house of the legislature of the party
38 conferences whose candidate for governor received the largest number of
39 votes shall have a four-year term in the case of the Senate and a three-
40 year term in the case of the Assembly. The person first appointed by the
41 legislative leaders in each house of the legislature of the party
42 conferences whose candidate for governor received the second largest
43 number of votes shall have a two-year term in the case of the Senate and
44 a one-year term in the case of the Assembly. Each member of the commis-
45 sion shall be appointed thereafter for a term of four years and shall be
46 appointed in the same manner with a person of the same political affil-
47 iation as his or her predecessor.

48 e. The organization and procedure of the commission shall be as
49 provided by law provided that the commission shall act by majority vote
50 of its membership and determine violations based on a preponderance of
51 the evidence except that any order of censure or removal shall be based
52 on clear and convincing evidence. The commission may establish its own
53 rules and procedures not inconsistent with law and due process. Those
54 rules shall bar ex parte communications regarding a potential or ongoing
55 investigation or other matter before the commission, direct or indirect,
56 between members of the commission and their appointing authority and

1 such rule shall bind both the member, the commission staff, the appoint-
2 ing authority and the staff, agents and representatives of the appoint-
3 ing authority. The commission shall be empowered to designate one or
4 more of its members or any other persons as hearing officers to hear and
5 report concerning any matter before the commission.

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

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

15 c. The commission, shall have the duty to train all persons within the
16 commission's jurisdiction in compliance with the laws, rules and regu-
17 lations with respect to which the commission has jurisdiction and to
18 otherwise encourage persons subject to the commission's jurisdiction to
19 fulfill their duties under such laws and shall have the power to issue
20 and interpret rules and regulations subject to judiciary review for
21 conformance with law.

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

24 e. The commission, after notice and opportunity for public comment,
25 may issue advisory opinions or bulletins which will have such protective
26 effect on those who act in compliance therewith as is specified in the
27 opinion or bulletin. It shall also establish an office of ethics and
28 lobbying guidance to give prompt, non-precedental informal advice to
29 persons whose conduct it oversees. Persons receiving such informal
30 advice may rely on that advice absent misrepresentation of material
31 facts to the office of ethics and lobbying guidance and such communi-
32 cations with the office of ethics and lobbying shall be treated as
33 confidential except as disclosure is needed to prevent or rectify a
34 crime or fraud or prevent a substantial threat to public safety.

35 § 4. The commission shall annually submit a budget which the governor
36 shall include in his executive budget and financial plan without
37 revision. The legislature may reduce the commission's budget and the
38 governor may veto that reduction and replace it with an amount not less
39 than that determined by the legislature. If such veto shall be overrid-
40 den by a two-thirds vote of both houses of the legislature, the amount
41 determined by the legislature shall become binding.

42 § 5. a. The commission shall administer and enforce the state code of
43 ethics established by law. The state code of ethics shall be construed,
44 and any revision or amendment thereto, shall be drafted and construed to
45 proscribe conduct that creates in the mind of a reasonable person an
46 appearance of corruption, conflicts of interest that materially impair
47 the performance of official duties and breaches of the public trust
48 including the misuse of official position or the abuse of official
49 authority for personal gain. The commission shall periodically review
50 the state code of ethics and may propose to the legislature revisions
51 and amendments to the code.

52 b. The state code of ethics shall, by virtue of this provision,
53 provide that it shall be the ethical duty of any person or entity within
54 the jurisdiction of the commission to promptly report to the commission
55 information not protected by the attorney-client or prosecutorial inves-
56 tigative privilege about activity known to be in violation of the state

1 code of ethics or other law which any person or entity has engaged in
2 with respect to activity that is within the jurisdiction of the commis-
3 sion. There shall be no retaliation against a person or entity making
4 such a report in good faith on information and belief, and any person
5 aggrieved by such retaliation may bring a civil action for compensatory
6 and exemplary damages.

7 c. The state code of ethics shall, by virtue of this provision,
8 provide that no person within the jurisdiction of the commission shall
9 commit an act of discriminatory or retaliatory harassment while serving
10 in his or her official capacity and no such person serving in a supervi-
11 sory capacity shall suffer an act of such harassment to occur without
12 taking care that there be due consequences in accordance with law. The
13 commission may by rule define the conduct that constitutes an act of
14 discriminatory or retaliatory harassment and shall establish a unit
15 responsible for harassment complaints and investigations.

16 § 6. The commission may recommend to the legislature limits for all
17 categories of campaign contributions to candidates and political organ-
18 izations that in its judgment are low enough to prevent an elected offi-
19 cial from being so beholden to a campaign contributor as to materially
20 impair such official's exercise of independent policy judgment in the
21 interests of the public and his or her constituents.

22 § 7. The commission shall be subject to all transparency and public
23 access laws subject to such reasonable exceptions for pending confiden-
24 tial investigations as shall be provided by law. The legislative branch
25 shall be subject to laws providing for transparency to the same extent
26 as is the executive branch.

27 § 8. Any commission appointment not made within sixty days following
28 the effective date of this article, or within sixty days of the occur-
29 rence of any vacancy, shall be filled by the president and president-e-
30 lect of the state bar acting jointly. For no more than ninety days
31 following the initial appointment all the members of the commission
32 shall prepare to commence operation, including the hiring of an execu-
33 tive director and managerial staff, and on such ninetieth day the joint
34 commission on public ethics and the legislative ethics commission shall
35 no longer exist, and the authority of the board of elections over
36 campaign finance shall cease all their powers, duties, non-managerial
37 employees and matters having been transferred to the commission.

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