STATE OF NEW YORK

586

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. ROZIC, WILLIAMS, SEAWRIGHT, GUNTHER, ENGLEBRIGHT, CAHILL, HYNDMAN, LAVINE, WEPRIN, DICKENS, MOSLEY, D'URSO, NIOU, BARRON, DE LA ROSA, GIGLIO, RIVERA, LUPARDO, ARROYO, LAWRENCE -- Multi-Sponsored by -- M. of A. ABBATE, DAVILA, NOLAN, SIMON, THIELE -- read once and referred to the Committee on Governmental Operations

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

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

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

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

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

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

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

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

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

(d) "legislative member" shall mean a senator or member of the assembly.

2. There is hereby established within the department of state a commission on public transparency and sexual harassment which shall consist of eleven members and shall have and exercise the powers and the duties set forth in this section with respect to statewide elected officials, state officers and employees, legislative employees, and legisla-

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

LBD01315-01-9

tive members. This section shall not be deemed to have revoked or rescinded any regulations or advisory opinions issued by the legislative ethics commission, the commission on public integrity, the state ethics commission, or the state office for human rights in effect upon the effective date of this section to the extent that such regulations or opinions are not inconsistent with any law of this state, but such regulations and opinions shall apply only to matters over which such commissions had jurisdiction at the time such regulations and opinions were promulgated or issued. The commission shall undertake a comprehensive review of the current sexual harassment policies in the legislature and executive agencies. The commission shall, before February first, two thousand twenty, report to the governor and the legislature regarding this review and recommendations for any regulatory or statutory guidance for consistency and transparency.

3. The commission shall consist of eleven members of whom three shall be appointed by the governor, four by the chief judge of the court of appeals, and one each by the speaker of the assembly, the temporary president of the senate, the minority leader of the senate, and the minority leader of the assembly. Of the three members appointed by the governor, no more than two shall be enrolled in the same political party, and two shall be attorneys admitted to practice law in this state. Of the four members appointed by the chief judge of the court of appeals, no more than two shall be enrolled in the same political party, two shall be attorneys licensed to practice law in this state, and two shall not be attorneys. No member of the commission shall hold any office in any political party. Members of the commission shall be appointed based on their actual experience in the establishment of institutional policies, sexual harassment claims, and legal matters regarding sexual harassment issues, sex crimes, and reporting. Appointing authorities shall coordinate appointments to include, but not be limited to, an attorney actually employed in the area of sexual harassment litigation and similar legal matters who has demonstrated outstanding service and contributions to this legal area, a human resources or labor relations representative who has demonstrated actual service in the establishment of effective sexual harassment policies in the workplace, a member of law enforcement who has work experience in relation to sex crimes and harassment, and a member of the judicial branch who has had experience in the consideration of civil claims related to sexual harassment and sex discrimination. In the event that a vacancy arises with respect to a member of the commission first appointed pursuant to this section by a legislative leader, the legislative leaders of the same political party in the same house shall appoint a member to fill such vacancy irrespective of whether that legislative leader's political party is in the majority or minority. No individual shall be eligible for appointment as a member of the commission who currently or within the last three years is or has been a member of the New York state legislature or has been a legislative employee, or a statewide officer or elected official or a commissioner of an executive agency appointed by the governor, or has held judicial office. Members of the commission shall be residents of the state.

4. Members of the commission shall serve for terms of five years; provided, however, that of the members first appointed by the governor, one shall serve for one year, one shall serve for two years, and one shall serve for three years, as designated by the governor; the members first appointed by the temporary president of the senate and by the speaker of the assembly shall serve for four years and the members first

appointed by the minority leaders of the senate and the assembly shall serve for two years.

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

6. Any vacancy occurring on the commission shall be filled within thirty days of its occurrence in the same manner as the member whose vacancy is being filled was appointed. A person appointed to fill a vacancy occurring other than by expiration of a term of office shall be appointed for the unexpired term of the member he or she succeeds.

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

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

9. Eight members shall constitute a quorum.

10. The commission shall:

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

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

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

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

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

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

(g) prepare an annual report to the governor and the legislature summarizing the activities of the commission during the previous year including, but not limited to, (i) an accounting of founded and unfounded claims of sexual harassment organized by legislative branch and executive office or agency, and (ii) where a matter has been

resolved, the date and nature of the disposition and any sanctions or recommendations of the commission, subject to the confidentiality requirements of this section;

(h) provide notification to any person who has filed a sexual harassment claim of the determination of the commission's review as well as the individual's right to appeal the commission's determination pursuant to subdivision twelve of this section;

(i) appoint an executive director who shall act in accordance with the policies of the commission. The appointment and removal of the executive director shall be made solely by a vote of a majority of the commission, which majority shall include at least one member appointed by the governor from each of the two major political parties, and one member appointed by a legislative leader from each of the two major political parties. The commission may delegate authority to the executive director to act in the name of the commission between meetings of the commission provided such delegation is in writing, the specific powers to be delegated are enumerated, and the commission shall not delegate any decisions specified in this section that require a vote of the commission. The executive director shall be appointed without regard to political affiliation and solely on the basis of fitness to perform the duties assigned by this article, and shall be a qualified, independent professional. The commission may remove the executive director for neglect of duty, misconduct in office, violation of the confidentiality, or inability or failure to discharge the powers or duties of office, including the failure to follow the lawful instructions of the commission;

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

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

(l) develop and administer an online sexual harassment orientation course to be made available across the legislative and executive branches for the purposes of a uniform and consistent policy across government.

11. (a) When an individual becomes a member or staff of the commission, that individual shall be required to sign a non-disclosure statement.

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

(c) The commission shall establish procedures necessary to prevent the unauthorized disclosure of any information received by any member of the commission or staff of the commission. Any breaches of confidentiality shall be investigated by the inspector general and appropriate action shall be taken. Any commissioner or person employed by the commission who intentionally and without authorization releases confidential information received by the commission shall be guilty of a class A misdemeanor.

12. The commission shall be deemed to be an agency of the state within the meaning of article three of the state administrative procedure act and shall adopt rules governing the conduct of adjudicatory proceedings and appeals taken pursuant to a proceeding commenced under article seventy-eight of the civil practice law and rules relating to the assessment of penalties or findings authorized in this section. Such rules, which shall not be subject to the approval requirements of the state administrative procedure act, shall provide for due process procedural mechanisms substantially similar to those set forth in article three of the state administrative procedure act but such mechanisms need not be identical in terms of scope.

§ 2. This act shall take effect immediately and shall apply to settlements entered into on and after such date.