

STATE OF NEW YORK

8507

2019-2020 Regular Sessions

IN ASSEMBLY

August 7, 2019

Introduced by M. of A. SIMOTAS -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to requiring the joint commission on public ethics to update complainants on the status of investigations

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

1 Section 1. Subdivision 9-a and paragraphs (a) and (b) of subdivision
2 13 of section 94 of the executive law, subdivision 9-a as added by
3 section 6 of part A of chapter 399 of the laws of 2011, paragraph (a) of
4 subdivision 13 as amended by section 1 and paragraph (b) of subdivision
5 13 as amended by section 2 of part J of chapter 286 of the laws of 2016,
6 are amended to read as follows:

7 9-a. (a) When an individual becomes a commissioner or staff of the
8 commission, that individual shall be required to sign a non-disclosure
9 statement.

10 (b) Except as otherwise required or provided by law, or when necessary
11 to inform the complainant or target of the alleged violation of law, if
12 any of the status of an investigation, testimony received or any other
13 information obtained by a commissioner or staff of the commission shall
14 not be disclosed by any such individual to any person or entity outside
15 the commission during the pendency of any matter. Any confidential
16 communication to any person or entity outside the commission related to
17 the matters before the commission may occur only as authorized by the
18 commission.

19 (c) The commission shall establish procedures necessary to prevent the
20 unauthorized disclosure of any information received by any member of the
21 commission or staff of the commission. Any breaches of confidentiality
22 shall be investigated by the inspector general and appropriate action
23 shall be taken. Any commissioner or person employed by the commission
24 who intentionally and without authorization releases confidential infor-

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

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1 mation received by the commission shall be guilty of a class A misdemea-
2 nor.

3 (d) Notwithstanding paragraph (b) of this subdivision and subdivision
4 thirteen of this section, the commission may, in the public interest or
5 under extraordinary circumstances, if the public is otherwise aware of
6 the existence of such actual or potential investigative matter, author-
7 ize the chairman or designated staff to publicly disclose that: (1) such
8 matter is pending before the commission; (2) such matter has been closed
9 by the commission; or (3) the commission has deferred action on the
10 matter at the request of a prosecutor, other law enforcement agency, or
11 due to another pending proceeding. Before authorizing such disclosure,
12 the commission shall provide the subject of such investigation and the
13 complainant or target of alleged violation of law, if any the opportu-
14 nity to be heard regarding the public release of such information.

15 (a) Investigations. If the commission receives a sworn complaint
16 alleging a violation of section seventy-three, seventy-three-a, or
17 seventy-four of the public officers law, section one hundred seven of
18 the civil service law or article one-A of the legislative law by a
19 person or entity subject to the jurisdiction of the commission including
20 members of the legislature and legislative employees and candidates for
21 member of the legislature, or if a reporting individual has filed a
22 statement which reveals a possible violation of these provisions, or if
23 the commission determines on its own initiative to investigate a possi-
24 ble violation, the commission shall notify the individual in writing,
25 describe the possible or alleged violation of such laws, provide a
26 description of the allegations against him or her and the evidence, if
27 any, supporting such allegations, provided however that the joint
28 commission shall redact any information that might, in the judgment of
29 the commission, be prejudicial to either the complainant or the investi-
30 gation; the letter also shall set forth the sections of law alleged to
31 have been violated and provide the person with a fifteen day period in
32 which to submit a written response, including any evidence, statements,
33 and proposed witnesses, setting forth information relating to the activ-
34 ities cited as a possible or alleged violation of law. The commission
35 shall provide a copy of such letter to the complainant or the target of
36 the alleged violation of law, if any. The commission shall, within sixty
37 calendar days after a complaint or a referral is received or an investi-
38 gation is initiated on the commission's own initiative, vote on whether
39 to commence a full investigation of the matter under consideration to
40 determine whether a substantial basis exists to conclude that a
41 violation of law has occurred. The staff of the joint commission shall
42 provide to the members prior to such vote information regarding the
43 likely scope and content of the investigation, and a subpoena plan, to
44 the extent such information is available. Such investigation shall be
45 conducted if at least eight members of the commission vote to authorize
46 it. Where the subject of such investigation is a member of the legisla-
47 ture or a legislative employee or a candidate for member of the legisla-
48 ture, at least two of the eight or more members who so vote to authorize
49 such an investigation must have been appointed by a legislative leader
50 or leaders from the major political party in which the subject of the
51 proposed investigation is enrolled if such person is enrolled in a major
52 political party. Where the subject of such investigation is a state
53 officer or state employee, at least two of the eight or more members who
54 so vote to authorize such an investigation must have been appointed by
55 the governor and lieutenant governor. Where the subject of such investi-
56 gation is a statewide elected official or a direct appointee of such an

1 official, at least two of the eight or more members who so vote to
2 authorize such an investigation must have been appointed by the governor
3 and lieutenant governor and be enrolled in the major political party in
4 which the subject of the proposed investigation is enrolled, if such
5 person is enrolled in a major political party. If the commission does
6 not vote to authorize a full investigation, the commission shall provide
7 written notice of the decision to the complainant or target of the
8 alleged violation of law.

9 (b) Substantial basis investigation. Upon the affirmative vote of not
10 less than eight commission members to commence a substantial basis
11 investigation, written notice of the commission's decision shall be
12 provided to the individual who is the subject of such substantial basis
13 investigation and the complainant or target of the alleged violation of
14 law, if any. Such written notice shall include a copy of the commis-
15 sion's rules and procedures and shall also include notification of [~~such
16 individual's~~] the subject of the investigation's right to be heard with-
17 in thirty calendar days of the date of the commission's written notice.
18 If the commission votes to commence a substantial basis investigation,
19 the commission shall provide to the [~~individual~~] subject of the investi-
20 gation and the complainant or target of the alleged violation of law, if
21 any a notice setting forth the alleged violations of law and the factual
22 basis for those allegations. The commission shall provide to the [~~indi-
23 vidual~~] subject of the investigation any additional evidence supporting
24 the allegations not set forth in the letter sent pursuant to paragraph
25 (a) of this subdivision in sufficient detail to enable the [~~individual~~]
26 subject of the investigation to respond, at least seven days before the
27 hearing. Such hearing shall afford the [~~individual~~] subject of the
28 investigation with a reasonable opportunity to appear in person, and by
29 attorney, give sworn testimony and present evidence. Such hearing shall
30 occur before the commission votes on whether or not to issue a substan-
31 tial basis report. The commission shall also inform the [~~individual~~]
32 subject of the investigation of its rules regarding the conduct of adju-
33 dicatory proceedings and appeals and the other due process procedural
34 mechanisms available to such [~~individual~~] subject of the investigation.
35 If the commission determines at any stage that there is no violation,
36 that any potential violation has been rectified, or if the investigation
37 is closed for any other reason, it shall so advise the [~~individual~~]
38 subject of the investigation and the complainant or target of the
39 alleged violation of law, if any in writing within fifteen days of such
40 decision. All of the foregoing proceedings shall be confidential.

41 § 2. This act shall take effect on the ninetieth day after it shall
42 have become a law. Effective immediately the addition, amendment and/or
43 repeal of any rule or regulation necessary for the implementation of
44 this act on its effective date are authorized to be made and completed
45 on or before such date.