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

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

ARTICLE V-A

STATE GOVERNMENT INTEGRITY

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

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

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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.

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

§ 2. a. There shall be a New York state government integrity commission. The commission shall, on an independent and non-partisan basis: (i) receive, initiate, investigate and determine complaints with respect to laws, rules and regulations prohibiting unethical behavior, including, conflict of interest, self-dealing and breach of the public trust; (ii) administer and enforce laws, rules and regulations providing for the disclosure of financial and other interests by state government officers and employees; (iii) administer and enforce laws, rules and regulations relating to abuse of official position, including through discrimination and discriminatory and retaliatory harassment, by state government officers and employees; (iv) administer and enforce laws, rules and regulations regulating the influence of money in politics including those providing for the disclosure of receipts and expenditures by candidates and political parties; (v) administer and enforce laws, rules and regulations relating to public financing of political campaigns; (vi) administer and enforce laws, rules and regulations that regulate lobbying and lobbyists; and (vii) receive, initiate, investigate and determine complaints that laws, rules and regulations related to government procurement are not being faithfully executed. This jurisdiction shall be in addition to and not in derogation of the investigatory, disciplinary, vendor qualification or law enforcement authority of any other person or entity and of the right of an aggrieved person to seek civil redress in accordance with law. The commission may in its discretion decline to initiate, or suspend initiation of proceedings, or otherwise adjust its procedures, in view of such other proceedings undertaken or able to be undertaken by such other person or entity.

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

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

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

d. The persons first appointed by the governor shall have respectively three and four-year terms as the governor shall designate. The persons first appointed jointly by the chief judge of the state of New York and the presiding justices of the appellate divisions shall have respectively one, two, two, three, three, four, and four-year terms as that judge and those justices shall designate. The person first appointed by the legislative leaders in each house of the legislature of the party conferences whose candidate for governor received the largest number of votes shall have a four-year term in the case of the Senate and a three-year term in the case of the Assembly. The person first appointed by the legislative leaders in each house of the legislature of the party conferences whose candidate for governor received the second largest number of votes shall have a two-year term in the case of the Senate and a one-year term in the case of the Assembly. Each member of the commission shall be appointed thereafter for a term of four years and shall be appointed in the same manner with a person of the same political affiliation as his or her predecessor.

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 7. The commission shall be subject to all transparency and public access laws subject to such reasonable exceptions for pending confidential investigations as shall be provided by law. The legislative branch shall be subject to laws providing for transparency to the same extent as is the executive branch.

§ 8. Any commission appointment not made within sixty days following the effective date of this article, or within sixty days of the occurrence of any vacancy, shall be filled by the president and president-elect of the state bar acting jointly. For no more than ninety days following the initial appointment all the members of the commission shall prepare to commence operation, including the hiring of an executive director and managerial staff, and on such ninetieth day the joint commission on public ethics and the legislative ethics commission shall no longer exist, and the authority of the board of elections over campaign finance shall cease all their powers, duties, non-managerial employees and matters having been transferred to the commission.

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