

# STATE OF NEW YORK

1302

2019-2020 Regular Sessions

## IN SENATE

January 14, 2019

Introduced by Sens. SERINO, FELDER, HELMING, LANZA, LAVALLE, LITTLE, RANZENHOFER, RITCHIE -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

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:

1 Section 1. The public officers law is amended by adding a new section  
2 75-b to read as follows:

3 § 75-b. Commission on public transparency and sexual harassment. 1.  
4 When used in this section the following terms shall have the following  
5 meanings:

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

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

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

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

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

15 (d) "legislative member" shall mean a senator or member of the assem-  
16 bly.

17 2. There is hereby established within the department of state a  
18 commission on public transparency and sexual harassment which shall  
19 consist of eleven members and shall have and exercise the powers and the  
20 duties set forth in this section with respect to statewide elected offi-  
21 cials, state officers and employees, legislative employees, and legisla-  
22 tive members. This section shall not be deemed to have revoked or  
23 rescinded any regulations or advisory opinions issued by the legislative  
24 ethics commission, the commission on public integrity, the state ethics

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

LBD01315-01-9

1 commission, or the state office for human rights in effect upon the  
2 effective date of this section to the extent that such regulations or  
3 opinions are not inconsistent with any law of this state, but such regu-  
4 lations and opinions shall apply only to matters over which such commis-  
5 sions had jurisdiction at the time such regulations and opinions were  
6 promulgated or issued. The commission shall undertake a comprehensive  
7 review of the current sexual harassment policies in the legislature and  
8 executive agencies. The commission shall, before February first, two  
9 thousand twenty, report to the governor and the legislature regarding  
10 this review and recommendations for any regulatory or statutory guidance  
11 for consistency and transparency.

12 3. The commission shall consist of eleven members of whom three shall  
13 be appointed by the governor, four by the chief judge of the court of  
14 appeals, and one each by the speaker of the assembly, the temporary  
15 president of the senate, the minority leader of the senate, and the  
16 minority leader of the assembly. Of the three members appointed by the  
17 governor, no more than two shall be enrolled in the same political  
18 party, and two shall be attorneys admitted to practice law in this  
19 state. Of the four members appointed by the chief judge of the court of  
20 appeals, no more than two shall be enrolled in the same political party,  
21 two shall be attorneys licensed to practice law in this state, and two  
22 shall not be attorneys. No member of the commission shall hold any  
23 office in any political party. Members of the commission shall be  
24 appointed based on their actual experience in the establishment of  
25 institutional policies, sexual harassment claims, and legal matters  
26 regarding sexual harassment issues, sex crimes, and reporting. Appoint-  
27 ing authorities shall coordinate appointments to include, but not be  
28 limited to, an attorney actually employed in the area of sexual harass-  
29 ment litigation and similar legal matters who has demonstrated outstand-  
30 ing service and contributions to this legal area, a human resources or  
31 labor relations representative who has demonstrated actual service in  
32 the establishment of effective sexual harassment policies in the work-  
33 place, a member of law enforcement who has work experience in relation  
34 to sex crimes and harassment, and a member of the judicial branch who  
35 has had experience in the consideration of civil claims related to sexu-  
36 al harassment and sex discrimination. In the event that a vacancy arises  
37 with respect to a member of the commission first appointed pursuant to  
38 this section by a legislative leader, the legislative leaders of the  
39 same political party in the same house shall appoint a member to fill  
40 such vacancy irrespective of whether that legislative leader's political  
41 party is in the majority or minority. No individual shall be eligible  
42 for appointment as a member of the commission who currently or within  
43 the last three years is or has been a member of the New York state  
44 legislature or has been a legislative employee, or a statewide officer  
45 or elected official or a commissioner of an executive agency appointed  
46 by the governor, or has held judicial office. Members of the commission  
47 shall be residents of the state.

48 4. Members of the commission shall serve for terms of five years;  
49 provided, however, that of the members first appointed by the governor,  
50 one shall serve for one year, one shall serve for two years, and one  
51 shall serve for three years, as designated by the governor; the members  
52 first appointed by the temporary president of the senate and by the  
53 speaker of the assembly shall serve for four years and the members first  
54 appointed by the minority leaders of the senate and the assembly shall  
55 serve for two years.

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

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

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

15 8. Members of the commission shall be reimbursed for all reasonable  
16 expenses actually and necessarily incurred by him or her in the perform-  
17 ance of his or her duties under this section.

18 9. Eight members shall constitute a quorum.

19 10. The commission shall:

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

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

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

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

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

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

50 (g) prepare an annual report to the governor and the legislature  
51 summarizing the activities of the commission during the previous year  
52 including, but not limited to, (i) an accounting of founded and  
53 unfounded claims of sexual harassment organized by legislative branch  
54 and executive office or agency, and (ii) where a matter has been  
55 resolved, the date and nature of the disposition and any sanctions or

1 recommendations of the commission, subject to the confidentiality  
2 requirements of this section;

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

7 (i) appoint an executive director who shall act in accordance with the  
8 policies of the commission. The appointment and removal of the executive  
9 director shall be made solely by a vote of a majority of the commission,  
10 which majority shall include at least one member appointed by the gover-  
11 nor from each of the two major political parties, and one member  
12 appointed by a legislative leader from each of the two major political  
13 parties. The commission may delegate authority to the executive director  
14 to act in the name of the commission between meetings of the commission  
15 provided such delegation is in writing, the specific powers to be deleg-  
16 ated are enumerated, and the commission shall not delegate any decisions  
17 specified in this section that require a vote of the commission. The  
18 executive director shall be appointed without regard to political affil-  
19 iation and solely on the basis of fitness to perform the duties assigned  
20 by this article, and shall be a qualified, independent professional. The  
21 commission may remove the executive director for neglect of duty,  
22 misconduct in office, violation of the confidentiality, or inability or  
23 failure to discharge the powers or duties of office, including the fail-  
24 ure to follow the lawful instructions of the commission;

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

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

33 (l) develop and administer an online sexual harassment orientation  
34 course to be made available across the legislative and executive branch-  
35 es for the purposes of a uniform and consistent policy across govern-  
36 ment.

37 11. (a) When an individual becomes a member or staff of the commis-  
38 sion, that individual shall be required to sign a non-disclosure state-  
39 ment.

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

47 (c) The commission shall establish procedures necessary to prevent the  
48 unauthorized disclosure of any information received by any member of the  
49 commission or staff of the commission. Any breaches of confidentiality  
50 shall be investigated by the inspector general and appropriate action  
51 shall be taken. Any commissioner or person employed by the commission  
52 who intentionally and without authorization releases confidential infor-  
53 mation received by the commission shall be guilty of a class A misdemea-  
54 nor.

55 12. The commission shall be deemed to be an agency of the state within  
56 the meaning of article three of the state administrative procedure act

1 and shall adopt rules governing the conduct of adjudicatory proceedings  
2 and appeals taken pursuant to a proceeding commenced under article  
3 seventy-eight of the civil practice law and rules relating to the  
4 assessment of penalties or findings authorized in this section. Such  
5 rules, which shall not be subject to the approval requirements of the  
6 state administrative procedure act, shall provide for due process proce-  
7 dural mechanisms substantially similar to those set forth in article  
8 three of the state administrative procedure act but such mechanisms need  
9 not be identical in terms of scope.

10 § 2. This act shall take effect immediately and shall apply to settle-  
11 ments entered into on and after such date.