

STATE OF NEW YORK

594

2019-2020 Regular Sessions

IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sens. KRUEGER, METZGER, BIAGGI, JACKSON, GAUGHRAN, MAYER, MAY, MARTINEZ, SKOUFIS, RAMOS, MYRIE, LIU, KAPLAN, KAMINSKY, BROOKS, SAVINO, HOYLMAN, KENNEDY, CARLUCCI, ANTONACCI, AMEDORE, JORDAN, BOYLE -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

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 Assembly concur), That the constitution be amended by adding a new article V-A to read as follows:

ARTICLE V-A

STATE GOVERNMENT INTEGRITY

Sec.

1. Declarations of the people.

2. New York state government integrity commission.

3. Additional powers of the commission.

4. Funding of the commission.

5. State code of ethics.

6. Recommending revisions of campaign contribution limits.

7. Transparency.

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 regu-

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

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lations, 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 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, receive, initiate, investigate and determine complaints with respect to the matters specified in section one of this article. 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.

c. The commission shall consist of nine members, of whom two shall be appointed jointly by the governor, the attorney general and the comptroller, at least one of whom shall not be, or within the prior five years shall not have been, enrolled in the same political party as the governor, one jointly by 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 number of votes, one jointly by the leaders in each house of the legislature of the party conferences whose candidate for governor in the most recent gubernatorial election received the second largest number of votes, and five jointly by the chief judge of the state of New York and the presiding justices of each of the appellate divisions, no more than three of whom shall be, or

1 within the prior five years shall not have been, enrolled in the same
2 political party. No member of the commission shall have held office in
3 any political party organization, have been a state officer or employee
4 or have been engaged as a lobbyist within three years of appointment or
5 at any time during their term. The chair shall be elected by the commis-
6 sion members from among its members. Commission members shall be reim-
7 bursed for their actual expenses and paid a per diem salary to be fixed
8 by law but at least a per diem amount equal to the annual salary paid to
9 a justice of the supreme court divided by two hundred twenty. A member
10 may be removed for cause on application to the court of appeals made by
11 a majority vote of the full membership of the commission.

12 d. The persons first appointed by the governor, the attorney general
13 and the comptroller shall have respectively three and four-year terms as
14 those officials shall designate. The persons first appointed by the
15 chief judge of the state of New York and the presiding justices of the
16 appellate divisions shall have respectively one, two, three, three, and
17 four-year terms as that judge and those justices shall designate. The
18 person first appointed jointly by the legislative leaders in each house
19 of the legislature of the party conferences whose candidate for governor
20 received the largest number of votes shall have a one-year term. The
21 person first appointed jointly by the legislative leaders in each house
22 of the legislature of the party conferences whose candidate for governor
23 received the second largest number of votes shall have a two-year term.
24 Each member of the commission shall be appointed thereafter for a term
25 of four years.

26 e. The organization and procedure of the commission shall be as
27 provided by law provided that the commission shall act by majority vote
28 of its membership in attendance and constituting a quorum and determine
29 violations based on a preponderance of the evidence except that any
30 order of censure or removal shall be based on clear and convincing
31 evidence and shall be approved by a majority of all the members of the
32 commission. The commission may establish its own rules and procedures
33 not inconsistent with law and due process. Those rules shall bar ex
34 parte communications of any kind or substance, direct or indirect,
35 between members of the commission and their appointing authority and
36 such rule shall bind both the member, the commission staff, the appoint-
37 ing authority and the staff, agents and representatives of the appoint-
38 ing authority. The commission shall be empowered to designate one or
39 more of its members or any other persons as hearing officers to hear and
40 report concerning any matter before the commission.

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

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

50 c. The commission shall assure the effective enforcement and adminis-
51 tration of the state ethics laws including the code of ethics, laws
52 providing for disclosure of financial and other interests by state offi-
53 cers and employees, the laws regulating lobbying and lobbyists and the
54 laws concerning campaign finance. The commission shall take care that
55 laws respecting procurement of goods and services by the state are
56 faithfully observed as are laws respecting workplace behavior. This

1 authority shall include the power and duty to interpret laws adminis-
2 tered by the commission, to train all persons within the commission's
3 jurisdiction in compliance with the laws, rules and regulations adminis-
4 tered or enforced by the commission and to issue and interpret rules and
5 regulations that are not in conflict with law.

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

8 e. The commission, after notice and opportunity for public comment,
9 may issue advisory opinions or bulletins which will have such protective
10 effect on those who act in compliance therewith as is specified in the
11 opinion or bulletin. It shall also establish an office of ethics and
12 lobbying guidance to give prompt, non-precendential informal advice to
13 persons whose conduct it oversees. Persons receiving such informal
14 advice may rely on that advice absent misrepresentation of material
15 facts to the office of ethics and lobbying guidance and such advice
16 shall be protected as an attorney-client communication.

17 § 4. The state shall annually appropriate an amount adequate to
18 support the commission's discharge of its fiduciary duty to the people.
19 In no event shall the appropriation for the work of the commission be
20 less than ten percent of the appropriation to the state law department.

21 § 5. a. The commission shall periodically review the state code of
22 ethics and may propose revisions and amendments to the code. The state
23 code of ethics, and any revision or amendment thereto, shall be drafted
24 and construed to eliminate conduct that creates an appearance of
25 corruption, conflicts of interest that materially impair the performance
26 of official duties and breaches of the public trust including the misuse
27 of official position or the abuse of official authority for personal
28 gain.

29 b. The state code of ethics shall provide that it shall be the ethical
30 duty of any person or entity within the jurisdiction of the commission
31 to promptly report to the commission information not protected by the
32 attorney-client or prosecutorial investigative privilege about activity
33 known to be in violation of the state code of ethics or other law which
34 any person or entity has engaged in with respect to activity that is
35 within the jurisdiction of the commission. There shall be no retali-
36 ation against a person or entity making such a report in good faith on
37 information and belief, and any person aggrieved by such retaliation may
38 bring a civil action for compensatory and exemplary damages.

39 c. The state code of ethics shall provide that no person within the
40 jurisdiction of the commission shall commit an act of sexual harassment
41 while serving in his or her official capacity and no such person serving
42 in a supervisory capacity shall suffer an act of sexual harassment to
43 occur without taking care that there be due consequences in accordance
44 with law. The commission may by rule define the conduct that constitutes
45 an act of sexual harassment and shall establish a unit responsible for
46 sexual harassment complaints and investigations.

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

53 § 7. The commission shall be subject to all transparency and public
54 access laws subject to such reasonable exceptions for pending confiden-
55 tial investigations as shall be provided by law. The legislative branch

1 shall be subject to laws providing for transparency to the same extent
2 as is the executive branch.

3 § 8. Within ninety days of the effective date of this article the
4 legislature shall make and the governor shall approve the necessary
5 changes to law to transfer the functions performed by the joint commis-
6 sion on public ethics and the legislative ethics commission to the
7 commission.

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