STATE OF NEW YORK

8238

2021-2022 Regular Sessions

IN ASSEMBLY

August 25, 2021

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

AN ACT to amend the executive law, in relation to the joint commission on public ethics; to amend the executive law, in relation to modifying the composition of the voting majority upon the appointment and removal of the executive director of the joint commission on public ethics; and to amend the executive law, in relation to filling of vacancies on the joint commission on public ethics

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

Section 1. Paragraph (a) of subdivision 13, the opening paragraph of subdivision 14-a and subdivision 14-b of section 94 of the executive law, paragraph (a) of subdivision 13 as amended by section 1 of part J of chapter 286 of the laws of 2016, the opening paragraph of subdivision 14-a and subdivision 14-b as added by section 6 of part A of chapter 399 of the laws of 2011, are amended to read as follows:

(a) Investigations. If the commission receives a sworn complaint alleging a violation of section seventy-three, seventy-three-a, or seventy-four of the public officers law, section one hundred seven of the civil service law or article one-A of the legislative law by a person or entity subject to the jurisdiction of the commission including members of the legislature and legislative employees and candidates for member of the legislature, or if a reporting individual has filed a statement which reveals a possible violation of these provisions, or if the commission determines on its own initiative to investigate a possible violation, the commission shall notify the individual in writing, describe the possible or alleged violation of such laws, provide a description of the allegations against him or her and the evidence, if any, supporting such allegations, provided however that the joint commission shall redact any information that might, in the judgment of the commission, be prejudicial to either the complainant or the investi-

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

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gation; the letter also shall set forth the sections of law alleged to have been violated and provide the person with a fifteen day period in which to submit a written response, including any evidence, statements, and proposed witnesses, setting forth information relating to the activities cited as a possible or alleged violation of law. The commission shall, within sixty calendar days after a complaint or a referral is received or an investigation is initiated on the commission's own initiative, vote on whether to commence a full investigation of the matter under consideration to determine whether a substantial basis exists to conclude that a violation of law has occurred. The staff of the joint commission shall provide to the members prior to such vote information regarding the likely scope and content of the investigation, and a subpoena plan, to the extent such information is available. Such investigation shall be conducted if at least eight members of the commission vote to authorize it. [~~Where the subject of such investigation is a member of the legislature or a legislative employee or a candidate for member of the legislature, at least two of the eight or more members who so vote to authorize such an investigation must have been appointed by a legislative leader or leaders from the major political party in which the subject of the proposed investigation is enrolled if such person is enrolled in a major political party. Where the subject of such investigation is a state officer or state employee, at least two of the eight or more members who so vote to authorize such an investigation must have been appointed by the governor and lieutenant governor. Where the subject of such investigation is a statewide elected official or a direct appointee of such an official, at least two of the eight or more members who so vote to authorize such an investigation must have been appointed by the governor and lieutenant governor and be enrolled in the major political party in which the subject of the proposed investigation is enrolled, if such person is enrolled in a major political party.~~]

The joint commission on public ethics shall have jurisdiction to investigate, but shall have no jurisdiction to impose penalties upon members of or candidates for member of the legislature or legislative employees for any violation of the public officers law. If, after its substantial basis investigation, by a vote of at least eight members, [~~two of whom are enrolled members of the investigated individual's political party if the individual is enrolled in a major political party and were appointed by a legislative leader of such political party,~~] the joint commission on public ethics has found a substantial basis to conclude that a member of the legislature or a legislative employee or candidate for member of the legislature has violated any provisions of such laws, it shall present a written report to the legislative ethics commission, and deliver a copy of the report to the individual who is the subject of the report. Such written report shall include:

14-b. With respect to the investigation of any individual who is not a member of the legislature or a legislative employee or candidate for member of the legislature, if after its investigation the joint commission has found a substantial basis to conclude that the individual has violated the public officers law or the legislative law, the joint commission shall send a substantial basis investigation report containing its findings of fact and conclusions of law to the individual. [~~With respect to an individual who is a statewide elected official or a direct appointee of such an official, no violation may be found unless the majority voting in support of such a finding includes at least two members appointed by the governor and lieutenant governor and enrolled in the individual's major political party, if he or she is enrolled in a~~

~~major political party. Where the subject of such investigation is a state officer or employee who is not a direct appointee of a statewide elected official, at least two of the eight or more members who vote to issue a substantial basis investigation report must have been appointed by the governor and lieutenant governor.~~] The commission shall release such report publicly within forty-five days of its issuance.

§ 2. Paragraph (a) of subdivision 9 of section 94 of the executive law, as amended by section 6 of part A of chapter 399 of the laws of 2011, is amended to read as follows:

(a) 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 restrictions in subdivision nine-a of this section, or inability or failure to discharge the powers or duties of office, including the failure to follow the lawful instructions of the commission;

§ 3. The opening paragraph of subdivision 2 of section 94 of the executive law, as amended by section 6 of part A of chapter 399 of the laws of 2011, is amended to read as follows:

The members of the commission shall be appointed as follows: three members shall be appointed by the temporary president of the senate, three members shall be appointed by the speaker of the assembly, one member shall be appointed by the minority leader of the senate, one member shall be appointed by the minority leader of the assembly, and six members shall be appointed by the governor and the lieutenant governor. [~~In the event that a vacancy arises with respect to a member of the commission first appointed pursuant to the chapter of the laws of two thousand eleven which amended this subdivision 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.~~] Of the members appointed by the governor and the lieutenant governor, at least three members shall be and shall have been for at least three years enrolled members of the major political party in which the governor is not enrolled. In the event of a vacancy in a position previously appointed by the governor and lieutenant governor, the governor and lieutenant governor shall appoint a member of the same political party as the member that vacated that position. Prior to making their respective appointments, the governor and the lieutenant governor and the legislative leaders shall solicit and receive recommendations for appointees from the attorney general and the comptroller of the state of New York, which recommendations shall be fully and properly considered but shall not be binding.

§ 4. This act shall take effect immediately.