

STATE OF NEW YORK

1929

2021-2022 Regular Sessions

IN ASSEMBLY

January 13, 2021

Introduced by M. of A. CARROLL, STIRPE, WOERNER, EPSTEIN, THIELE, SANTA-BARBARA, PHEFFER AMATO, MONTESANO, FAHY, BUTTENSCHON, L. ROSENTHAL, SALKA, LUPARDO, McMAHON, SEAWRIGHT, FRONTUS, GALEF, RICHARDSON, TAGUE, QUART, CRUZ, JACOBSON, REYES, OTIS, STERN, CUSICK, BARRON, WALLACE, GRIFFIN, ASHBY, BARRETT -- Multi-Sponsored by -- M. of A. BRABENEC, BRONSON, COOK, DINOWITZ, GOTTFRIED, PAULIN -- read once and referred to the Committee on Governmental Operations

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

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

ARTICLE V-A

STATE GOVERNMENT INTEGRITY

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5 Section 1. a. The people of New York expect officers and employees of
6 the state to observe laws, rules and regulations that specify high stan-
7 dards of ethical conduct designed to avoid the reality and appearance of
8 corruption, conflict of interest, self-dealing and breach of the public
9 trust. Equally they expect that candidates for state office and others
10 seeking to influence state elections to observe laws, rules and regu-
11 lations designed to regulate actual and potential corruption and
12 conflicts of interest by regulating the influence of money in politics
13 and making transparent the financing and expenditures of efforts to
14 influence voters. To protect the integrity and freedom from corruption
15 of the use of state power to enact laws, establish rules and regu-
16 lations, and contract for goods and services funded in whole or in part
17 with state taxes and other revenues, the people of New York expect
18 observance of laws, rules and regulations that regulate lobbying, lobby-
19 ists and government procurement. To ensure the appropriate workplace
20 conduct of state officers and employees and those who interact with such
21 officers and employees while dealing with the state and its instrumen-
22 talities, the people of New York expect that all such persons will

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

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1 observe laws, rules and regulations setting standards of appropriate and
2 non-discriminatory workplace behavior.

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

12 § 2. a. There shall be a New York state government integrity commis-
13 sion. The commission shall, on an independent and non-partisan basis:
14 (i) receive, initiate, investigate and determine complaints with respect
15 to laws, rules and regulations prohibiting unethical behavior, includ-
16 ing, conflict of interest, self-dealing and breach of the public trust;
17 (ii) administer and enforce laws, rules and regulations providing for
18 the disclosure of financial and other interests by state government
19 officers and employees; (iii) administer and enforce laws, rules and
20 regulations relating to abuse of official position, including through
21 discrimination and discriminatory and retaliatory harassment, by state
22 government officers and employees; (iv) administer and enforce laws,
23 rules and regulations regulating the influence of money in politics
24 including those providing for the disclosure of receipts and expendi-
25 tures by candidates and political parties; (v) administer and enforce
26 laws, rules and regulations relating to public financing of political
27 campaigns; (vi) administer and enforce laws, rules and regulations that
28 regulate lobbying and lobbyists; and (vii) receive, initiate, investi-
29 gate and determine complaints that laws, rules and regulations related
30 to government procurement are not being faithfully executed. This
31 jurisdiction shall be in addition to and not in derogation of the inves-
32 tigatory, disciplinary, vendor qualification or law enforcement authori-
33 ty of any other person or entity and of the right of an aggrieved person
34 to seek civil redress in accordance with law. The commission may in its
35 discretion decline to initiate, or suspend initiation of proceedings, or
36 otherwise adjust its procedures, in view of such other proceedings
37 undertaken or able to be undertaken by such other person or entity.

38 b. When, after hearing, the commission has determined that the
39 respondent has violated a law, rule or regulation within the commis-
40 sion's jurisdiction to enforce, the commission may impose any civil
41 sanction authorized by law and/or refer the matter for criminal prose-
42 cution. The commission may also caution, admonish or censure such
43 respondent or, in the case of a non-elected state officer or employee,
44 suspend, demote or remove such respondent from office or employment
45 after such adjudicatory process that substantially complies with the
46 terms of any relevant collective bargaining agreement. In deciding the
47 severity of the sanction, the commission shall consider to what extent
48 the violation is inadvertent, isolated and/or of insubstantial conse-
49 quence on the one hand or willful, repeated, causing actual public harm
50 or risk of public harm and/or otherwise egregious on the other. Determi-
51 nations, other than a determination to refer for criminal prosecution,
52 shall be subject to judicial review in accordance with law. If it finds
53 such a violation it may also issue a cease and desist order and seek
54 judicial enforcement of that order in accordance with law.

55 c. The commission shall consist of thirteen members, appointed as
56 follows: (i) two shall be appointed by the governor, at least one of

1 whom shall be, or within the prior five years shall have been, enrolled
2 in a different major political party than the governor; (ii) one shall
3 be appointed by each of the leaders in each house of the legislature of
4 the party conferences whose candidate for governor in the most recent
5 gubernatorial election received the largest and second largest number of
6 votes; and (iii) seven jointly by the chief judge of the state of New
7 York and the presiding justices of each of the appellate divisions,
8 three of whom shall be, and within the prior five years shall have been,
9 enrolled in each of the two majority political parties and one of whom
10 shall not be, and shall not within the past five years have been
11 enrolled in any political party. The chief judge shall request the pres-
12 ident and immediate past president of the state bar jointly to propose
13 seven persons for each of two appointments to the commission who as a
14 group of seven would be eligible for such appointment and two of those
15 appointed jointly by the chief judge and the presiding justices shall be
16 drawn from these two lists. No member of the commission shall have held
17 office in any political party organization, have been a state officer or
18 employee or have been engaged as a lobbyist within three years of
19 appointment or at any time during their term. The chair shall be elected
20 by the commission members from among its members. Commission members
21 shall be reimbursed for their actual expenses and paid a per diem salary
22 to be fixed by law but at least a per diem amount equal to the annual
23 salary paid to a justice of the supreme court divided by two hundred
24 twenty. A member may be removed for cause on application to the court of
25 appeals made by a majority vote of the full membership of the commis-
26 sion.

27 d. The persons first appointed by the governor shall have respectively
28 three and four-year terms as the governor shall designate. The persons
29 first appointed jointly by the chief judge of the state of New York and
30 the presiding justices of the appellate divisions shall have respective-
31 ly one, two, two, three, three, four, and four-year terms as that judge
32 and those justices shall designate. The person first appointed by the
33 legislative leaders in each house of the legislature of the party
34 conferences whose candidate for governor received the largest number of
35 votes shall have a four-year term in the case of the Senate and a three-
36 year term in the case of the Assembly. The person first appointed by the
37 legislative leaders in each house of the legislature of the party
38 conferences whose candidate for governor received the second largest
39 number of votes shall have a two-year term in the case of the Senate and
40 a one-year term in the case of the Assembly. Each member of the commis-
41 sion shall be appointed thereafter for a term of four years and shall be
42 appointed in the same manner with a person of the same political affil-
43 iation as his or her predecessor.

44 e. The organization and procedure of the commission shall be as
45 provided by law provided that the commission shall act by majority vote
46 of its membership and determine violations based on a preponderance of
47 the evidence except that any order of censure or removal shall be based
48 on clear and convincing evidence. The commission may establish its own
49 rules and procedures not inconsistent with law and due process. Those
50 rules shall bar ex parte communications regarding a potential or ongoing
51 investigation or other matter before the commission, direct or indirect,
52 between members of the commission and their appointing authority and
53 such rule shall bind both the member, the commission staff, the appoint-
54 ing authority and the staff, agents and representatives of the appoint-
55 ing authority. The commission shall be empowered to designate one or

1 more of its members or any other persons as hearing officers to hear and
2 report concerning any matter before the commission.

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

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

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

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

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

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

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

49 b. The state code of ethics shall, by virtue of this provision,
50 provide that it shall be the ethical duty of any person or entity within
51 the jurisdiction of the commission to promptly report to the commission
52 information not protected by the attorney-client or prosecutorial inves-
53 tigative privilege about activity known to be in violation of the state
54 code of ethics or other law which any person or entity has engaged in
55 with respect to activity that is within the jurisdiction of the commis-
56 sion. There shall be no retaliation against a person or entity making

1 such a report in good faith on information and belief, and any person
2 aggrieved by such retaliation may bring a civil action for compensatory
3 and exemplary damages.

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

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

19 § 7. The commission shall be subject to all transparency and public
20 access laws subject to such reasonable exceptions for pending confiden-
21 tial investigations as shall be provided by law. The legislative branch
22 shall be subject to laws providing for transparency to the same extent
23 as is the executive branch.

24 § 8. Any commission appointment not made within sixty days following
25 the effective date of this article, or within sixty days of the occur-
26 rence of any vacancy, shall be filled by the president and president-e-
27 lect of the state bar acting jointly. For no more than ninety days
28 following the initial appointment all the members of the commission
29 shall prepare to commence operation, including the hiring of an execu-
30 tive director and managerial staff, and on such ninetieth day the joint
31 commission on public ethics and the legislative ethics commission shall
32 no longer exist, and the authority of the board of elections over
33 campaign finance shall cease all their powers, duties, non-managerial
34 employees and matters having been transferred to the commission.

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