STATE OF NEW YORK

8391

2021-2022 Regular Sessions

IN ASSEMBLY

October 20, 2021

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

AN ACT to amend the executive law, in relation to establishing the commission on public officer investigation

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

Section 1. The executive law is amended by adding a new section 63-e to read as follows:

§ 63-e. Commission on public officer investigation. 1. There is established within the department of law the commission on public officer investigation which shall undertake a comprehensive review of matters concerning the public peace, public safety and public justice and the alleged commission of an indictable offense by certain public officials. After such review, if the commission has found a substantial basis to conclude that an individual has violated the law of this state, the commission shall authorize a full investigation by the attorney general.

2. When the commission receives a complaint alleging a violation of the law of this state by statewide elected officials, members of the legislature, employees of the legislature, state officers and employees, as defined in sections seventy-three and seventy-three-a of the public officers law and candidates for statewide elected office, or if the commission determines on its own initiative to review a possible violation, the commission shall notify the individual in writing, describe the alleged violation of law, provide a description of the allegation and the evidence, if any, supporting such allegation and provide the individual with a ten day period in which to submit a written response, including any evidence, statements and proposed witnesses relating to the activities cited as an alleged violation of law. The commission shall, within fourteen days after a complaint is received or a review is commenced on the commission's own initiative, vote on whether a substantial basis exists to conclude that an individual has

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

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violated the law of this state. If at least seven members of the commission vote in favor of the existence of a substantial basis, a full investigation of the matter by the attorney general shall be authorized.

3. Upon the vote of at least seven members of the commission that a substantial basis exists to conclude that an individual has violated the law of this state, the commission shall authorize a full investigation by the attorney general. Written notice of such authorization shall immediately be provided to the attorney general along with a report detailing the review by the commission. If the commission determines at any stage that there is no violation or that any potential violation has been rectified, it shall advise the individual and the complainant, if any, in writing within five days of such decision.

4. The jurisdiction of the commission when acting pursuant to this section shall continue notwithstanding that a statewide elected official or a state officer or employee or member of the legislature or legislative employee separates from state service or a candidate ceases to be a candidate, provided that the commission notifies such individual of the alleged violation of law within one year from his or her separation from state service or his or her termination of candidacy.

5. The commission shall consist of thirteen members who shall possess knowledge or experience in criminal law or law enforcement and who shall be appointed as follows: five members shall be appointed by the temporary president of the senate, four members shall be appointed by the speaker of the assembly, two members shall be appointed by the minority leader of the senate and two members shall be appointed by the minority leader of the assembly.

6. Members of the commission shall receive a per diem allowance for each day spent in the performance of his or her duties under this article, and, in addition thereto, shall be reimbursed for all reasonable expenses actually and necessarily incurred by him or her in the performance of his or her duties under this section.

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

8. The commission shall have jurisdiction to investigate but shall have no jurisdiction to impose penalties for any violation of the law of this state.

9. To effectuate the purposes of this section, the commission may request and shall receive from the department and any other agency, department, division, board, bureau or commission of the state, or any political subdivision thereof, such assistance, information and data as will enable the commission to properly carry out its powers and duties as described in this section.

§ 2. Subdivision 3 of section 63 of the executive law, as amended by chapter 155 of the laws of 2012, is amended to read as follows:

3. Upon request of the governor, comptroller, secretary of state, commissioner of transportation, superintendent of financial services, commissioner of taxation and finance, commissioner of motor vehicles, or the state inspector general, or the head of any other department, authority, division or agency of the state, or upon authorization by the commission on public officer investigation created pursuant to section 63-e of this article, investigate the alleged commission of any indictable offense or offenses in violation of the law which the officer making

the request is especially required to execute or in relation to any matters connected with such department, and [~~to~~] prosecute the person or persons believed to have committed the same and any crime or offense arising out of such investigation or prosecution or both, including but not limited to appearing before and presenting all such matters to a grand jury.

§ 3. Subdivision 8 of section 63 of the executive law, as amended by chapter 451 of the laws of 1977, is amended to read as follows:

8. Whenever in his **or her** judgment the public interest requires it, the attorney-general may, with the approval of the governor, and when directed by the governor **or the commission on public officer investigation created pursuant to section 63-e of this article**, shall, inquire into matters concerning the public peace, public safety and public justice. For such purpose he **or she** may, in his **or her** discretion, and without civil service examination, appoint and employ, and at pleasure remove, such deputies, officers and other persons as he **or she** deems necessary, determine their duties and, with the approval of the governor, fix their compensation. All appointments made pursuant to this subdivision shall be immediately reported to the governor, and shall not be reported to any other state officer or department. Payments of salaries and compensation of officers and employees and of the expenses of the inquiry shall be made out of funds provided by the legislature for such purposes, which shall be deposited in a bank or trust company in the names of the governor and the attorney-general, payable only on the draft or check of the attorney-general, countersigned by the governor, and such disbursements shall be subject to no audit except by the governor and the attorney-general. The attorney-general, his **or her** deputy, or other officer, designated by him **or her**, is empowered to subpoena witnesses, compel their attendance, examine them under oath before himself**, herself** or a magistrate and require that any books, records, documents or papers relevant or material to the inquiry be turned over to him **or her** for inspection, examination or audit, pursuant to the civil practice law and rules. If a person subpoenaed to attend upon such inquiry fails to obey the command of a subpoena without reasonable cause, or if a person in attendance upon such inquiry shall, without reasonable cause, refuse to be sworn or to be examined or to answer a question or to produce a book or paper, when ordered so to do by the officer conducting such inquiry, he **or she** shall be guilty of a misdemeanor. It shall be the duty of all public officers, their deputies, assistants and subordinates, clerks and employees, and all other persons, to render and furnish to the attorney-general, his **or her** deputy or other designated officer, when requested, all information and assistance in their possession and within their power. Each deputy or other officer appointed or designated to conduct such inquiry shall make a weekly report in detail to the attorney-general, in form to be approved by the governor and the attorney-general, which report shall be in duplicate, one copy of which shall be forthwith, upon its receipt by the attorney-general, transmitted by him **or her** to the governor. Any officer participating in such inquiry and any person examined as a witness upon such inquiry who shall disclose to any person other than the governor or the attorney-general the name of any witness examined or any information obtained upon such inquiry, except as directed by the governor or the attorney-general, shall be guilty of a misdemeanor.

§ 4. This act shall take effect immediately.