STATE OF NEW YORK

8616

IN ASSEMBLY

January 10, 2022

Introduced by M. of A. STECK -- read once and referred to the Committee on Codes

AN ACT to amend the executive law, in relation to prosecutorial discretion of the attorney general

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

Section 1. Subdivisions 2, 3, 7 and 8 of section 63 of the executive law, subdivision 3 as amended by chapter 155 of the laws of 2012, subdivision 7 as amended by chapter 310 of the laws of 1962 and subdivision 8 as amended by chapter 451 of the laws of 1977, are amended to read as follows:

2. Whenever required by the governor, attend in person, or by one of his **or her** deputies, any term of the supreme court or appear before the grand jury thereof for the purpose of managing and conducting in such court or before such jury criminal actions or proceedings as shall be specified in such requirement; in which case the attorney-general or his **or her** deputy so attending shall exercise all the powers and perform all the duties in respect of such actions or proceedings, which the district attorney would otherwise be authorized or required to exercise or perform; and in any of such actions or proceedings the district attorney shall only exercise such powers and perform such duties as are required of him **or her** by the attorney-general or the deputy attorney-general so attending. In all such cases all expenses incurred by the attorney-general, including the salary or other compensation of all deputies employed, shall be a county charge.

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, 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~~] **The attorney general may, in his or her reasonable prosecutorial discretion, investigate the alleged commission of any indictable felony or felonies in violation of the law upon complaint of any citizen when the alleged violation of the law involves any department or agency of the state, or**

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

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any person subject to the public officers law, 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.

7. He or she may, on behalf of the state, agree upon a case containing a statement of the facts and submit a controversy for decision to a court of record which would have jurisdiction of an action brought on the same case. He or she may agree that a referee, to be appointed in an action to which the state is a party, shall receive such compensation at such rate per day as the court in the order of reference may specify. He or she may with the approval of the governor retain counsel to recover moneys or property belonging to the state, or to the possession of which the state is entitled, upon an agreement that such counsel shall receive reasonable compensation, to be fixed by the attorney-general, out of the property recovered, and not otherwise.

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, 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 or 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.

§ 2. Paragraph (a) of subdivision 13 of section 94 of the executive law, as amended by section 1 of part J of chapter 286 of the laws of 2016, is 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 investigation; 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~~] 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. 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~~] a majority vote of eight members of the commission is required. 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.

§ 3. This act shall take effect on the thirtieth day after it shall have become a law.