

STATE OF NEW YORK

2948--A

2021-2022 Regular Sessions

IN SENATE

January 26, 2021

Introduced by Sens. SERINO, FELDER, HELMING, JORDAN, LANZA, RITCHIE -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public officers law, in relation to establishing a joint commission on public transparency and sexual harassment

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

1 Section 1. The public officers law is amended by adding a new section
2 75-b to read as follows:

3 § 75-b. Commission on public transparency and sexual harassment. 1.
4 When used in this section the following terms shall have the following
5 meanings:

6 (a) "statewide elected official" shall mean the governor, lieutenant
7 governor, comptroller, or attorney general;

8 (b) "state officer or employee" shall mean:

9 (i) heads of state departments and their deputies and assistants who
10 serve at the discretion of the statewide elected official; and

11 (ii) officers and employees of statewide elected officials who serve
12 at the discretion of the statewide elected official;

13 (c) "legislative employee" shall mean any officer or employee of the
14 legislature; and

15 (d) "legislative member" shall mean a senator or member of the assem-
16 bly.

17 2. There is hereby established within the department of state a
18 commission on public transparency and sexual harassment which shall
19 consist of nine members and shall have and exercise the powers and the
20 duties set forth in this section with respect to statewide elected offi-
21 cials, state officers and employees, legislative employees, and legisla-
22 tive members. This section shall not be deemed to have revoked or
23 rescinded any regulations or advisory opinions issued by the legislative

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

LBD03203-04-1

1 ethics commission, the commission on public integrity, the state ethics
2 commission, or the state office for human rights in effect upon the
3 effective date of this section to the extent that such regulations or
4 opinions are not inconsistent with any law of this state, but such regu-
5 lations and opinions shall apply only to matters over which such commis-
6 sions had jurisdiction at the time such regulations and opinions were
7 promulgated or issued. The commission shall undertake a comprehensive
8 review of the current sexual harassment policies in the legislature and
9 executive agencies. The commission shall, before February first, two
10 thousand twenty-two, report to the governor and the legislature regard-
11 ing this review and recommendations for any regulatory or statutory
12 guidance for consistency and transparency.

13 3. The commission shall consist of nine members of whom one shall be
14 appointed by the governor, four by the chief judge of the court of
15 appeals, and one each by the speaker of the assembly, the temporary
16 president of the senate, the minority leader of the senate, and the
17 minority leader of the assembly. Of the four members appointed by the
18 chief judge of the court of appeals, no more than two shall be enrolled
19 in the same political party, two shall be attorneys licensed to practice
20 law in this state, and two shall not be attorneys. No member of the
21 commission shall hold any office in any political party. Members of the
22 commission shall be appointed based on their actual experience in the
23 establishment of institutional policies, sexual harassment claims, and
24 legal matters regarding sexual harassment issues, sex crimes, and
25 reporting. Appointing authorities shall coordinate appointments to
26 include, but not be limited to, an attorney actually employed in the
27 area of sexual harassment litigation and similar legal matters who has
28 demonstrated outstanding service and contributions to this legal area, a
29 human resources or labor relations representative who has demonstrated
30 actual service in the establishment of effective sexual harassment poli-
31 cies in the workplace, a member of law enforcement who has work experi-
32 ence in relation to sex crimes and harassment, and a member of the judi-
33 cial branch who has had experience in the consideration of civil claims
34 related to sexual harassment and sex discrimination. In the event that a
35 vacancy arises with respect to a member of the commission first
36 appointed pursuant to this section by a legislative leader, the legisla-
37 tive leaders of the same political party in the same house shall appoint
38 a member to fill such vacancy irrespective of whether that legislative
39 leader's political party is in the majority or minority. No individual
40 shall be eligible for appointment as a member of the commission who
41 currently or within the last three years is or has been a member of the
42 New York state legislature or has been a legislative employee, or a
43 statewide officer or elected official or a commissioner of an executive
44 agency appointed by the governor, or has held judicial office. Members
45 of the commission shall be residents of the state.

46 4. Members of the commission shall serve for terms of five years;
47 provided, however, that the member first appointed by the governor shall
48 serve for three years and the members first appointed by the temporary
49 president of the senate, the speaker of the assembly, and the minority
50 leaders of the senate and assembly shall serve for four years.

51 5. Members of the commission shall designate a chair from the member-
52 ship thereof for a term of two years or until his or her term expires,
53 whichever period is shorter. The chair or a member of the commission may
54 call a meeting.

55 6. Any vacancy occurring on the commission shall be filled within
56 thirty days of its occurrence in the same manner as the member whose

1 vacancy is being filled was appointed. A person appointed to fill a
2 vacancy occurring other than by expiration of a term of office shall be
3 appointed for the unexpired term of the member he or she succeeds.

4 7. Members of the commission may be removed by the appointing authori-
5 ty solely for substantial neglect of duty, gross misconduct in office,
6 violation of the confidentiality, inability to discharge the powers or
7 duties of office or a violation of this section, after written notice
8 and opportunity for a reply.

9 8. Members of the commission shall be reimbursed for all reasonable
10 expenses actually and necessarily incurred by him or her in the perform-
11 ance of his or her duties under this section.

12 9. Seven members shall constitute a quorum.

13 10. The commission shall:

14 (a) adopt, amend and rescind rules and regulations defining sexual
15 harassment for state agencies, offices, and branches of government and
16 develop recommendations for the uniform distribution of the definitions
17 and policies developed pursuant to this section;

18 (b) make available forms for complaints of sexual harassment and sex
19 discrimination involving statewide elected officials, state officers or
20 employees, legislative members and employees;

21 (c) review sexual harassment filing procedures in accordance with the
22 provisions of this section;

23 (d) receive complaints and referrals alleging violations of section
24 two hundred ninety-six of the executive law, or provisions of article
25 one hundred thirty of the penal law by a statewide elected official, a
26 state officer or employee, legislative employee or legislative member;

27 (e) immediately report any allegations that, if true, would constitute
28 a crime, to law enforcement for investigation;

29 (f) for all other matters the commission shall determine whether a
30 complaint is "founded" or "unfounded" and shall issue a recommendation,
31 in accordance with the confidentiality provisions contained in this
32 section and consistent with all other laws, including awards to crime
33 victims under article twenty-two of the executive law, to the appointing
34 authority as to the basis of the claims, recommendations for appropriate
35 resolution, and whether the commission approves of the use of public
36 monies, including funds of the legislature, to resolve specific claims
37 raised by the claimant. The recommendations of the commission shall be
38 fully and properly considered by the appointing authority but shall not
39 be binding. There shall be a rebuttable presumption assumed by the
40 commission that any statewide elected official, state officer or employ-
41 ee, or legislative member or employee who makes a good faith effort at
42 reporting or addressing sexual harassment shall not be held individually
43 liable under any claim or settlement;

44 (g) prepare and submit an annual report to the governor and the legis-
45 lature summarizing the activities of the commission during the previous
46 year including, but not limited to, (i) an accounting of founded and
47 unfounded claims of sexual harassment organized by legislative branch
48 and executive office or agency, and (ii) where a matter has been
49 resolved, the date and nature of the disposition and any sanctions or
50 recommendations of the commission, subject to the confidentiality
51 requirements of this section;

52 (h) provide notification to any person who has filed a sexual harass-
53 ment claim of the determination of the commission's review as well as
54 the individual's right to appeal the commission's determination pursuant
55 to subdivision twelve of this section;

1 (i) appoint an executive director who shall act in accordance with the
2 policies of the commission. The appointment and removal of the executive
3 director shall be made solely by a vote of a majority of the commission,
4 which majority shall include at least one member appointed by a legisla-
5 tive leader from each of the two major political parties. The commission
6 may delegate authority to the executive director to act in the name of
7 the commission between meetings of the commission provided such deleg-
8 ation is in writing, the specific powers to be delegated are enumerated,
9 and the commission shall not delegate any decisions specified in this
10 section that require a vote of the commission. The executive director
11 shall be appointed without regard to political affiliation and solely on
12 the basis of fitness to perform the duties assigned by this article, and
13 shall be a qualified, independent professional. The commission may
14 remove the executive director for neglect of duty, misconduct in office,
15 violation of the confidentiality, or inability or failure to discharge
16 the powers or duties of office, including the failure to follow the
17 lawful instructions of the commission;

18 (j) review and approve a staffing plan provided and prepared by the
19 executive director which shall contain, at a minimum, a list of the
20 various units and divisions as well as the number of positions in each
21 unit, titles and their duties, and salaries, as well as the various
22 qualifications for each position including, but not limited to, educa-
23 tion and prior experience for each position;

24 (k) appoint such other staff as are necessary to carry out its duties
25 under this section; and

26 (l) develop and administer an online sexual harassment orientation
27 course to be made available across the legislative and executive branch-
28 es for the purposes of a uniform and consistent policy across govern-
29 ment.

30 11. (a) When an individual becomes a member or staff of the commis-
31 sion, that individual shall be required to sign a non-disclosure state-
32 ment.

33 (b) Except as otherwise required or provided by law, testimony
34 received or any other information obtained by a commissioner or staff of
35 the commission shall not be disclosed by any such individual to any
36 person or entity outside the commission during the pendency of any
37 matter. Any confidential communication to any person or entity outside
38 the commission related to the matters before the commission may occur
39 only as authorized by the commission.

40 (c) The commission shall establish procedures necessary to prevent the
41 unauthorized disclosure of any information received by any member of the
42 commission or staff of the commission. Any breaches of confidentiality
43 shall be investigated by the inspector general and appropriate action
44 shall be taken. Any commissioner or person employed by the commission
45 who intentionally and without authorization releases confidential infor-
46 mation received by the commission shall be guilty of a class A misdemea-
47 nor.

48 12. The commission shall be deemed to be an agency of the state within
49 the meaning of article three of the state administrative procedure act
50 and shall adopt rules governing the conduct of adjudicatory proceedings
51 and appeals taken pursuant to a proceeding commenced under article
52 seventy-eight of the civil practice law and rules relating to the
53 assessment of penalties or findings authorized in this section. Such
54 rules, which shall not be subject to the approval requirements of the
55 state administrative procedure act, shall provide for due process proce-
56 dural mechanisms substantially similar to those set forth in article

1 three of the state administrative procedure act but such mechanisms need
2 not be identical in terms of scope.

3 § 2. This act shall take effect immediately and shall apply to settle-
4 ments entered into on and after such date.