

# STATE OF NEW YORK

1433

2023-2024 Regular Sessions

## IN ASSEMBLY

January 17, 2023

Introduced by M. of A. ROZIC, WILLIAMS, SEAWRIGHT, GUNTHER, HYNDMAN, LAVINE, WEPRIN, DICKENS, RIVERA, LUPARDO, J. M. GIGLIO -- Multi-Sponsored by -- M. of A. DAVILA, SIMON, THIELE -- read once and referred to the Committee on Governmental Operations

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23 rescinded any regulations or advisory opinions issued by the legislative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.

LBD02264-01-3

ethics commission, the commission on public integrity, the state ethics commission, or the state office for human rights in effect upon the effective date of this section to the extent that such regulations or opinions are not inconsistent with any law of this state, but such regulations and opinions shall apply only to matters over which such commissions had jurisdiction at the time such regulations and opinions were promulgated or issued. The commission shall undertake a comprehensive review of the current sexual harassment policies in the legislature and executive agencies. The commission shall, before February first, two thousand twenty-four, report to the governor and the legislature regarding this review and recommendations for any regulatory or statutory guidance for consistency and transparency.

3. The commission shall consist of nine members of whom one shall be appointed by the governor, four by the chief judge of the court of appeals, and one each by the speaker of the assembly, the temporary president of the senate, the minority leader of the senate, and the minority leader of the assembly. Of the four members appointed by the chief judge of the court of appeals, no more than two shall be enrolled in the same political party, two shall be attorneys licensed to practice law in this state, and two shall not be attorneys. No member of the commission shall hold any office in any political party. Members of the commission shall be appointed based on their actual experience in the establishment of institutional policies, sexual harassment claims, and legal matters regarding sexual harassment issues, sex crimes, and reporting. Appointing authorities shall coordinate appointments to include, but not be limited to, an attorney actually employed in the area of sexual harassment litigation and similar legal matters who has demonstrated outstanding service and contributions to this legal area, a human resources or labor relations representative who has demonstrated actual service in the establishment of effective sexual harassment policies in the workplace, a member of law enforcement who has work experience in relation to sex crimes and harassment, and a member of the judicial branch who has had experience in the consideration of civil claims related to sexual harassment and sex discrimination. In the event that a vacancy arises with respect to a member of the commission first appointed pursuant to this section 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. No individual shall be eligible for appointment as a member of the commission who currently or within the last three years is or has been a member of the New York state legislature or has been a legislative employee, or a statewide officer or elected official or a commissioner of an executive agency appointed by the governor, or has held judicial office. Members of the commission shall be residents of the state.

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

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

6. Any vacancy occurring on the commission shall be filled within 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.