



MEMO OF SUPPORT

[S6964A \(Biaggi\)](#)

Improves Voting Processes at JCOPE and Equalizes Legislative Appointments

May 2021

Title

An act to amend the executive law, in relation to the Joint Commission on Public Ethics; to amend the executive law, in relation to modifying the composition of the voting majority upon the appointment and removal of the executive director of the Joint Commission on Public Ethics; and to amend the executive law, in relation to filling of vacancies on the Joint Commission on Public Ethics.

Summary

Section 1 amends subdivision 13 paragraph (a) of section 94 the executive law to remove the requirements that in order to initiate investigations or issue a report with findings that there is a *substantial basis* to conclude that violations have occurred, two members of the Joint Commission on Public Ethics (JCOPE) voting in favor of the action must also be members of the suspected individual's own political party and/or branch of government.

Section 2 amends paragraph a of subdivision 9 or section 94 of the executive law to remove the partisan voting requirements for appointing or removing the executive director of the Joint Commission on Public Ethics, instead requiring a simple majority.

Section 3 amends subdivision 2 of section 94 of the executive law to remove the requirement that vacancies are filled by the legislative leaders of the same party that filled them originally in 2011. These rules have meant that the Senate Republican conference, the minority, appoints three members to JCOPE while the Senate Democrats, the majority, appoint one member. Similarly, the Assembly Democratic conference appoints three members, while the Assembly minority appoints one. This bill provides the majorities and minorities in each house two appointments each, for a total of eight legislative appointees.

Section 4 sets the effective date as immediate.

Statement of Support

We support this legislation because JCOPE's contrived voting rules and governance structure have made it impossible for the agency to effectively and independently enforce state ethics laws.

Currently, the rules for voting on investigations and issuing reports with findings of misconduct are convoluted. The voting rules require support from two commissioners of the suspected individual's political party *and* branch of government. For example, for investigations into the conduct of a statewide official, investigations can be blocked if there are not at least two votes from commissioners appointed by the governor. Similar rules apply regarding investigations of legislators and staff, which require at least two votes from appointees of legislative leaders representing the individual's political party. This is an unnecessarily high threshold for investigating claims of misconduct. Instead, a simple vote of 8 of the 14 commissioners of JCOPE should be required to proceed with investigations or issue reports finding that misconduct has occurred, with no requirements regarding commissioners' political affiliations and appointers.

Similarly, the current rules for selection and removal of an executive director for JCOPE provide an unnecessarily high threshold. Currently, the appointment or removal of the executive director requires a majority vote that includes at least one member appointed by the governor from each of the two major political parties, and one member appointed by a legislative leader from each of the two major political parties, rather than a simple majority. This high threshold has contributed to the executive director position remaining vacant. The position was recently filled in April 2021 after [remaining vacant for two years](#).

Lastly, we support the equalization of appointments by the majority and minority caucuses of the legislature to JCOPE. Providing the majority and minority conferences in the legislature each two appointments provides a better balance of representation rather than locking in the majority representation from 2011. While these changes do not make JCOPE more independent, they do provide that the legislative appointments are better balanced.

While much more must be done to provide the public confidence that misconduct will be handled independently and effectively, this legislation is a step in the right direction to improve enforcement of the state's ethics and lobbying laws by fixing a number of known problems at JCOPE. We encourage the Legislature to hold hearings in the summer of 2021 to determine constitutional changes to replace JCOPE with a fully independent ethics commission, as requested in our [May 24, 2021 letter to the Legislature](#).