



## MEMO OF SUPPORT

### [S8420A \(Biaggi\)](#)

*Amends State Code of Ethics to Include a Duty to Report Misconduct*

**May 9, 2022**

#### **Title**

An act to amend the public officers law, in relation to expanding the ethical duties of public officers and employees.

#### **Summary**

Section 1 amends section 74 of the public officers law, the state code of ethics, to add a new subsection to expand the ethical duties of public officers and employees to promptly report to the Joint Commission of Publics Ethics (JCOPE) or its successor Commission on Ethics and Lobbying in Government (CELG) any information about known violations of the code of ethics or any other law related to the jurisdiction of the ethics commission. This would not include information protected by the attorney-client or prosecutorial investigative privilege. Additionally, knowledge of discriminatory harassment need not be reported by the *subject* of such harassment, or by another if confided in confidence on the basis of personal friendship. There shall be no retaliation against such a report made in good faith on information and belief, and any person aggrieved by such retaliation may bring a civil action forward.

Section 2 provides the effective date as within 30 days for JCOPE, and upon the effective date of part QQ of chapter 56 of the laws of 2022 for CELG.

#### **Statement of Support**

Our groups support this legislation as it will improve enforcement of our state's ethics laws and help protect whistleblowers from retaliation.

Currently, section 55 of the Executive Law requires executive branch employees to report misconduct, including those related to conflicts of interest and abuse of power, to the State Inspector General (IG). This is woefully inadequate because the IG reports to the Secretary to the Governor, is controlled by the Governor, and lacks any semblance of independence. For example, the IG's office failed to question former Governor Cuomo about how he learned that one of the Speaker's appointees to JCOPE had voted to launch an investigation into Joseph Percoco's alleged misuse of state resources.

Rather than directing whistleblowers to the IG, the ethical duty of state officers and employees in both branches of government should be to report misconduct to the state's ethics commission. To this end, the state's code of ethics should include a duty to report misconduct. If the alleged misconduct does not fall within its jurisdiction, the ethics commission can simply refer the matter to another appropriate enforcement authority.

Our groups have called on our state's elected officials to [create a truly independent ethics commission](#), and to strengthen the state's code of ethics. We continue to believe that improvements to the state's ethics code must be made in conjunction with creation of an independent ethics commission if they are to be enforced without fear or favor.