

Ethics panel faces

Sex-harassment victims embolden State Legislature

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ALBANY — The state ethics board that has long been criticized for being too close to the elected officials who appoint its commissioners and for cloaking its actions in secrecy is now facing its strongest challenge from the State Legislature.

Bolstered by the testimony of sexual harassment victims who felt victimized by the board's investigators, a revived effort to scrap the Joint Commission on Public Ethics is underway in the legislature.

Meanwhile, Gov. Andrew M. Cuomo, who created JCOPE in 2011 to replace separate ethics and lobbying commissions, initially did not call for changes to JCOPE in his proposals earlier this year to revamp ethics laws. But on Wednesday, he seemed to budge.

"As the governor said, he is open to making changes that will improve JCOPE and is more than happy to engage with the Legislature on the issue," said Cuomo spokesman Jason Conwall.

Senate Majority Leader Andrea Stewart-Cousins (D-Yonkers) and Assembly Speaker Carl Heastie (D-Bronx) said they will press a package of bills aimed at JCOPE in the state budget due April 1 or by the end of this legislative session June 19.

"I really don't think it can be fixed," said Senate Ethics and Internal Governance Committee Chairwoman Allesandra Biggi (D-Mount Vernon). "I think the way JCOPE was built is inherently a conflict of interest ... I think JCOPE has to be eliminated."

A half-dozen active bills would replace or reform JCOPE with mounting support by legislators such as Assemb. Nily Rozic (D-Queens) who called JCOPE's practices "opaque."

Two issues this year have bolstered the movement.

In January, JCOPE was or-



The ethics board meets in Albany. Sex harassment victims said when they tried to get it to act against politicians, they felt victimized again.

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— Elias Farah, a sexual harassment victim who testified before JCOPE

dered by a judge to take a vote on a complaint that former Cuomo aide Joseph Percoco was using his state office and its resources in 2014 while on leave to run Cuomo's re-election campaign and to lobby. Percoco was found guilty in a federal trial of corruption in helping developers, who were also big campaign contributors to Cuomo, land lucrative state contracts. During that trial, top Cuomo aides had testified that Percoco repeatedly used his Manhattan executive chamber office while Percoco was not a

state employee.

Despite the testimony and records that showed Percoco used the office more than 50 times in 2014, JCOPE has refused to say whether it would investigate the issue, after receiving written requests to do so by the state Republican Committee and the New York Public Interest Research Group.

GOP chairman Ed Cox sued to force JCOPE to say whether it took any action and a state judge ultimately compelled JCOPE board to vote. JCOPE apparently did so in a secret meet-

ing on Jan. 29, but it refused to say how the vote turned out.

In February, a legislative hearing on sexual harassment forced a rare public discussion of JCOPE.

43 harassment complaints

Under questioning, JCOPE Executive Director Seth Agata said the commission, which has jurisdiction over 200,000 state employees, had received 43 complaints of sexual harassment in the last seven years, and just three resulted in fines.

"Both of the numbers are kind of astonishing," said Sen. James Skoufis, a Hudson Valley Democrat and chairman of the Senate Investigations Committee, at the time. "Where is the disconnect? Clearly there is a more pervasive issue than the volume you are handling. What is happening?"

Of the 12 JCOPE members (two seats are vacant), two are held by women.

Sexual harassment victims testifying at the hearing further reported that when they tried to get JCOPE to take action against politicians, they felt victimized again. One said she was handed a subpoena at 7 a.m. at her home when she was trying to feed her newborn twins and felt intimidated, like she was being investigated. Two of the victims said they were asked about their own past sexual history.

"The process of JCOPE is a little bit like you're on trial," said Elias Farah, who like other victims said they were asked about what their sex lives were before they were harassed by their bosses. "The entire thing came off as an investigation of me."

Agata said they often can't tell a victim or complainant who is being investigated under the secrecy required by the state law that created JCOPE to protect state employees from premature public disclosure of targets of probes.

push to revamp



Gov. Andrew M. Cuomo is now open to making changes to JCOPE, his spokesman said Wednesday.

JCOPE also defended asking some victims and witnesses about their own sexual history.

“We fully understand that victims that have gone through sexual harassment already feel powerless and that this is a difficult process,” said Emily A. Logue, JCOPE’s deputy director of investigations and enforcement. “Sometimes we have to ask difficult questions and that is for the benefit of the overall outcome of the case.”

Cuomo created JCOPE in 2011, with the legislature’s approval, as a top and early priority when he became governor. JCOPE replaced separate state enforcement boards for ethics and lobbying.

From the start, however, legislators have complained that JCOPE is too close to Cuomo. The governor has twice as many appointees as any legislative leader, appoints the chairman, and his former aides hold top positions in the 55-person staff.

A founding JCOPE commissioner, Ravi Batra, who was appointed by the Senate Democratic conference, resigned in 2012, saying JCOPE lacked independence from Cuomo, that JCOPE held secret meetings, and that federal authorities should investigate the potentially powerful political weapon.

In 2015, several JCOPE commissioners reportedly grumbled

when then-Executive Director Letizia Tagliafierro — a former Cuomo aide — left the job to return to the Cuomo administration. But before she left, she hired three other former Cuomo aides to top positions. Commissioners referred to the unexpected hiring as the midnight appointments and passed a measure barring staff from making future appointments without conferring with the board.

Later in 2015, four commissioners said that “if the next executive director is not hired from outside state government after an exhaustive search, the public trust will be inexorably destroyed.”

Nine months later, JCOPE hired Agata, who, like all previous executive directors, worked for Cuomo. As Cuomo’s counsel, Agata had approved his controversial \$700,000 deal to write a memoir for a company that lobbies the state.

Two of the four commissioners who wrote the letter resigned, but under JCOPE rules backed up by the threat of a misdemeanor, they didn’t say why.

There are other concerns, too. David Grandeau is the former state lobbying commission executive director who now represents lobbying clients dealing with JCOPE. Grandeau said that even the commission’s flawed structure could be over-

come with a sharp, independent staff and board instead of “packing a room with lawyers waiting to be told what to do and afraid to make a mistake.”

JCOPE also has been accused of selective enforcement, and of not notifying whistleblowers whether the commission has taken up their concerns.

NYPIRG’s requests

Blair Horner of the New York Public Interest Research Group said he’s sent four formal complaints to JCOPE and never heard if they were acted upon.

One 2014 written request asked JCOPE to investigate whether lobbying laws were broken when a Suffolk County company hired politically connected developer Gary Melius, the owner of Oheka Castle in Huntington, to lobby to pass a law requiring automobile ignition interlocks.

“It’s a political creature, not an independent one and you add to it that they operate in secret and this is an entity that should be scrapped,” Horner said.

Meanwhile, although JCOPE was created to investigate ethics in government and lobbying, the vast majority of the 30 corruption cases in the last 10 years were investigated by the U.S. Attorney’s Office.

Now, legislators are pushing

for change, and they aren’t alone. Attorney General Letitia James, in her Cuomo-backed campaign last year, called for scrapping JCOPE for a body “with teeth.”

Sen. Liz Krueger (D-Manhattan) proposes a constitutional amendment to amend a pattern of governors creating new ethics boards when they enter office. The Anti-Corruption Constitutional Amendment could replace JCOPE with a board run by appointees from judges, not governors and legislative leaders.

“This amendment will create a truly independent ethics enforcement structure and ensure that the fox is no longer guarding the hen house,” Krueger said in a January news conference.

But the rare public appearance of JCOPE officials at the sexual harassment hearing revealed another advocate for change in JCOPE: JCOPE itself.

“I fully understand the public trust issues,” Agata said at the February hearing. “The way the statute was designed was to have some insulation” from the public, but “the confidentiality, that secrecy, is a two-edged sword ... Having our lips hermetically sealed is a problem.”

He recommended changes to the laws that protect the confidentiality of officials who may be targeted because it could allow the public to see their work is thorough, fair and professional. He said discussion of cases is under a “cone of silence,” a reference to the 1960s TV spy spoof “Get Smart.”

Agata said Cuomo has kept JCOPE’s funding flat, at \$5.5 million, for at least three years, which limits their scope. For example, a proposal to add a specially trained sexual harassment unit was proposed last year, but without funding. It was never approved in negotiations between Cuomo and legislative leaders.

“The way it is supposed to work, the commissioners are within this fortress and they will be free to voice their own opinions and act uninhibited without legislators or the executive looking over their shoulder,” he said.

“If there is partisanship, it is certainly not present to me,” Agata said. He said commissioners “on occasion” recuse themselves from any conflicts.

SCHUMER: FINALIZE E-CIG RULES

BY ALISON FOX

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Sen. Chuck Schumer pushed the Food and Drug Administration on Sunday to finalize a set of rules concerning the classification of e-cigarettes and the sale of their flavors.

Schumer said the FDA should finalize a ban of flavored e-cigarettes in convenience stores where he said kids tend to be customers, as well as define e-cigarettes as tobacco products. The push comes amid news that FDA Commissioner Scott Gottlieb will resign at the end of the month.

“In an administration known for cozying up to special interests and huge corporations, Gottlieb was different. He really stuck up for the average consumer,” Schumer said, speaking at his Manhattan office. “But now with his departure, there’s something to worry about and that is inaction on these e-cigs, and particularly the kids flavors that they use to lure kids into vaping.”

In October 2017, Schumer pushed the FDA to limit the sale of e-cigarettes — like tobacco products — to people over 18 years old. He also said New York high school students are more likely to smoke e-cigarettes than students in other states.

Then in May he pushed for a ban on what he called “kid-friendly flavors.”

Schumer said Sunday that a ban on flavors like “candy cane” and “vanilla wafer” has been discussed, but not yet enacted, and that Gottlieb should push to complete this process before he leaves. Schumer added that Gottlieb has called out companies for questionable marketing tactics, and has received voluntary compliance, “but then other companies come in and fill the gap, that’s why we need a comprehensive rule.”

“A ban on the kid-friendly flavors has been in the pipeline, but now with him leaving it’s in jeopardy,” Schumer said, adding: “The rules are in the pipeline, they take a while.”

AP / SETH WENIG