ASSEMBLY, No. 5197



STATE OF NEW JERSEY

217th LEGISLATURE



INTRODUCED NOVEMBER 30, 2017

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

SYNOPSIS

Increases penalties for certain public corruption offenses; bars public entities from confidential settlements of “whistleblower” claims; provides for oversight by Comptroller in supersedure of county prosecutor.

CURRENT VERSION OF TEXT

As introduced.



An Act concerning certain public officials and amending and supplementing various parts of the statutory law.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.2C:27-1 is amended to read as follows:

2C:27-1. Definitions.

In chapters 27 through 30, unless a different meaning plainly is required:

a. "Benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including a pecuniary benefit or a benefit to any other person or entity in whose welfare he is interested. “Benefit” also includes, but is not limited to, a promise of a future appointment, promotion, or more favorable treatment within the government;

b. "Government" includes any branch, subdivision or agency of the government of the State or any locality within it;

c. "Harm" means loss, disadvantage or injury, or anything so regarded by the person affected, including loss, disadvantage or injury to any other person or entity in whose welfare he is interested;

d. "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative or other governmental agency, arbitration proceeding, or official authorized to take evidence under oath, including any arbitrator, referee, hearing examiner, commissioner, notary or other person taking testimony or deposition in connection with any such proceeding;

e. "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts, or participates in directing or conducting party affairs at any level of responsibility;

f. "Pecuniary benefit" is benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain;

g. "Public servant" means any officer or employee of government, including but not limited to the Governor, legislators **[**and**]** judges, and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function, but the term does not include witnesses;

h. "Administrative proceeding" means any proceeding, other than a judicial proceeding, the outcome of which is required to be based on a record or documentation prescribed by law, or in which law or regulation is particularized in application to individuals;

i. "Statement" means any representation, but includes a representation of opinion, belief or other state of mind only if the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.

(cf: P.L.1979, c.178, s.47)

2. N.J.S.2C:27-3 is amended to read as follows:

2C:27-3. Threats and other improper influence in official and political matters.

a. Offenses defined. A person commits an offense if he directly or indirectly:

(1) Threatens unlawful harm to any person with purpose to influence a decision, opinion, recommendation, vote or exercise of discretion of a public servant, party official or voter on any public issue or in any public election; or

(2) Threatens harm to any public servant with purpose to influence a decision, opinion, recommendation, vote or exercise of discretion in a judicial or administrative proceeding; or

(3) Threatens harm to any public servant or party official with purpose to influence him to violate his official duty.

As used in this section, “threatens unlawful harm” and “threatens harm” includes, but is not limited to, a threat involving dismissal from public office or public employment or a threat involving preclusion from promotion to higher public office or public employment.

It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office or lacked jurisdiction, or for any other reason.

b. Grading. An offense under this section is a crime of the **[**third**]** second degree.

(cf: P.L.1979, c.178, s.49)

3. N.J.S.2C:27-5 is amended to read as follows:

2C:27-5. Retaliation for past official action.

A person commits a crime of the **[**fourth**]** third degree if he harms another by any unlawful act with purpose to retaliate for or on account of the service of another as a public servant.

(cf: P.L.1978, c.95, s.2C:27-5)

4. Section 10 of P.L.1970, c.74 (C.52:17B-106) is amended to read as follows:

10. a. Whenever requested in writing by the Governor, the Attorney General shall, and whenever requested in writing by a grand jury or the board of chosen freeholders of a county or the assignment judge of the superior court for the county, the Attorney General may supersede the county prosecutor for the purpose of prosecuting all of the criminal business of the State in said county, intervene in any investigation, criminal action, or proceeding instituted by the county prosecutor, and appear for the State in any court or tribunal for the purpose of conducting such investigations, criminal actions or proceedings as shall be necessary for the protection of the rights and interests of the State.

Whenever the Attorney General shall have superseded a county prosecutor as aforesaid, the county prosecutor, the assistant county prosecutors and other members of the staff of the county prosecutor shall exercise only such powers and perform such duties as are required of them by the Attorney General.

b. (1) Any such supersedure shall be monitored by the State Comptroller established pursuant to P.L.2007, c.52 (C.52:15C-1 et seq.).

(2) Within six months of the initiation of any supersedure and every six months thereafter until the supersedure is terminated, the State Comptroller shall report to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature on the supersedure, including all investigations, criminal actions and proceedings conducted by the Attorney General pursuant to the supersedure.

(cf: P.L.1970, c.74, s.10)

5. Section 11 of P.L.1970, c.74 (C.52:17B-107) is amended to read as follows:

a. Whenever in the opinion of the Attorney General the interests of the State will be furthered by so doing, the Attorney General may (1) supersede a county prosecutor in any investigation, criminal action or proceeding, (2) participate in any investigation, criminal action or proceeding, or (3) initiate any investigation, criminal action or proceeding. In such instances, the Attorney General may appear for the State in any court or tribunal for the purpose of conducting such investigations, criminal actions or proceedings as shall be necessary to promote and safeguard the public interests of the State and secure the enforcement of the laws of the State.

b. The Attorney General may in his discretion act for any county prosecutor in representing the interests of the State in any and all appeals and applications for post-conviction remedies.

c. (1) Any such supersedure shall be monitored by the State Comptroller established pursuant to P.L.2007, c.52 (C.52:15C-1 et seq.).

(2) Within six months of the initiation of any supersedure and every six months thereafter until the supersedure is terminated, the State Comptroller shall report to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature on the supersedure, including all investigations, criminal actions and proceedings conducted by the Attorney General pursuant to the supersedure.

(cf: P.L.1970, c.74, s.11)

6. (New section) a. As used in this act:

“Public entity” means the State, and any county, municipality, district, public authority, public agency, and any other political subdivision or public body in the State.

“Public employee” means an employee of a public entity.

b. (1) Except as provided in paragraph (3) of this subsection, no public entity or public employee may enter into any agreement to settle a claim or action to which the public entity, or a public employee in his capacity as a public employee, is a party when the public employee asserts the protections of the “Conscientious Employee Protection Act,” P.L.1986, c.105 (C.34:19-1 et seq.), if:

(a) such agreement provides that the terms or conditions of the settlement are confidential; or

(b) the purpose or effect of such agreement is to conceal information relating to any claim or action concerning the public interest.

(2) Any orders entered by the court during the course of litigation of a claim or action pursuant to this subsection that authorize a party to designate particular materials as confidential shall be dissolved if the public entity is the losing party in the claim or action or if the claim or action is settled.

(3) A public entity or public employee may enter into an agreement pursuant to this subsection that provides that the terms or conditions of settlement of such a claim or action are confidential if the settlement involves a matter of national security.

7. (New section) Any agreement to settle a claim or action in which a public entity, or a public employee in his capacity as a public employee, is a party and when the public employee asserts the protections of the “Conscientious Employee Protection Act,” P.L.1986, c.105 (C.34:19-1 et seq.) , as set forth in paragraph (1) of subsection b. of section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill), shall be considered a public record within the meaning of P.L.1963, c.73 (C.47:1A-1 et seq.) and P.L.2001, c.404 (C.47:1A-5 et al.) except for matters involving national security.

8. (New section) Nothing in sections 6 and 7 of P.L. , c. (C. ) (pending before the Legislature as this bill) shall be deemed to affect the requirement set out in P.L.1989, c.336 (C.2A:82-46), or in any other law or Rule of Court, that in prosecutions for aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, endangering the welfare of children under N.J.S.2C:24-4, or in any action alleging an abused or neglected child under P.L.1974, c.119 (C.9:6-8.21 et seq.), the name, address, and identity of a victim who was under the age of 18 at the time of the alleged commission of an offense shall not appear on the indictment, complaint, or any other public record.

9. (New section) Nothing in sections 4 and 5 of P.L. , c. (C. ) (pending before the Legislature as this bill) shall be deemed to preclude or otherwise limit the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) and P.L.2001, c.404 (C.47:1A-5 et al.).

10. (New section) The Attorney General shall make publicly available on the Department of Law and Public Safety’s website a list of any agreements set forth in paragraph (1) of subsection b. of section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill) to settle a claim or action in which a public entity, or a public employee in his capacity as a public employee, is a party. The list of the agreements shall be in a searchable format in a prominent location on the website and shall include for each settlement agreement:

a. the date on which the parties entered into the settlement agreement;

b. the names of the parties;

c. a description of the claims;

d. the total amount each party is obligated to pay; and

e. the total amount of compensation for any outside legal counsel.

11. (New section) Notwithstanding the provisions of any other law to the contrary, any agreement to settle a claim or action when a public entity is a party shall be considered a public record within the meaning of P.L.1963, c.73 (C.47:1A-1 et seq.) and P.L.2001, c.404 (C.47:1A-5 et al.), except for matters involving national security.

12. This act shall take effect on the 90th day following enactment.

STATEMENT

This bill would implement a number of changes to the law concerning public officials and public entities. The bill increases penalties for certain public corruption offenses; bars public entities and public employees from the confidential settlements of “whistleblower” claims; and provides for oversight by the State Comptroller when the Attorney General supersedes a county prosecutor.

Public Corruption Crimes. Section 1 of the bill amends the definition of “benefit” set out in N.J.S.2C:27-1 to provide that the term also includes, but is not limited to, a promise of a future appointment, promotion, or more favorable treatment within the government. This section of the bill also amends the term “public servant” to clarify that, in addition to meaning any officer or employee of government, including legislators and judges, “public servant” specifically includes, but is not limited to, the Governor.

Section 2 of the bill amends N.J.S.2C:27-3, Threats and Other Improper Influence in Official and Political Matters, to provide that the terms “threatens unlawful harm” and “threatens harm” include, but are not limited to, a threat involving dismissal from public office or public employment or a threat involving preclusion from promotion to higher public office or public employment.

Section 3 of the bill amends N.J.S.2C:27-5, Retaliation for Past Official Action, to upgrade this offense from a crime of the fourth degree to a crime of the third degree.

Oversight of supersedure by Attorney General. Sections 4 and 5 of the bill provide that the State Comptroller would have oversight over the Attorney General whenever the Attorney General supersedes a county prosecutor.

Under current law, when requested by the Governor the Attorney General shall supersede a county prosecutor for the purpose of prosecuting all of the criminal business of the State in that county, intervene in any investigation, criminal action or proceeding, and appear for the State in any court or tribunal for the purpose of conducting investigations, criminal actions or proceedings. In addition, current law provides that the Attorney General may supersede a county prosecutor when requested by a grand jury, county board of chosen freeholders, or Assignment Judge of the Superior Court for the county, or when the Attorney General finds it to be in the interests of the State. This bill provides that any supersedure by the Attorney General would be monitored by the State Comproller, established by P.L.2007, c.52 (C.52:15C-1 et seq.)

The bill provides that within six months of the initiation of any supersedure and every six months thereafter until the supersedure is terminated, the State Comptroller would report to the Governor and Legislature on the supersedure, including all investigations, criminal actions and proceedings conducted by the Attorney General pursuant to the supersedure.

“whistleblower” claims involving public entities. Sections 6 through 11 of the bill would bar public entities and public employees from entering into any agreement to settle claims or actions when the public employee asserts the protections of the “Conscientious Employee Protection Act,” P.L.1986, c.105 (C.34:19-1 et seq., informally referred to as the “Whistleblower Act”), if: (1) the agreement provides for the terms and conditions to be confidential; or (2) the purpose or the effect of such agreement is to conceal information relating to any claim or action concerning the public interest. The bill also provides that any orders entered by the court during the course of litigation of a claim or action concerning such a “whistleblower” claim that authorize a party to designate particular materials as confidential would be dissolved if the public entity is the losing party in the claim or action or if the claim or action is settled.

Under the bill, any such settlement agreements would constitute public records under the open public records laws, P.L.1963, c.73 (C.47:1A-1 et seq.) and P.L.2001, c.404 (C.47:1A-5 et al.).

There would be exceptions for matters involving national security and for matters involving victims of sex crimes and child abuse. Under current law, set out in P.L.1989, c.336 (C.2A:82-46), the name, address, and identity of a victim of a sex crime or child abuse who was under the age of 18 at the time of the offense shall not appear on the indictment, complaint, or any other public record. The bill specifically provides that its provisions are not intended to affect this requirement.

The Attorney General would be required to make any such settlement agreements publicly available online, with a list of the agreements in a searchable format in a prominent location on the Department of Law and Public Safety’s website. The information would include: (1) the date the parties entered into the agreement; (2) the names of the parties; (3) a description of the claims; (4) the total amount each party is obligated to pay; and (5) the total amount of compensation for any outside legal counsel.