10618

IN ASSEMBLY

April 12, 2010

Introduced by M. of A. KELLNER -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to creating the New York state civilian complaint review board

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The executive law is amended by adding a new article 43 to read as follows:

ARTICLE 43

NEW YORK STATE CIVILIAN COMPLAINT REVIEW BOARD

SECTION 930. NEW YORK STATE CIVILIAN COMPLAINT REVIEW BOARD.

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6 S 930. NEW YORK STATE CIVILIAN COMPLAINT REVIEW BOARD. 1. LEGISLATIVE 7 INTENT. IT IS IN THE INTEREST OF THE PEOPLE OF THE STATE OF NEW YORK AND 8 POLICE DEPARTMENTS AND PEACE OFFICERS THROUGHOUT THE STATE THAT THE 9 INVESTIGATION OF COMPLAINTS CONCERNING MISCONDUCT BY OFFICERS TOWARDS THE PUBLIC BE COMPLETE, 10 THOROUGH AND MEMBERS OF IMPARTIAL. THESE 11 INOUIRIES MUST BE CONDUCTED FAIRLY AND INDEPENDENTLY, AND IN A MANNER IN WHICH THE PUBLIC AND THE POLICE HAVE CONFIDENCE. AN INDEPENDENT CIVILIAN 12 COMPLAINT REVIEW BOARD IS HEREBY ESTABLISHED AS A BODY COMPRISED SOLELY 13 14 MEMBERS OF THE PUBLIC WITH THE AUTHORITY TO INVESTIGATE ALLEGATIONS OF 15 OF MISCONDUCT AS PROVIDED IN THIS SECTION.

16 2. DEFINITIONS. (A) AS USED IN THIS SECTION, THE TERM "OFFICER" SHALL MEAN "POLICE OFFICERS" AS DEFINED IN PARAGRAPHS (A), (E), (F), (H), (J), 17 (K), (L), (M), (P), (Q), (S), AND (V) OF SUBDIVISION THIRTY-FOUR OF 18 19 SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW AND "PEACE OFFICERS" AS 20 DEFINED IN SUBDIVISIONS THREE, FOUR, FIVE, SIX, EIGHT, TWELVE, THIRTEEN, FIFTEEN, SIXTEEN, TWENTY, TWENTY-ONE, TWENTY-TWO, TWENTY-THREE, TWENTY-21 22 FOUR, TWENTY-FIVE, TWENTY-SIX, TWENTY-SEVEN, TWENTY-NINE, THIRTY-TWO, 23 THIRTY-THREE, THIRTY-FOUR, THIRTY-FIVE, THIRTY-SIX, THIRTY-EIGHT, FORTY, FORTY-FIVE, FORTY-SIX, FORTY-SEVEN, FIFTY-TWO, FIFTY-NINE, SIXTY-ONE, SIXTY-TWO, SIXTY-EIGHT, SEVENTY-FOUR, SEVENTY-NINE, AND EIGHTY-TWO OF 24 25 26 SECTION 2.10 OF THE CRIMINAL PROCEDURE LAW.

27 (B) AS USED IN THIS SECTION "BOARD" SHALL MEAN THE NEW YORK STATE 28 CIVILIAN COMPLAINT REVIEW BOARD.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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(C) AS USED IN THIS SECTION, "INVESTIGATOR" SHALL MEAN AN INVESTIGATOR 1 2 AS APPOINTED ACCORDING TO SUBDIVISION THREE OF THIS SECTION. 3 3. APPOINTMENTS. (A) THE BOARD SHALL CONSIST OF NINE MEMBERS; THREE, 4 INCLUDING THE CHAIR, AS SELECTED BY THE GOVERNOR; AND SIX MEMBERS TO BE 5 APPOINTED BY THE GOVERNOR UPON THE RECOMMENDATIONS, RESPECTIVELY, OF THE 6 ATTORNEY GENERAL, THE COMPTROLLER, THE TEMPORARY PRESIDENT OF THE 7 SENATE, THE MINORITY LEADER OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, 8 AND THE MINORITY LEADER OF THE ASSEMBLY. ANY VACANCY IN THE BOARD SHALL BE FILLED FOR THE UNEXPIRED TERM IN THE SAME MANNER AS THE ORIGINAL 9 10 APPOINTMENT. 11 (B) NO MEMBER OF THE BOARD SHALL HOLD ANY OTHER PUBLIC OFFICE OR 12 EMPLOYMENT. NO MEMBERS SHALL HAVE EXPERIENCE AS LAW ENFORCEMENT PROFES-SIONALS. FOR THE PURPOSES OF THIS SECTION, EXPERIENCE AS A LAW ENFORCE-13 14 MENT PROFESSIONAL SHALL INCLUDE EXPERIENCE AS A PEACE OFFICER, POLICE 15 OFFICER, CRIMINAL INVESTIGATOR, SPECIAL AGENT, OR A MANAGERIAL OR SUPER-VISORY EMPLOYEE WHO EXERCISED SUBSTANTIAL POLICY DISCRETION ON LAW ENFORCEMENT MATTERS, IN A FEDERAL, STATE, OR LOCAL LAW ENFORCEMENT AGEN-16 17 CY, OTHER THAN EXPERIENCE AS AN ATTORNEY IN A PROSECUTORIAL AGENCY. 18 19 (C) THE MEMBERS OF THE BOARD SHALL BE APPOINTED FOR TERMS OF THREE 20 YEARS. 21 (D) EACH MEMBER OF THE BOARD SHALL BE ENTITLED TO REIMBURSEMENT FOR HIS OR HER ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF 22 23 HIS OR HER OFFICIAL DUTIES AND A PER DIEM ALLOWANCE OF ONE HUNDRED FIFTY 24 DOLLARS WHEN RENDERING SERVICE AS A MEMBER; PROVIDED THAT THE AGGREGATE 25 OF SUCH PER DIEM ALLOWANCE TO ANY ONE MEMBER IN ANY ONE FISCAL YEAR OF THE BOARD SHALL NOT EXCEED THE SUM OF FIVE THOUSAND DOLLARS. 26 27 4. POWERS AND DUTIES OF THE BOARD. (A) THE BOARD SHALL APPOINT AN 28 EXECUTIVE DIRECTOR WHO SHALL ACT IN ACCORDANCE WITH THE POLICIES OF THE 29 BOARD. (B) THE BOARD IS AUTHORIZED, WITHIN APPROPRIATIONS AVAILABLE THEREFOR, 30 TO APPOINT SUCH EMPLOYEES AS ARE NECESSARY TO EXERCISE ITS POWERS AND 31 32 FULFILL ITS DUTIES. THE BOARD SHALL APPOINT INVESTIGATORS TO INVESTIGATE 33 CIVILIAN COMPLAINTS. SUCH INVESTIGATORS SHALL HAVE INVESTIGATIVE EXPERI-34 ENCE AS A CONDITION OF THEIR APPOINTMENT BY THE BOARD. 35 (C) THE BOARD SHALL HAVE THE POWER TO ADOPT, AMEND AND RESCIND RULES AND REGULATIONS TO GOVERN PROCEDURES OF THE BOARD IN ACCORDANCE WITH 36 37 THIS SECTION. 38 (D) THE BOARD SHALL HAVE THE POWER TO SUBPOENA AND REQUIRE THE ATTEND-39 ANCE IN THIS STATE OF WITNESSES AND THE PRODUCTION OF BOOKS AND PAPERS 40 PERTINENT TO THE INVESTIGATION AND INQUIRIES HEREBY AUTHORIZED AND TO EXAMINE THEM AND SUCH PUBLIC RECORDS AS IT SHALL REQUIRE RELATING TO ANY 41 SUCH MATTER. A SUBPOENA ISSUED PURSUANT TO THIS ACTION SHALL BE 42 REGU-43 LATED BY THE CIVIL PRACTICE LAW AND RULES. 44 (E) THE BOARD MAY ALSO OFFER, BUT MAY NOT REQUIRE, MEDIATION BY AN 45 EXPERIENCED MEDIATOR BETWEEN A COMPLAINANT AND A SUBJECT OFFICER AS AN ALTERNATIVE TO INVESTIGATION AND DISCIPLINE. THE BOARD SHALL SET GUIDE-46 47 LINES TO DETERMINE CASES APPROPRIATE FOR MEDIATION. 48 5. COMPLAINT REVIEW PROCEDURE. (A) COMPLAINTS MAY BE INITIATED BY ANY PERSON WHETHER OR NOT THAT PERSON IS A VICTIM OF, OR A WITNESS TO, AN 49 50 INCIDENT ALLEGING THE USE OF EXCESSIVE FORCE OR ABUSE OF AUTHORITY. A 51 COMPLAINT MAY ALSO BE INITIATED BY THE BOARD, UPON A MAJORITY VOTE THER-EOF, IF THE BOARD DETERMINES THAT THERE IS A CLEAR PUBLIC INTEREST IN 52 53 DOING SO. 54 (B) THE BOARD MUST TAKE REASONABLE MEASURES TO ENSURE THE CONFIDEN-55 TIALITY OF ALL COMPLAINANTS.

(C) ALL COMPLAINTS, OTHER THAN THOSE IN WHICH BOTH THE COMPLAINANT AND 1 2 THE SUBJECT OFFICER AGREE TO MEDIATION, SHALL BE ASSIGNED TO AN INVESTI-3 GATOR, WHO SHALL TAKE SUCH STEPS AS ARE NECESSARY TO INVESTIGATE THE 4 COMPLAINT, INCLUDING OBTAINING A STATEMENT FROM THE COMPLAINANT, WITNESS 5 STATEMENTS, DOCUMENTARY EVIDENCE, AND INTERVIEWS WITH SUBJECT OFFICERS. 6 WHEN THE INVESTIGATION IS COMPLETE, IT SHALL BE FORWARDED TO THE BOARD, OR A PANEL CONSISTING OF AT LEAST THREE MEMBERS OF THE BOARD, WHICH 7 SHALL READ THE CASE, REVIEW ALL OF THE EVIDENCE AND VOTE ON THE DISPOSI-8 9 TION OF EACH ALLEGATION RAISED BY THE COMPLAINT.

10 (D) THE BOARD'S VOTE ON EACH ALLEGATION BROUGHT BEFORE IT SHALL RESULT 11 IN ONE OF THE FOLLOWING DISPOSITIONS:

12 (I) SUBSTANTIATED; A FINDING THAT THERE IS SUFFICIENT CREDIBLE 13 EVIDENCE TO BELIEVE THAT THE SUBJECT OFFICER COMMITTED THE ACT CHARGED 14 IN THE ALLEGATION CONSTITUTING MISCONDUCT;

15 (II) EXONERATED; A FINDING THAT THE SUBJECT OFFICER WAS FOUND TO HAVE 16 COMMITTED THE ACT ALLEGED, BUT THE SUBJECT OFFICER'S ACTIONS WERE DETER-17 MINED TO BE LAWFUL AND PROPER;

18 (III) UNFOUNDED; A FINDING THAT THERE IS SUFFICIENT CREDIBLE EVIDENCE 19 TO BELIEVE THAT THE SUBJECT OFFICER DID NOT COMMIT THE ALLEGED ACT OF 20 MISCONDUCT;

21 (IV) UNSUBSTANTIATED; A FINDING THAT THE WEIGHT OF THE AVAILABLE 22 EVIDENCE IS INSUFFICIENT TO SUBSTANTIATE, EXONERATE OR UNFOUND THE ALLE-23 GATION;

24 (V) OFFICER(S) UNIDENTIFIED; A FINDING THAT THE BOARD WAS UNABLE TO 25 IDENTIFY THE SUBJECT OR SUBJECTS OF THE ALLEGED MISCONDUCT; OR

26 (VI) MISCELLANEOUS; A FINDING THAT THE SUBJECT OF THE ALLEGATION IS NO 27 LONGER AN OFFICER.

28 THE ALLEGATIONS ARE SUBSTANTIATED, THE BOARD SHALL (E) IF ANY OF 29 FORWARD THE CASE TO THE SUBJECT OFFICER'S EMPLOYER, AND MAY RECOMMEND TO THE EMPLOYER APPROPRIATE DISCIPLINARY ACTION. IF, WITHIN THIRTY DAYS OF 30 A CASE BEING FORWARDED FOR DISCIPLINE, NO DISCIPLINARY ACTION IS TAKEN 31 32 BY AN OFFICER'S EMPLOYER WITH RESPECT TO THE SUBSTANTIATED ALLEGATIONS 33 OF MISCONDUCT, THE BOARD SHALL FORWARD THE CASE TO THE DISTRICT ATTORNEY 34 FOR THE JURISDICTION IN WHICH THE MISCONDUCT OCCURRED.

35 (F) EXCEPT IN EXTENUATING CIRCUMSTANCES, ALL INVESTIGATIONS SHALL BE 36 COMPLETED WITHIN SIX MONTHS OF THE DATE WHEN THE COMPLAINT WAS INITI-37 ATED.

38 S 2. This act shall take effect immediately.