S T A T E O F N E W Y O R K

4768

2011-2012 Regular Sessions

I N A S S E M B L Y

February 7, 2011

Introduced by M. of A. BOYLE, CERETTO, MALLIOTAKIS, MONTESANO, MURRAY, REILICH -- Multi-Sponsored by -- M. of A. BURLING, BUTLER, CALHOUN, CONTE, CORWIN, CROUCH, CURRAN, DUPREY, FITZPATRICK, GABRYSZAK, GIGLIO, GRAF, JORDAN, KELLNER, McDONOUGH, McKEVITT, McLAUGHLIN, MOLINARO, OAKS, RABBITT, RAIA, SAYWARD, SPANO, THIELE -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the public officers law, in relation to prohibiting the destruction of constituent case files by public officials

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

Section 1. This act shall be known and may be cited as the "constituent casework protection act".

S 2. Section 80 of the public officers law, as amended by chapter 556 of the laws of 1925, is amended to read as follows:

S 80. Delivery of books and papers, money and property. 1. A public officer shall demand from his OR HER predecessor in office or any person in whose possession they may be, a delivery to such officer of all books and papers, money and property belonging or appertaining to such office. If such demand is refused, such officer may make complaint thereof to any justice of the supreme court of the district, or to the county judge of the county in which the person refusing resides. If such justice or judge be satisfied that such books or papers, money and property are withheld, he OR SHE shall grant an order directing the person refusing to show cause before him OR HER at a time specified therein, why he OR SHE should not deliver the same. At such time, or at any time to which the matter may be adjourned, on proof of the due service of the order, such justice or judge shall proceed to inquire into the circumstances. If the person charged with withholding such books or papers, money and property makes affidavit before such justice or judge that he OR SHE has delivered to the officer all books and papers, money and property in his OR HER custody which, within his OR HER knowledge, or to his OR HER

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

LBD07622-05-1

belief belong or appertain thereto, such proceedings before such justice or judge shall cease, and such person be discharged. If the person complained against shall not make such oath, and it appears that any such books or papers, money and property are withheld by him OR HER, such justice or judge shall commit him OR HER to the county jail until he OR SHE delivers such books and papers, money and property, or is otherwise discharged according to law. On such commitment, such justice or judge, if required by the complainant, shall also issue his OR HER warrant directed to any sheriff or constable, commanding him OR HER to search, in the daytime, the places designated therein, for such books and papers, money and property, and to bring them before such justice or judge. If any such books and papers, money and property, are brought before him OR HER by virtue of such warrant, he OR SHE shall determine whether they appertain to such office, and if so shall cause them to be delivered to the complainant.

2. A. NO PUBLIC OFFICER SHALL KNOWINGLY, WILLFULLY OR INTENTIONALLY DESTROY CONSTITUENT CASE FILES, OR PERMIT ANOTHER PERSON TO DO SO. FOR THE PURPOSES OF THIS SUBDIVISION, CONSTITUENT CASE FILES SHALL INCLUDE ANY CORRESPONDENCE, WRITTEN OR ELECTRONIC, BETWEEN AN ELECTED OFFICIAL AND A CONSTITUENT OR ANY CORRESPONDENCE BETWEEN SAID ELECTED OFFICIAL AND ANY OTHER PARTY PERTAINING TO: A CONSTITUENT'S GRIEVANCE; OR A QUESTION OF ELIGIBILITY FOR ANY BENEFIT; OR ANY ISSUE REGARDING A CONSTITUENT REQUEST FOR ASSISTANCE.

B. ANY PERSON WHO VIOLATES THE PROVISIONS OF THIS SUBDIVISION SHALL BE GUILTY OF A MISDEMEANOR AND SHALL BE SUBJECT TO A FINE OF AT LEAST TEN THOUSAND DOLLARS BUT NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS, OR TO A TERM OF IMPRISONMENT OF UP TO ONE YEAR, OR BOTH. THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY TO: (A) ANY FILES WHICH ARE PROTECTED BY ATTORNEY-CLIENT PRIVILEGE, OR (B) ANY DESTRUCTION OF FILES WHICH THE CONSTITUENT CONSENTS TO IN WRITING, OR (C) CORRESPONDENCE FROM A CONSTITUENT PRIMARILY ADVOCATING FOR OR AGAINST LEGISLATION, OR (D) ANY FILES WHICH RELATE TO MATTERS WHICH HAVE BEEN RESOLVED.

S 3. This act shall take effect immediately.