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

7586

2011-2012 Regular Sessions

I N A S S E M B L Y

May 10, 2011

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

AN ACT to amend the state administrative procedure act, in relation to enforcement of violations

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

Section 1. The state administrative procedure act is amended by adding a new article 6 to read as follows:

ARTICLE 6

ENFORCEMENT OF VIOLATIONS

SECTION 601. ENFORCEMENT OF VIOLATIONS.

S 601. ENFORCEMENT OF VIOLATIONS. 1. UNLESS OTHERWISE PROVIDED BY LAW, NO STATE AGENCY SHALL:

(A) IMPOSE OR SUGGEST ANY ENFORCEMENT QUOTA WITH RESPECT TO OFFICERS OR EMPLOYEES DIRECTLY INVOLVED IN ENFORCEMENT ACTIVITIES OR THEIR IMMEDIATE SUPERVISORS;

(B) USE RECORDS OF QUANTITATIVE ENFORCEMENT RESULTS AS THE PRIMARY CRITERION TO EVALUATE SUCH OFFICERS, EMPLOYEES OR SUPERVISORS;

(C) REWARD ANY OFFICER, EMPLOYEE OR SUPERVISOR FOR MEETING OR EXCEEDING AN ENFORCEMENT QUOTA; OR

(D) TRANSFER OR IN ANY OTHER MANNER PENALIZE OR THREATEN, EXPRESSLY OR IMPLIEDLY, ANY SUCH OFFICER, EMPLOYEE OR SUPERVISOR AS TO HIS OR HER EMPLOYMENT IN A MANNER, INCLUDING, BUT NOT LIMITED TO, A REASSIGNMENT, A SCHEDULING CHANGE, AN ADVERSE EVALUATION, A CONSTRUCTIVE DISMISSAL, THE DENIAL OF A PROMOTION, OR THE DENIAL OF OVERTIME, BASED IN WHOLE OR IN PART ON SUCH PERSON'S FAILURE TO MEET AN ENFORCEMENT QUOTA.

2. NOTHING IN THIS SECTION SHALL PRECLUDE AN AGENCY FROM MAKING AND COMMUNICATING FORECASTS OF ENFORCEMENT RESULTS FOR PLANNING PURPOSES, AND ACCUMULATING, TABULATING, PUBLISHING AND USING ENFORCEMENT RESULTS FOR MANAGEMENT AND CONTROL OF AGENCY RESOURCES SO LONG AS ENFORCEMENT RESULTS OR TABULATIONS ARE NOT USED AS THE PRIMARY CRITERION TO EVALUATE

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

LBD11471-01-1

AN OFFICER OR EMPLOYEE DESCRIBED IN SUBDIVISION ONE OF THIS SECTION OR TO IMPOSE OR SUGGEST ENFORCEMENT QUOTAS. IN THE DISCHARGE OF A MANAGER'S RESPONSIBILITIES, BUT SUBJECT TO THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION, A MANAGER MAY RAISE QUESTIONS WITH AN OFFICER OR EMPLOYEE ABOUT THE NUMBER OF CASES PROCESSED OR INSPECTIONS PERFORMED BY THE OFFICER OR EMPLOYEE, THE AMOUNT OF TIME THE OFFICER OR EMPLOYEE HAS BEEN SPENDING ON INDIVIDUAL ENFORCEMENT ACTIVITIES, OR THE KIND OF RESULTS THE OFFICER OR EMPLOYEE HAS BEEN OBTAINING, AND MAY USE SIMILAR STANDARDS IN EVALUATING THE PERFORMANCE OF A SUPERVISOR OF SUCH OFFICERS OR EMPLOYEES.

3. AS USED IN THIS SECTION, "ENFORCEMENT QUOTA" SHALL MEAN A QUANTITATIVE STANDARD FOR EVALUATING OR MEASURING ENFORCEMENT ACTIVITIES, INCLUDING BUT NOT LIMITED TO (A) A SPECIFIC NUMBER OF ENFORCEMENT CASES IN WHICH CITATIONS FOR VIOLATIONS ARE MADE WITHIN A SPECIFIED PERIOD OF TIME; (B) THE TOTAL NUMBER OF VIOLATIONS FOUND WITHIN A SPECIFIED PERIOD; (C) THE TOTAL DOLLAR AMOUNT OF PENALTIES ASSOCIATED WITH ENFORCEMENT ACTIVITIES WITHIN A SPECIFIED PERIOD OF TIME; OR (D) ANY COMPARISON OF THE ENFORCEMENT ACTIVITIES OF AN OFFICER, EMPLOYEE OR SUPERVISOR WITH OTHER OFFICERS, EMPLOYEES OR SUPERVISORS, WITH AN AVERAGE OF SUCH ACTIVITIES OR WITH OTHER QUANTITATIVE STANDARDS, WHEN USED TO PENALIZE OR REWARD OFFICERS, EMPLOYEES OR SUPERVISORS FOR ATTAINING OR FAILING TO ATTAIN A SPECIFIC NUMBER OF CITATIONS FOR VIOLATIONS AND/OR PENALTIES WITHIN A SPECIFIED PERIOD OF TIME.

S 2. This act shall take effect immediately.