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

8217

2011-2012 Regular Sessions

I N A S S E M B L Y

June 7, 2011

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

AN ACT to amend the general municipal law, in relation to civil actions against police officers of the city of New York

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

Section 1. Section 50-k of the general municipal law, as added by chapter 673 of the laws of 1979, is amended to read as follows:

S 50-k. Civil actions against employees AND POLICE OFFICERS of the city of New York. 1. As used in this section:

a. "Agency" shall mean a city, county, borough, or other office, position, administration, council, department, division, bureau, board, community board, commission, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury, but shall not include, unless otherwise provided by law, any public authority, public benefit corporation or board of education.

b. "City" shall mean the city of New York.

c. "Comptroller" shall mean the comptroller of the city.

d. "Corporation Council" shall mean the corporation council of the city.

e. "Employee" shall mean any person holding a position by election, appointment or employment in the service of any agency, whether or not compensated, or a volunteer expressly authorized to participate in a city sponsored volunteer program, but shall not include an independent contractor. The term employee shall include a former employee, his estate or judicially appointed personal representative. FOR PURPOSES OF THIS SECTION, THE TERM "EMPLOYEE" SHALL NOT INCLUDE POLICE OFFICERS, AS DEFINED IN PARAGRAPH F OF THIS SUBDIVISION.

F. "POLICE OFFICER" SHALL MEAN ANY PERSON EMPLOYED BY THE THE NEW YORK CITY POLICE DEPORTMENT AS A "POLICE OFFICER" AS THAT TERM IS DEFINED IN SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW.

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

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2. At the request of the employee and upon compliance by the employee with the provisions of subdivision four of this section, the city shall provide for the defense of an employee of any agency in any civil action or proceeding in any state or federal court including actions under sections nineteen hundred eighty-one through nineteen hundred eighty-eight of title forty-two of the United States code arising out of any alleged act or omission which the corporation counsel finds occurred while the employee was acting within the scope of his public employment and in the discharge of his duties and was not in violation of any rule or regulation of his agency at the time the alleged act or omission occurred. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or on behalf of the city or state or an agency of either.

2-A. AT THE REQUEST OF THE POLICE OFFICER AND UPON COMPLIANCE BY THE POLICE OFFICER WITH THE PROVISIONS OF SUBDIVISION FOUR OF THIS SECTION, THE CITY SHALL PROVIDE FOR THE DEFENSE OF A POLICE OFFICER IN ANY CIVIL ACTION OR PROCEEDING IN ANY STATE OR FEDERAL COURT INCLUDING ACTIONS UNDER SECTIONS NINETEEN HUNDRED EIGHTY-ONE THROUGH NINETEEN HUNDRED EIGHTY-EIGHT OF TITLE FORTY-TWO OF THE UNITED STATES CODE ARISING OUT OF ANY ALLEGED ACT OR OMISSION WHICH THE COMPTROLLER FINDS OCCURRED WHILE THE POLICE OFFICER WAS ACTING WITHIN THE SCOPE OF HIS PUBLIC EMPLOYMENT AND IN THE DISCHARGE OF HIS DUTIES. THIS DUTY TO PROVIDE FOR A DEFENSE SHALL NOT ARISE WHERE SUCH CIVIL ACTION OR PROCEEDING IS BROUGHT BY OR ON BEHALF OF THE CITY OR STATE OR AN AGENCY OF EITHER.

3. The city shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in any state or federal court, or in the amount of any settlement of a claim approved by the corporation counsel and the comptroller, provided that the act or omission from which such judgment or settlement arose occurred while the employee was acting within the scope of his public employment and in the discharge of his duties and was not in violation of any rule or regulation of his agency at the time the alleged damages were sustained; the duty to indemnify and save harmless prescribed by this subdivision shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.

3-A. THE CITY SHALL INDEMNIFY AND SAVE HARMLESS ITS POLICE OFFICERS IN THE AMOUNT OF ANY JUDGMENT OBTAINED AGAINST SUCH POLICE OFFICERS IN ANY STATE OR FEDERAL COURT, OR IN THE AMOUNT OF ANY SETTLEMENT OF A CLAIM APPROVED BY THE CORPORATION COUNSEL AND THE COMPTROLLER, PROVIDED THAT THE COMPTROLLER FINDS THAT THE ACT OR OMISSION FROM WHICH SUCH JUDGMENT OR SETTLEMENT AROSE OCCURRED WHILE THE POLICE OFFICER WAS ACTING WITHIN THE SCOPE OF HIS PUBLIC EMPLOYMENT AND IN THE DISCHARGE OF HIS DUTIES; THE DUTY TO INDEMNIFY AND SAVE HARMLESS PRESCRIBED BY THIS SUBDIVISION SHALL NOT ARISE WHERE THE INJURY OR DAMAGE RESULTED FROM INTENTIONAL WRONGDOING OR RECKLESSNESS ON THE PART OF THE POLICE OFFICER.

4. The duty to defend or indemnify and save harmless prescribed by this section shall be conditioned upon (a) delivery to the corporation counsel at the office of the law department of the city by the employee OR POLICE OFFICER of the original or a copy of any summons, complaint, process, notice, demand or pleading within ten days after he is served with such document, and (b) the full cooperation of the employee OR POLICE OFFICER in the defense of such action or proceeding and in defense of any action or proceeding against the city based upon the same act or omission, and in the prosecution of any appeal. Such delivery shall be deemed a request by the employee OR POLICE OFFICER that the city provide for his defense pursuant to this section. In the event that

the corporation counsel shall assume an employee's OR POLICE OFFICER'S defense and thereafter the employee OR POLICE OFFICER fails to or refuses to cooperate in the formation or presentation of his defense, the court shall permit the corporation counsel to withdraw his representation ten days after giving written notice to the employee OR POLICE OFFICER of his intention to discontinue such representation.

5. In the event that the act or omission upon which the court proceeding against the employee is based was or is also the basis of a disciplinary proceeding by the employee's agency against the employee, representation by the corporation counsel and indemnification by the city may be withheld (a) until such disciplinary proceeding has been resolved and (b) unless the resolution of the disciplinary proceeding exonerated the employee as to such act or omission.

5-A. IN THE EVENT THAT THE ACT OR OMISSION UPON WHICH THE COURT PROCEEDING AGAINST THE POLICE OFFICER IS BASED WAS OR IS ALSO THE BASIS OF A DISCIPLINARY PROCEEDING BY THE POLICE OFFICER'S AGENCY AGAINST THE EMPLOYEE BROUGHT PURSUANT TO SUBDIVISION (B) OF SECTION 14-115 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK, REPRESENTATION BY THE CORPORATION COUNSEL SHALL CONTINUE AND THE CITY SHALL INDEMNIFY AND HOLD HARMLESS THE POLICE OFFICER UNLESS OR UNTIL THE RESOLUTION OF THE DISCIPLINARY PROCEEDING RESULTS IN A FINDING AFTER TRIAL THAT THE POLICE OFFICER WAS GUILTY OF THE ACT OR OMISSION UPON WHICH THE COURT PROCEEDING AGAINST THE POLICE OFFICER IS BASED, OR THE POLICE OFFICER PLEADS GUILTY TO THE ACT OR OMISSION UPON WHICH THE COURT PROCEEDING IS BASED.

6. Every action or proceeding instituted hereunder, including an action brought to enforce a provision of sections nineteen hundred eighty-one through nineteen hundred eighty-eight of title forty-two of the United States code, shall be commenced pursuant to the provisions of section fifty-i of this chapter and within one year and ninety days. No action or proceeding instituted hereunder, other than one instituted pursuant to sections nineteen hundred eighty-one through nineteen hundred eighty-eight of title forty-two of the United States code shall be prosecuted or maintained against the city or any agency or an employee OR A POLICE OFFICER unless notice of claim shall have been made and served upon the city in compliance with section fifty-e of this chapter and within ninety days after the claim arises.

7. The provisions of this section shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

8. The provisions of this section shall apply to all actions and proceedings pending upon the effective date thereof or thereafter instituted, except that the provisions of subdivision six shall apply only to actions and proceedings instituted on or after the effective date of this section.

9. The provisions of this section shall not be construed in any way to impair, alter, limit, modify, or abrogate or restrict any immunity available to or conferred upon any unit, entity, officer or employee of the city or any agency or any other level of government, or any right to defense and/or indemnification provided for any governmental officer or employee by, in accordance with, or by reason of, any other provision of state, federal or local law or common law.

10. IN THE EVENT THAT THE COMPTROLLER DETERMINES PURSUANT TO SUBDIVISION 2-A, 3-A OR 5-A OF THIS SECTION THAT THE CITY WILL NOT DEFEND OR INDEMNIFY AND SAVE HARMLESS A POLICE OFFICER IN ANY CIVIL ACTION, THE COMPTROLLER SHALL PROVIDE TO THE POLICE OFFICER A DETAILED REPORT

SETTING FORTH SPECIFIC REASONS FOR SUCH DETERMINATION IN ACCORDANCE WITH THIS SECTION.

S 2. This act shall take effect immediately and shall apply to civil actions commenced on or after such date.