

6442

I N S E N A T E

February 9, 2012

Introduced by Sens. CARLUCCI, KLEIN, SAVINO, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business

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:

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

3 ARTICLE 6

4 ENFORCEMENT OF VIOLATIONS

5 SECTION 601. ENFORCEMENT OF VIOLATIONS.

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

8 (A) IMPOSE OR SUGGEST ANY ENFORCEMENT QUOTA WITH RESPECT TO OFFICERS
9 OR EMPLOYEES DIRECTLY INVOLVED IN ENFORCEMENT ACTIVITIES OR THEIR IMME-
10 DIATE SUPERVISORS;

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

13 (C) REWARD ANY OFFICER, EMPLOYEE OR SUPERVISOR FOR MEETING OR EXCEED-
14 ING AN ENFORCEMENT QUOTA; OR

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

21 2. NOTHING IN THIS SECTION SHALL PRECLUDE AN AGENCY FROM MAKING AND
22 COMMUNICATING FORECASTS OF ENFORCEMENT RESULTS FOR PLANNING PURPOSES,
23 AND ACCUMULATING, TABULATING, PUBLISHING AND USING ENFORCEMENT RESULTS
24 FOR MANAGEMENT AND CONTROL OF AGENCY RESOURCES SO LONG AS ENFORCEMENT
25 RESULTS OR TABULATIONS ARE NOT USED AS THE PRIMARY CRITERION TO EVALUATE
26 AN OFFICER OR EMPLOYEE DESCRIBED IN SUBDIVISION ONE OF THIS SECTION OR
27 TO IMPOSE OR SUGGEST ENFORCEMENT QUOTAS. IN THE DISCHARGE OF A MANAGER'S

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

LBD11471-01-1

1 RESPONSIBILITIES, BUT SUBJECT TO THE PROVISIONS OF SUBDIVISION ONE OF
2 THIS SECTION, A MANAGER MAY RAISE QUESTIONS WITH AN OFFICER OR EMPLOYEE
3 ABOUT THE NUMBER OF CASES PROCESSED OR INSPECTIONS PERFORMED BY THE
4 OFFICER OR EMPLOYEE, THE AMOUNT OF TIME THE OFFICER OR EMPLOYEE HAS BEEN
5 SPENDING ON INDIVIDUAL ENFORCEMENT ACTIVITIES, OR THE KIND OF RESULTS
6 THE OFFICER OR EMPLOYEE HAS BEEN OBTAINING, AND MAY USE SIMILAR STAND-
7 ARDS IN EVALUATING THE PERFORMANCE OF A SUPERVISOR OF SUCH OFFICERS OR
8 EMPLOYEES.

9 3. AS USED IN THIS SECTION, "ENFORCEMENT QUOTA" SHALL MEAN A QUANTITA-
10 TIVE STANDARD FOR EVALUATING OR MEASURING ENFORCEMENT ACTIVITIES,
11 INCLUDING BUT NOT LIMITED TO (A) A SPECIFIC NUMBER OF ENFORCEMENT CASES
12 IN WHICH CITATIONS FOR VIOLATIONS ARE MADE WITHIN A SPECIFIED PERIOD OF
13 TIME; (B) THE TOTAL NUMBER OF VIOLATIONS FOUND WITHIN A SPECIFIED PERI-
14 OD; (C) THE TOTAL DOLLAR AMOUNT OF PENALTIES ASSOCIATED WITH ENFORCEMENT
15 ACTIVITIES WITHIN A SPECIFIED PERIOD OF TIME; OR (D) ANY COMPARISON OF
16 THE ENFORCEMENT ACTIVITIES OF AN OFFICER, EMPLOYEE OR SUPERVISOR WITH
17 OTHER OFFICERS, EMPLOYEES OR SUPERVISORS, WITH AN AVERAGE OF SUCH ACTIV-
18 ITIES OR WITH OTHER QUANTITATIVE STANDARDS, WHEN USED TO PENALIZE OR
19 REWARD OFFICERS, EMPLOYEES OR SUPERVISORS FOR ATTAINING OR FAILING TO
20 ATTAIN A SPECIFIC NUMBER OF CITATIONS FOR VIOLATIONS AND/OR PENALTIES
21 WITHIN A SPECIFIED PERIOD OF TIME.

22 S 2. This act shall take effect immediately.