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

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2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. KELLNER, MILLMAN, ROBINSON, WRIGHT, JEFFRIES -- Multi-Sponsored by -- M. of A. BOYLAND, GALEF, GIBSON, GOTTFRIED -- 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.

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

2. DEFINITIONS. (A) AS USED IN THIS SECTION, THE TERM "OFFICER" SHALL MEAN "POLICE OFFICERS" AS DEFINED IN PARAGRAPHS (A), (E), (F), (H), (J), (K), (L), (M), (P), (Q), (S), AND (V) OF SUBDIVISION THIRTY-FOUR OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW AND "PEACE OFFICERS" AS DEFINED IN SUBDIVISIONS THREE, FOUR, FIVE, SIX, EIGHT, TWELVE, THIRTEEN, FIFTEEN, SIXTEEN, TWENTY, TWENTY-ONE, TWENTY-TWO, TWENTY-THREE, TWENTY-FOUR, TWENTY-FIVE, TWENTY-SIX, TWENTY-SEVEN, TWENTY-NINE, THIRTY-TWO, THIRTY-THREE, THIRTY-FOUR, THIRTY-FIVE, THIRTY-SIX, THIRTY-EIGHT, FORTY,

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

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FORTY-FIVE, FORTY-SIX, FORTY-SEVEN, FIFTY-TWO, FIFTY-NINE, SIXTY-ONE, SIXTY-TWO, SIXTY-EIGHT, SEVENTY-FOUR, SEVENTY-NINE, AND EIGHTY-TWO OF SECTION 2.10 OF THE CRIMINAL PROCEDURE LAW.

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

(C) AS USED IN THIS SECTION, "INVESTIGATOR" SHALL MEAN AN INVESTIGATOR AS APPOINTED IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION THREE OF THIS SECTION.

3. APPOINTMENTS. (A) THE BOARD SHALL CONSIST OF NINE MEMBERS; THREE, INCLUDING THE CHAIR, AS SELECTED BY THE GOVERNOR; AND SIX MEMBERS TO BE APPOINTED BY THE GOVERNOR UPON THE RECOMMENDATIONS, RESPECTIVELY, OF THE ATTORNEY GENERAL, THE COMPTROLLER, THE TEMPORARY PRESIDENT OF THE SENATE, THE MINORITY LEADER OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, 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 APPOINTMENT.

(B) NO MEMBER OF THE BOARD SHALL HOLD ANY OTHER PUBLIC OFFICE OR EMPLOYMENT. NO MEMBERS SHALL HAVE EXPERIENCE AS LAW ENFORCEMENT PROFESSIONALS. FOR THE PURPOSES OF THIS SECTION, EXPERIENCE AS A LAW ENFORCEMENT PROFESSIONAL SHALL INCLUDE EXPERIENCE AS A PEACE OFFICER, POLICE OFFICER, CRIMINAL INVESTIGATOR, SPECIAL AGENT, OR A MANAGERIAL OR SUPERVISORY EMPLOYEE WHO EXERCISED SUBSTANTIAL POLICY DISCRETION ON LAW ENFORCEMENT MATTERS, IN A FEDERAL, STATE, OR LOCAL LAW ENFORCEMENT AGENCY, OTHER THAN EXPERIENCE AS AN ATTORNEY IN A PROSECUTORIAL AGENCY.

(C) THE MEMBERS OF THE BOARD SHALL BE APPOINTED FOR TERMS OF THREE YEARS.

(D) EACH MEMBER OF THE BOARD SHALL BE ENTITLED TO REIMBURSEMENT FOR HIS OR HER ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF HIS OR HER OFFICIAL DUTIES AND A PER DIEM ALLOWANCE OF ONE HUNDRED FIFTY DOLLARS WHEN RENDERING SERVICE AS A MEMBER; PROVIDED THAT THE AGGREGATE 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.

4. POWERS AND DUTIES OF THE BOARD. (A) THE BOARD SHALL APPOINT AN EXECUTIVE DIRECTOR WHO SHALL ACT IN ACCORDANCE WITH THE POLICIES OF THE BOARD.

(B) THE BOARD IS AUTHORIZED, WITHIN APPROPRIATIONS AVAILABLE THEREFOR, TO APPOINT SUCH EMPLOYEES AS ARE NECESSARY TO EXERCISE ITS POWERS AND FULFILL ITS DUTIES. THE BOARD SHALL APPOINT INVESTIGATORS TO INVESTIGATE CIVILIAN COMPLAINTS. SUCH INVESTIGATORS SHALL HAVE INVESTIGATIVE EXPERIENCE AS A CONDITION OF THEIR APPOINTMENT BY THE BOARD.

(C) THE BOARD SHALL HAVE THE POWER TO ADOPT, AMEND AND RESCIND RULES AND REGULATIONS TO GOVERN PROCEDURES OF THE BOARD IN ACCORDANCE WITH THIS SECTION.

(D) THE BOARD SHALL HAVE THE POWER TO SUBPOENA AND REQUIRE THE ATTENDANCE IN THIS STATE OF WITNESSES AND THE PRODUCTION OF BOOKS AND PAPERS PERTINENT TO THE INVESTIGATION AND INQUIRIES HEREBY AUTHORIZED AND TO EXAMINE THEM AND SUCH PUBLIC RECORDS AS IT SHALL REQUIRE RELATING TO ANY SUCH MATTER. A SUBPOENA ISSUED PURSUANT TO THIS ACTION SHALL BE REGULATED BY THE CIVIL PRACTICE LAW AND RULES.

(E) THE BOARD MAY ALSO OFFER, BUT MAY NOT REQUIRE, MEDIATION BY AN EXPERIENCED MEDIATOR BETWEEN A COMPLAINANT AND A SUBJECT OFFICER AS AN ALTERNATIVE TO INVESTIGATION AND DISCIPLINE. THE BOARD SHALL SET GUIDELINES TO DETERMINE CASES APPROPRIATE FOR MEDIATION.

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 INCIDENT ALLEGING THE USE OF EXCESSIVE FORCE OR ABUSE OF AUTHORITY. A

COMPLAINT MAY ALSO BE INITIATED BY THE BOARD, UPON A MAJORITY VOTE THEREOF, IF THE BOARD DETERMINES THAT THERE IS A CLEAR PUBLIC INTEREST IN DOING SO.

(B) THE BOARD MUST TAKE REASONABLE MEASURES TO ENSURE THE CONFIDENTIALITY OF ALL COMPLAINANTS.

(C) ALL COMPLAINTS, OTHER THAN THOSE IN WHICH BOTH THE COMPLAINANT AND THE SUBJECT OFFICER AGREE TO MEDIATION, SHALL BE ASSIGNED TO AN INVESTIGATOR, WHO SHALL TAKE SUCH STEPS AS ARE NECESSARY TO INVESTIGATE THE COMPLAINT, INCLUDING OBTAINING A STATEMENT FROM THE COMPLAINANT, WITNESS STATEMENTS, DOCUMENTARY EVIDENCE, AND INTERVIEWS WITH SUBJECT OFFICERS. 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 SHALL READ THE CASE, REVIEW ALL OF THE EVIDENCE AND VOTE ON THE DISPOSITION OF EACH ALLEGATION RAISED BY THE COMPLAINT.

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

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

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

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

(IV) UNSUBSTANTIATED; A FINDING THAT THE WEIGHT OF THE AVAILABLE EVIDENCE IS INSUFFICIENT TO SUBSTANTIATE, EXONERATE OR UNFOUND THE ALLEGATION;

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

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

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

(F) EXCEPT IN EXTENUATING CIRCUMSTANCES, ALL INVESTIGATIONS SHALL BE COMPLETED WITHIN SIX MONTHS OF THE DATE WHEN THE COMPLAINT WAS INITIATED.

S 2. This act shall take effect immediately.