

# STATE OF NEW YORK

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5360

2017-2018 Regular Sessions

## IN SENATE

March 22, 2017

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Introduced by Sen. AKSHAR -- read twice and ordered printed, and when printed to be committed to the Committee on Civil Service and Pensions

AN ACT to amend the civil service law, in relation to independent hearing officers for certain disciplinary hearings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 75 of the civil service law is amended by adding a  
2 new subdivision 2-a to read as follows:

3 2-a. Independent hearing officer. (a) Notwithstanding any other  
4 provision of law to the contrary, any paid officer or member of an  
5 organized fire company or fire department of a city of less than one  
6 million population, or town, village or fire district who is represented  
7 by a certified or recognized employee organization pursuant to article  
8 fourteen of this chapter shall not be subjected to the penalty of  
9 dismissal from service if the hearing, upon such charge, has been  
10 conducted by someone other than an independent hearing officer to be  
11 agreed to by the employer and the person against whom disciplinary  
12 action is proposed. If the parties are unable to agree upon a hearing  
13 officer, he or she shall be selected from a list of seven names to be  
14 provided by the public employment relations board. The public employment  
15 relations board shall maintain a list of independent hearing officers  
16 for this purpose. The parties shall select the hearing officer by alter-  
17 nately striking names from the list of seven. The hearing officer shall  
18 be vested with all powers of the appointing authority, shall conduct and  
19 make a record of the hearing, and shall render a final decision. The  
20 cost incurred in obtaining such independent hearing officer shall be  
21 divided equally between the parties; provided that as may be determined  
22 upon the circumstances of the case, the hearing officer shall be author-  
23 ized to allocate such cost on the basis of the frivolous nature of any  
24 claim made or any defense interposed. In order to find a claim or

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

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1 defense to be frivolous, the hearing officer must find at least one of  
2 the following:

3 (i) the claim or defense was commenced, used or continued in bad  
4 faith, solely to delay or prolong the resolution of the action or to  
5 harass or maliciously injure another; or

6 (ii) the claim or defense was commenced or continued in bad faith  
7 without any reasonable basis in law or fact. If the claim or defense was  
8 promptly discontinued when the party learned or should have learned that  
9 the claim or defense lacked such reasonable basis, the hearing officer  
10 may find that the party did not act in bad faith. A person served with  
11 charges may, however, elect in writing to proceed with a hearing pursu-  
12 ant to the procedures established in subdivision two of this section in  
13 lieu of the procedures set forth in this subdivision.

14 (b) The rights set forth in paragraph (a) of this subdivision shall be  
15 in addition to, and shall not supplant, modify or replace any rights  
16 provided to an employee pursuant to agreements negotiated by a public  
17 employer and an employee organization pursuant to article fourteen of  
18 this chapter.

19 § 2. This act shall take effect on the first of March next succeeding  
20 the date on which it shall have become a law and shall apply to  
21 proceedings commenced on or after such effective date; provided, howev-  
22 er, that effective immediately, the addition, amendment and/or repeal of  
23 any rule or regulation necessary for the implementation of the  
24 provisions of this act on its effective date are authorized and directed  
25 to be made and completed on or before such effective date.