

STATE OF NEW YORK

10002--B

IN ASSEMBLY

March 4, 2020

Introduced by M. of A. TAYLOR, VANEL -- read once and referred to the Committee on Governmental Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, the public authorities law and chapter 154 of the laws of 1921 relating to the port authority of New York and New Jersey, in relation to establishing the law enforcement misconduct investigative office

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

1 Section 1. The executive law is amended by adding a new section 75 to
2 read as follows:

3 § 75. Law enforcement misconduct investigative office. 1. Jurisdic-
4 tion. This section shall, subject to the limitations contained in this
5 section, confer upon the law enforcement misconduct investigative office
6 jurisdiction over all covered agencies. For the purposes of this section
7 "covered agency" means a police agency of any political subdivision
8 within the state, including authorities or agencies maintaining a police
9 force or police forces of individuals defined as police officers in
10 section 1.20 of the criminal procedure law, provided however, covered
11 agency does not include any agency under the jurisdiction of the state
12 inspector general pursuant to article four-A of the executive law, the
13 metropolitan transportation authority inspector general pursuant to
14 section one thousand two hundred seventy-nine of the public authorities
15 law, or the port authority inspector general pursuant to chapter one
16 hundred fifty-four of the laws of nineteen twenty-one. Wherever a
17 covered agency is a board, commission, a public authority or public
18 benefit corporation, the head of the agency is the chairperson thereof.

19 2. Establishment and organization. (a) There is hereby established the
20 law enforcement misconduct investigative office in the department of
21 law. The head of the office shall be a deputy attorney general who shall
22 be appointed by the attorney general.

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

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1 (b) Such deputy attorney general may appoint one or more assistants to
2 serve at his or her pleasure.

3 (c) The salary for the head of such office shall be established within
4 the limit of funds available therefore; provided, however, such salary
5 shall be no less than the salaries of certain state officers holding the
6 positions indicated in paragraph (a) of subdivision one of section one
7 hundred sixty-nine of this chapter.

8 (d) The mission of the law enforcement misconduct investigative office
9 shall be to review, study, audit and make recommendations relating to
10 the operations, policies, programs and practices, including ongoing
11 partnerships with other law enforcement agencies, of state and local law
12 enforcement agencies with the goal of enhancing the effectiveness of law
13 enforcement, increasing public safety, protecting civil liberties and
14 civil rights, ensuring compliance with constitutional protections and
15 local, state and federal laws, and increasing the public's confidence in
16 law enforcement.

17 3. Functions and duties. The deputy attorney general shall have the
18 following duties and responsibilities:

19 (a) receive and investigate complaints from any source, or upon his or
20 her own initiative, concerning allegations of corruption, fraud, use of
21 excessive force, criminal activity, conflicts of interest or abuse in
22 any covered agency;

23 (b) inform the heads of covered agencies of such allegations and the
24 progress of investigations related thereto, unless special circumstances
25 require confidentiality;

26 (c) determine with respect to such allegations whether disciplinary
27 action, civil or criminal prosecution, or further investigation by an
28 appropriate federal, state or local agency is warranted, and to assist
29 in such investigations, if requested by such federal, state, or local
30 agency;

31 (d) prepare and release to the public written reports of investi-
32 gations, as appropriate and to the extent permitted by law, subject to
33 redaction to protect the confidentiality of witnesses and other informa-
34 tion that would be exempt from disclosure under article six of the
35 public officers law. The release of all or portions of such reports may
36 be temporarily deferred to protect the confidentiality of ongoing inves-
37 tigations;

38 (e) review and examine periodically the policies and procedures of
39 covered agencies with regard to the prevention and detection of
40 corruption, fraud, use of excessive force, criminal activity, conflicts
41 of interest and abuse;

42 (f) recommend remedial action to prevent or eliminate corruption,
43 fraud, use of excessive force, criminal activity, conflicts of interest
44 and abuse in covered agencies; and

45 (g) investigate patterns, practices, systemic issues, or trends iden-
46 tified by analyzing actions, claims, complaints, and investigations,
47 including, but not limited to, any patterns or trends regarding depart-
48 ments, precincts, and commands; and

49 (h) on an annual basis, submit to the governor, the attorney general,
50 the temporary president of the senate, the speaker of the assembly, the
51 minority leader of the senate and the minority leader of the assembly,
52 no later than December thirty-first, a report summarizing the activities
53 of the office and recommending specific changes to state law to further
54 the mission of the law enforcement misconduct investigative office.

55 4. Powers. The deputy attorney general shall have the power to:

56 (a) subpoena and enforce the attendance of witnesses;

1 (b) administer oaths or affirmations and examine witnesses under oath;
2 (c) require the production of any books and papers deemed relevant or
3 material to any investigation, examination or review;

4 (d) notwithstanding any law to the contrary, examine and copy or
5 remove documents or records of any kind prepared, maintained or held by
6 any covered agency;

7 (e) require any officer or employee in a covered agency to answer
8 questions concerning any matter related to the performance of his or her
9 official duties. No statement or other evidence derived therefrom may be
10 used against such officer or employee in any subsequent criminal prose-
11 cution other than for perjury or contempt arising from such testimony.
12 The refusal of any officer or employee to answer questions shall be
13 cause for removal from office or employment or other appropriate penal-
14 ty;

15 (f) monitor the implementation by covered agencies of any recommenda-
16 tions made by the law enforcement misconduct investigative office; and

17 (g) perform any other functions that are necessary or appropriate to
18 fulfill the duties and responsibilities of office.

19 5. Responsibilities of covered agencies, officers and employees. (a)
20 Every officer or employee in a covered agency shall report promptly to
21 the law enforcement misconduct investigative office any information
22 concerning corruption, fraud, use of excessive force, criminal activity,
23 conflicts of interest or abuse by another officer or employee relating
24 to his or her office or employment, or by a person having business deal-
25 ings with a covered agency relating to those dealings. The knowing fail-
26 ure of any officer or employee to so report shall be cause for removal
27 from office or employment or other appropriate penalty. Any officer or
28 employee who acts pursuant to this subdivision by reporting to the law
29 enforcement misconduct investigative office shall not be subject to
30 dismissal, discipline or other adverse personnel action.

31 (b) Upon receiving at least five complaints from five or more individ-
32 uals relating to at least five separate incidents involving a certain
33 officer or employee within two years, the head of any covered agency
34 shall refer such complaints to the law enforcement misconduct investi-
35 gative office for review. The law enforcement misconduct investigative
36 office shall investigate such complaints to determine whether the
37 subject officer or employee has engaged in a pattern or practice of
38 misconduct, use of excessive force, or acts of dishonesty. The referral
39 and investigation pursuant to this subdivision shall be in addition to
40 and shall not supersede any civil, criminal, administrative or other
41 action or proceeding relating to such complaints or the subject officer
42 or employee.

43 (c) The head of any covered agency shall advise the governor, the
44 temporary president of the senate, the speaker of the assembly, the
45 minority leader of the senate and the minority leader of the assembly
46 within ninety days of the issuance of a report by the law enforcement
47 misconduct investigative office as to the remedial action that the agen-
48 cy has taken in response to any recommendation for such action contained
49 in such report.

50 (d) Nothing in this section shall be construed to impede, infringe, or
51 diminish the rights, privileges, benefits or remedies that accrue to any
52 employee pursuant to any agreement entered into pursuant to article
53 fourteen of the civil service law.

54 § 2. Section 53 of the executive law is amended by adding a new subdi-
55 vision 1-a to read as follows:

1 1-a. receive and investigate complaints from any source, or upon his
2 or her own initiative, concerning allegations of corruption, fraud, use
3 of excessive force, criminal activity, conflicts of interest or abuse by
4 any police officer in a covered agency.

5 § 3. Subdivision 4 of section 1279 of the public authorities law is
6 amended by adding a new paragraph (a-1) to read as follows:

7 (a-1) to receive and investigate complaints from any source, or upon
8 his or her own initiative, concerning allegations of corruption, fraud,
9 use of excessive force, criminal activity, conflicts of interest or
10 abuse by any police officer under the jurisdiction of the office of the
11 metropolitan transportation authority.

12 § 4. Paragraph a of subdivision 6 of article 4 of section 1 of chapter
13 154 of the laws of 1921 relating to the port authority of New York and
14 New Jersey, as amended by chapter 559 of the laws of 2015, is amended to
15 read as follows:

16 a. The inspector general shall be responsible for receiving and inves-
17 tigating, where appropriate, all complaints regarding fraud, waste, and
18 abuse by commissioners, officers, and employees of the port authority or
19 third-parties doing business with the port authority. The inspector
20 general shall also receive and investigate complaints from any source,
21 or upon his or her own initiative, concerning allegations of corruption,
22 fraud, use of excessive force, criminal activity, conflicts of interest
23 or abuse by any police officer under the jurisdiction of the Port
24 Authority. The inspector general shall also be responsible for conduct-
25 ing investigations upon the inspector general's own initiative, as the
26 inspector general shall deem appropriate.

27 § 5. Severability clause. If any clause, sentence, paragraph, subdivi-
28 sion, section or part of this act shall be adjudged by any court of
29 competent jurisdiction to be invalid, such judgment shall not affect,
30 impair, or invalidate the remainder thereof, but shall be confined in
31 its operation to the clause, sentence, paragraph, subdivision, section
32 or part thereof directly involved in the controversy in which such judg-
33 ment shall have been rendered. It is hereby declared to be the intent of
34 the legislature that this act would have been enacted even if such
35 invalid provisions had not been included herein.

36 § 6. This act shall take effect on the first of April next succeeding
37 the date on which it shall have become a law, provided however, that
38 section four of this act shall take effect upon the enactment into law
39 by the state of New Jersey of legislation having an identical effect
40 with this act, but if the state of New Jersey shall have already enacted
41 such legislation, this act shall take effect immediately; provided that
42 the attorney general shall notify the legislative bill drafting commis-
43 sion upon the occurrence of the enactment of the legislation provided
44 for in section four of this act in order that the commission may main-
45 tain an accurate and timely effective data base of the official text of
46 the laws of the state of New York in furtherance of effectuating the
47 provisions of section 44 of the legislative law and section 70-b of the
48 public officers law.