

STATE OF NEW YORK

3595--B

2019-2020 Regular Sessions

IN SENATE

February 11, 2019

Introduced by Sens. PARKER, BAILEY, BRESLIN, BROOKS, HOYLMAN, JACKSON, KAVANAGH, LIU, MAY, SANDERS, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- recommitted to the Committee on Finance in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, 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 or department of the state or any
8 political subdivision thereof, including authorities or agencies main-
9 taining a police force or police forces of individuals defined as police
10 officers in section 1.20 of the criminal procedure law, provided howev-
11 er, covered agency does not include any agency under the jurisdiction of
12 the state inspector general pursuant to article four-A of the executive
13 law, the metropolitan transportation authority inspector general pursu-
14 ant to section one thousand two hundred seventy-nine of the public
15 authorities law, or the port authority inspector general pursuant to
16 chapter one hundred fifty-four of the laws of nineteen twenty-one.
17 Wherever a covered agency is a board, commission, a public authority or

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

LBD09532-05-0

1 public benefit corporation, the head of the agency is the chairperson
2 thereof.

3 2. Establishment and organization. (a) There is hereby established the
4 law enforcement misconduct investigative office in the department of
5 law. The head of the office shall be the director who shall be appointed
6 by the attorney general.

7 (b) The director shall serve for a five-year term and shall not hold-
8 over pursuant to section five of the public officers law. Upon the
9 expiration of a five-year term or a vacancy, the attorney general shall
10 reappoint the office holder or appoint a successor within sixty days.
11 The attorney general may remove the director during his or her term only
12 for good cause after an opportunity to be heard.

13 (c) The director may appoint one or more deputy directors to serve at
14 his or her pleasure.

15 (d) The salary of the director shall be established within the limit
16 of funds available therefore; provided, however, such salary shall be no
17 less than the salaries of certain state officers holding the positions
18 indicated in paragraph (a) of subdivision one of section one hundred
19 sixty-nine of this chapter.

20 (e) The mission of the law enforcement misconduct investigative office
21 shall be to review, study, audit and make recommendations relating to
22 the operations, policies, programs and practices, including ongoing
23 partnerships with other law enforcement agencies, of state and local law
24 enforcement agencies with the goal of enhancing the effectiveness of law
25 enforcement, increasing public safety, protecting civil liberties and
26 civil rights, ensuring compliance with constitutional protections and
27 local, state and federal laws, and increasing the public's confidence in
28 law enforcement.

29 3. Functions and duties. The director shall have the following duties
30 and responsibilities:

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

35 (b) inform the heads of covered agencies of such allegations and the
36 progress of investigations related thereto, unless special circumstances
37 require confidentiality;

38 (c) determine with respect to such allegations whether disciplinary
39 action, civil or criminal prosecution, or further investigation by an
40 appropriate federal, state or local agency is warranted, and to assist
41 in such investigations, if requested by such federal, state, or local
42 agency;

43 (d) prepare and release to the public written reports of investi-
44 gations, as appropriate and to the extent permitted by law, subject to
45 redaction to protect the confidentiality of witnesses and other informa-
46 tion that would be exempt from disclosure under article six of the
47 public officers law. The release of all or portions of such reports may
48 be temporarily deferred to protect the confidentiality of ongoing inves-
49 tigations;

50 (e) review and examine periodically the policies and procedures of
51 covered agencies with regard to the prevention and detection of
52 corruption, fraud, use of excessive force, criminal activity, conflicts
53 of interest and abuse;

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

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

5 (h) on an annual basis, submit to the governor, the attorney general,
6 the temporary president of the senate, the speaker of the assembly, the
7 minority leader of the senate and the minority leader of the assembly,
8 no later than December thirty-first, a report summarizing the activities
9 of the director and recommending specific changes to state law to
10 further the mission of the law enforcement misconduct investigative
11 office.

12 4. Powers. The director shall have the power to:

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

14 (b) administer oaths or affirmations and examine witnesses under oath;

15 (c) require the production of any books and papers deemed relevant or
16 material to any investigation, examination or review;

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

20 (e) require any officer or employee in a covered agency to answer
21 questions concerning any matter related to the performance of his or her
22 official duties. No statement or other evidence derived therefrom may be
23 used against such officer or employee in any subsequent criminal prose-
24 cution other than for perjury or contempt arising from such testimony.
25 The refusal of any officer or employee to answer questions shall be
26 cause for removal from office or employment or other appropriate penal-
27 ty;

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

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

32 5. Responsibilities of covered agencies, officers and employees. (a)
33 Every officer or employee in a covered agency shall report promptly to
34 the law enforcement misconduct investigative office any information
35 concerning corruption, fraud, use of excessive force, criminal activity,
36 conflicts of interest or abuse by another officer or employee relating
37 to his or her office or employment, or by a person having business deal-
38 ings with a covered agency relating to those dealings. The knowing fail-
39 ure of any officer or employee to so report shall be cause for removal
40 from office or employment or other appropriate penalty. Any officer or
41 employee who acts pursuant to this subdivision by reporting to the law
42 enforcement misconduct investigative office shall not be subject to
43 dismissal, discipline or other adverse personnel action.

44 (b) Upon receiving at least five complaints from five or more individ-
45 uals relating to at least five separate incidents involving a certain
46 officer or employee within two years, the head of any covered agency
47 shall refer such complaints to the law enforcement misconduct investi-
48 gative office for review. The law enforcement misconduct investigative
49 office shall investigate such complaints to determine whether the
50 subject officer or employee has engaged in a pattern or practice of
51 misconduct, use of excessive force, or acts of dishonesty. The referral
52 and investigation pursuant to this subdivision shall be in addition to
53 and shall not supersede any civil, criminal, administrative or other
54 action or proceeding relating to such complaints or the subject officer
55 or employee.

1 (c) The head of any covered agency shall advise the governor, the
2 temporary president of the senate, the speaker of the assembly, the
3 minority leader of the senate and the minority leader of the assembly
4 within ninety days of the issuance of a report by the law enforcement
5 misconduct investigative office as to the remedial action that the agen-
6 cy has taken in response to any recommendation for such action contained
7 in such report.

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

12 § 2. Section 53 of the executive law is amended by adding a new subdivi-
13 sion 1-a to read as follows:

14 1-a. receive and investigate complaints from any source, or upon his
15 or her own initiative, concerning allegations of corruption, fraud, use
16 of excessive force, criminal activity, conflicts of interest or abuse by
17 any police officer in a covered agency.

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

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

25 § 4. Paragraph a of subdivision 6 of article 4 of section 1 of chapter
26 154 of the laws of 1921 relating to the port authority of New York and
27 New Jersey, as amended by chapter 559 of the laws of 2015, is amended to
28 read as follows:

29 a. The inspector general shall be responsible for receiving and inves-
30 tigating, where appropriate, all complaints regarding fraud, waste, and
31 abuse by commissioners, officers, and employees of the port authority or
32 third-parties doing business with the port authority. The inspector
33 general shall also receive and investigate complaints from any source,
34 or upon his or her own initiative, concerning allegations of corruption,
35 fraud, use of excessive force, criminal activity, conflicts of interest
36 or abuse by any police officer under the jurisdiction of the Port
37 Authority. The inspector general shall also be responsible for conduct-
38 ing investigations upon the inspector general's own initiative, as the
39 inspector general shall deem appropriate.

40 § 5. Severability clause. If any clause, sentence, paragraph, subdivi-
41 sion, section or part of this act shall be adjudged by any court of
42 competent jurisdiction to be invalid, such judgment shall not affect,
43 impair, or invalidate the remainder thereof, but shall be confined in
44 its operation to the clause, sentence, paragraph, subdivision, section
45 or part thereof directly involved in the controversy in which such judg-
46 ment shall have been rendered. It is hereby declared to be the intent of
47 the legislature that this act would have been enacted even if such
48 invalid provisions had not been included herein.

49 § 6. This act shall take effect on the first of April next succeeding
50 the date on which it shall have become a law, provided however, that
51 section four of this act shall take effect upon the enactment into law
52 by the state of New Jersey of legislation having an identical effect
53 with this act, but if the state of New Jersey shall have already enacted
54 such legislation, this act shall take effect immediately; provided that
55 the attorney general shall notify the legislative bill drafting commis-
56 sion upon the occurrence of the enactment of the legislation provided

1 for in section four of this act in order that the commission may main-
2 tain an accurate and timely effective data base of the official text of
3 the laws of the state of New York in furtherance of effectuating the
4 provisions of section 44 of the legislative law and section 70-b of the
5 public officers law.