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:

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

§ 75. Law enforcement misconduct investigative office. 1. Jurisdiction. This section shall, subject to the limitations contained in this section, confer upon the law enforcement misconduct investigative office jurisdiction over all covered agencies. For the purposes of this section "covered agency" means a police agency or department of the state or any political subdivision thereof, including authorities or agencies maintaining a police force or police forces of individuals defined as police officers in section 1.20 of the criminal procedure law, provided however, covered agency does not include any agency under the jurisdiction of the state inspector general pursuant to article four-A of the executive law, the metropolitan transportation authority inspector general pursuant to section one thousand two hundred seventy-nine of the public authorities law, or the port authority inspector general pursuant to chapter one hundred fifty-four of the laws of nineteen twenty-one. 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.

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

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

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

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

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

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

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

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

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

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

(d) prepare and release to the public written reports of investigations, as appropriate and to the extent permitted by law, subject to redaction to protect the confidentiality of witnesses and other information that would be exempt from disclosure under article six of the public officers law. The release of all or portions of such reports may be temporarily deferred to protect the confidentiality of ongoing investigations;

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

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

(g) investigate patterns, practices, systemic issues, or trends identified by analyzing actions, claims, complaints, and investigations, including, but not limited to, any patterns or trends regarding departments, precincts, and commands; and

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

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

(a) subpoena and enforce the attendance of witnesses;

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

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

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

(e) require any officer or employee in a covered agency to answer questions concerning any matter related to the performance of his or her official duties. No statement or other evidence derived therefrom may be used against such officer or employee in any subsequent criminal prosecution other than for perjury or contempt arising from such testimony. The refusal of any officer or employee to answer questions shall be cause for removal from office or employment or other appropriate penalty;

(f) monitor the implementation by covered agencies of any recommendations made by the law enforcement misconduct investigative office; and

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

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

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

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

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

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

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

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

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

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

a. The inspector general shall be responsible for receiving and investigating, where appropriate, all complaints regarding fraud, waste, and abuse by commissioners, officers, and employees of the port authority or third-parties doing business with the port authority. The inspector general shall also receive and investigate complaints from any source, or upon his or her own initiative, concerning allegations of corruption, fraud, use of excessive force, criminal activity, conflicts of interest or abuse by any police officer under the jurisdiction of the Port Authority. The inspector general shall also be responsible for conducting investigations upon the inspector general's own initiative, as the inspector general shall deem appropriate.

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

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

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