

# STATE OF NEW YORK

3595--C

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 -- 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 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

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

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1 covered agency is a board, commission, a public authority or public  
2 benefit corporation, the head of the agency is the chairperson 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 a deputy attorney general who shall  
6 be appointed by the attorney general.

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

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

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

23 3. Functions and duties. The deputy attorney general shall have the  
24 following duties and responsibilities:

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

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

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

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

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

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

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

55 (h) on an annual basis, submit to the governor, the attorney general,  
56 the temporary president of the senate, the speaker of the assembly, the

1 minority leader of the senate and the minority leader of the assembly,  
2 no later than December thirty-first, a report summarizing the activities  
3 of the office and recommending specific changes to state law to further  
4 the mission of the law enforcement misconduct investigative office.

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

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

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

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

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

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

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

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

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

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

49 (c) The head of any covered agency shall advise the governor, the  
50 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 within ninety days of the issuance of a report by the law enforcement  
53 misconduct investigative office as to the remedial action that the agen-  
54 cy has taken in response to any recommendation for such action contained  
55 in such report.

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

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

7 1-a. receive and investigate complaints from any source, or upon his  
8 or her own initiative, concerning allegations of corruption, fraud, use  
9 of excessive force, criminal activity, conflicts of interest or abuse by  
10 any police officer in a covered agency.

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

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

18 § 4. Paragraph a of subdivision 6 of article 4 of section 1 of chapter  
19 154 of the laws of 1921 relating to the port authority of New York and  
20 New Jersey, as amended by chapter 559 of the laws of 2015, is amended to  
21 read as follows:

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

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

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