

STATUS:

S5879 SERRANO Same as [A 8941](#) Gianaris

State Finance Law

TITLE....Establishes the office of the federal stimulus ombudsman

06/15/09 REFERRED TO RULES

SUMMARY:

SERRANO

Add Art 8-A SS130 - 130-f, St Fin L

Establishes the office of the federal stimulus ombudsman.

BILL TEXT:

STATE OF NEW YORK

5879

2009-2010 Regular Sessions

IN SENATE

June 15, 2009

Introduced by Sen. SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the state finance law, in relation to establishing the office of the federal stimulus ombudsman

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

1 Section 1. The state finance law is amended by adding a new article
2 8-A to read as follows:

3 ARTICLE VIII-A
4 COMMISSION ON NOMINATION FOR THE FEDERAL
5 STIMULUS OMBUDSMAN

6 Section 130. Legislative intent.

7 130-a. Definitions.

8 130-b. Commission on nomination for the federal stimulus ombuds-
9 man.

10 130-c. Responsibilities and duties of the commission.

11 130-d. Federal stimulus ombudsman.

12 130-e. General functions, powers and duties of the office of the
13 federal stimulus ombudsman.

14 130-f. Agency requirement.

15 § 130. Legislative intent. 1. The state of New York has received
16 billions of dollars through the American Recovery and Reinvestment Act
17 of 2009 (Recovery Act) which is meant to revitalize the state's economy.
18 The general health and welfare of each citizen of the state is enhanced
19 and promoted by having a vibrant and robust economy.

- 20 It is further declared that the Recovery Act intended to:
21 (a) preserve and create jobs and promote economic recovery;
22 (b) assist those most impacted by the recession;
23 (c) provide investments needed to increase economic efficiency by
24 spurring technological advances in science and health;

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

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1 (d) invest in transportation, environmental protection, and other
2 infrastructure that will provide long-term economic benefits; and

3 (e) stabilize state and local government budgets, in order to minimize
4 and avoid reductions in essential services and counterproductive state
5 and local tax increases.

6 2. It is further declared that the governor of this great state has
7 done an exceptional job securing billions of dollars in funding under
8 the Recovery Act, and the governor should have all the assistance possi-
9 ble to ensure that federal stimulus money is being disbursed in a way
10 that will invigorate the state's economy, preserve and create jobs,
11 further the well-being of all of New York's communities and households
12 and seek those other intentions laid out by the United States Congress
13 in the Recovery Act and signed by President Barack Obama.

14 § 130-a. Definitions. For the purpose of this article, the following
15 terms shall have the following meanings:

16 1. "Commission" means the commission on nomination for the federal
17 stimulus ombudsman.

18 2. "Candidate" means a person who is duly qualified to act in the
19 capacity as the federal stimulus ombudsman and (a) who has requested the
20 commission to consider his qualifications to hold such office; or (b)
21 who has been recommended for consideration by the commission by another
22 person; or (c) who has agreed to be considered by the commission at the
23 commission's request.

24 3. "Ombudsman" means the head of the office of the federal stimulus
25 ombudsman as provided in section one hundred thirty-d of this article.

26 4. "Recovery Act" shall mean the American Recovery and Reinvestment
27 Act of 2009 signed by President Barack Obama in February two thousand
28 nine and any subsequent reappropriations, reallocations, reauthori-
29 zations, extensions or additions to such funding that the ombudsman
30 determines are intended to continue or further the purposes of the
31 Recovery Act.

32 5. "Agency" means any department, board, bureau, commission, division,
33 office, council, committee or officer of the state, or a public benefit
34 corporation or public authority at least one of whose members is
35 appointed by the governor, but shall not include the governor, agencies
36 in the legislative and judicial branches, or agencies created by inter-
37 state compact or international agreement.

38 § 130-b. Commission on nomination for the federal stimulus ombudsman.

39 1. There is hereby established a state commission to be known as the
40 commission on nomination for the federal stimulus ombudsman. The commis-
41 sion shall consist of nine members three of whom shall be appointed by
42 the governor, one by the temporary president of the senate, one by the
43 minority leader of the senate, one by the speaker of the assembly, one
44 by the minority leader of the assembly, one by the New York state attor-
45 ney general and one by the New York state comptroller. Of the three
46 members appointed by the governor, no more than two shall belong to the
47 same political party and no members shall be public officers or hold any
48 public office, elected or appointed. No member shall be a member of the
49 legislature, a candidate for membership to the legislature, a political
50 party chairman as defined in paragraph (k) of subdivision one of section
51 seventy-three of the public officers law, or a lobbyist as defined in
52 subdivision (a) of section one-c of the legislative law.

53 2. Each appointing officer shall appoint a member to the commission
54 within thirty days of the effective date of the chapter of the laws of
55 two thousand nine which added this section.

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1 3. A vacancy shall be deemed to occur immediately upon the appointment
2 or election of any member to an office that would disqualify him for
3 appointment to the commission.

4 4. A vacancy occurring for any reason shall be filled by the appoint-
5 ing officer for the remainder of the unexpired term.

6 5. Members of the commission shall be reimbursed for their reasonable
7 expenses incurred in performance of their duties as a member of the
8 commission.

9 § 130-c. Responsibilities and duties of the commission. The commission
10 shall:

11 1. Consider and evaluate the qualifications for appointment to the
12 office of the federal stimulus ombudsman, and shall recommend to the
13 governor persons who by their character, temperament, professional apti-
14 tude and experience are well qualified to hold such an office.

15 2. Conduct investigations, administer oaths or affirmations, subpoena
16 witnesses and compel their attendance, examine them under oath or affir-
17 mation and require the production of any books, records, documents or
18 other evidence that it may deem relevant or material to its evaluation
19 of candidates.

20 3. Require the appearance of any candidate to come before the commis-
21 sion prior to recommending said person to the governor.

22 4. Transmit its recommendations to the governor in a single written
23 report which shall be made available to the public by the commission at
24 the time it is submitted to the governor. The report shall be signed by
25 all members of the commission, and shall include the commission's find-
26 ings relating to the character, temperament, professional aptitude,
27 experience, qualifications and fitness for office of each candidate who
28 is recommended to the governor.

29 5. Not recommend a person to the governor who has not consented to be
30 a candidate, who has not been personally interviewed by a quorum of the
31 membership of the commission, and who has not filed a financial state-
32 ment with the commission, on a form to be prescribed by the commission.
33 The financial statement shall consist of a sworn statement of the
34 person's assets, liabilities and sources of income, and any other rele-
35 vant financial information which the commission may require. The commis-
36 sion shall transmit to the governor the financial statement filed by
37 each person who is recommended. The governor shall make available to the
38 public the financial statement filed by the person who is appointed to
39 fill a vacancy. The financial statement filed by all other persons
40 recommended to the governor, but not appointed by him, shall be confi-
41 dential.

42 6. In recognition of the unique responsibilities of the ombudsman
43 recommend to the governor three persons. Each recommendation of the
44 commission shall require the concurrence of seven members of the commis-
45 sion; provided, however, that if seven or more members of the commission
46 concur on fewer than three recommendations, the remainder shall require
47 the concurrence of six members of the commission. If six or more members
48 concur on fewer than three recommendations, the remainder shall require
49 the concurrence of five members of the commission.

50 7. The nominations by the commission shall take place not later than
51 forty days from the effective date of the chapter of the laws of two
52 thousand nine which added this section, and the appointment by the
53 governor shall take place not later than twenty days after receiving the
54 nominations from the commission.

55 § 130-d. Federal stimulus ombudsman. 1. There is hereby established
56 the office of the federal stimulus ombudsman.

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1 2. The head of the office of the federal stimulus ombudsman shall be
2 known as the "ombudsman," and shall be appointed by the governor, with
3 the procedures set forth for the nominating commission.

4 3. The ombudsman may appoint such deputies, directors, assistants and
5 other officers and employees as may be needed for the performance of his
6 duties and may prescribe their powers and duties and fix their compen-
7 sation within the amounts appropriated therefor.

8 4. The principal office shall be in the county of Albany in a location
9 as established by the governor.

10 5. The ombudsman shall receive an annual salary not to exceed one
11 hundred twenty-five thousand dollars.

12 6. The ombudsman's term of service shall expire on January thirty-
13 first, two thousand thirteen, subject to removal by the governor for
14 substantial neglect of duty, gross misconduct in office, inability to
15 discharge the powers or duties of office or violation of this section,
16 after written notice and opportunity for a reply.

17 7. The office of the federal stimulus ombudsman shall exist until
18 January thirty-first, two thousand thirteen at which time the office
19 shall close unless extended by the legislature.

20 8. There shall be an interactive website established by the ombudsman.
21 The website shall contain information supporting the reports released by
22 the ombudsman reviewing each agency. The office of technology shall
23 provide necessary assistance to ensure that such website be created.

24 9. The budget for the office of the federal stimulus ombudsman shall
25 be maintained through a portion of the funds available under the Recov-
26 ery Act.

27 § 130-e. General functions, powers and duties of the office of the
28 federal stimulus ombudsman. Under this section, the office of the feder-
29 al stimulus ombudsman shall have the power:

30 1. To coordinate and develop policies, planning and programs related
31 to all funding allocated or made available to the state of New York
32 under the Recovery Act and any subsequent reappropriations, reallo-
33 cations, reauthorizations, extensions or additions to such funding that
34 the ombudsman determines are intended to continue or further the
35 purposes of the Recovery Act.

36 2. To review and monitor the plans and programs that will be used by
37 the state to disburse or distribute funding under the Recovery Act and
38 any subsequent reappropriations, reallocations, reauthorizations, exten-
39 sions or additions to such funding that the ombudsman determines are
40 intended to continue or further the purposes of the Recovery Act.

41 3. To establish standards and performance measures to be used by the
42 ombudsman in the evaluation of funding decisions and outcomes. Such
43 standards and performance measures shall not be deemed to be rules and
44 shall not be subject to the state administrative procedure act;
45 provided, however, that prior to establishing or amending any standard
46 or performance measure, the ombudsman shall publish a draft version in
47 the State Register and on the website provided for in subdivision eight
48 of section one hundred thirty-d of this article and shall solicit public
49 comment thereon for a period of not less than thirty days. Such stand-
50 ards and performance measures shall seek to ensure that federal funding
51 under the Recovery Act is being used to further the goals of the Recov-
52 ery Act as well as those set forth in section one hundred thirty of this
53 article. Performance measures under this section shall include, but not
54 be limited to, evaluating if funding made available under the Recovery
55 Act has been invested effectively:

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- 1 (a) to preserve and create jobs and promote economic recovery, and the
2 quality of those jobs, the segments of the New York population that
3 received those jobs, the benefits offered in conjunction with the jobs
4 and other economic indicators;
5 (b) to assist those most impacted by the recession;
6 (c) to provide investments needed to increase economic efficiency by
7 spurring technological advances in science and health;
8 (d) to invest in transportation, environmental protection, and other
9 infrastructure that will provide long-term economic benefits and if
10 early indications of such long-term growth are apparent; and
11 (e) to stabilize state and local government budgets, in order to mini-
12 mize and avoid reductions in essential services and counterproductive
13 state and local tax increases.
- 14 4. To request and receive from any agency information and resources
15 necessary to carry out the responsibilities and provisions set forth in
16 this article.
- 17 5. To enter into contracts with any person, firm, partnership, limited
18 liability company, corporation, not-for-profit corporation, or govern-
19 mental entity.
- 20 6. To use monies made available to it from any source, and to accept,
21 as agent of the state, any gift, grant, devise or bequest, whether
22 conditional or unconditional, including federal grants, for the purpose
23 of implementing the provisions of this article.
- 24 7. To conduct investigations, administer oaths or affirmations,
25 subpoena witnesses and compel their attendance, examine them under oath
26 or affirmation and require the production of any books, records, docu-
27 ments or other evidence that it may deem relevant or material to its
28 evaluation of performance measures.
- 29 8. To determine whether additional legislation or procedures are
30 necessary or would be beneficial to effectively disburse funds made
31 available to New York state under the Recovery Act in order to further
32 the goals of this section.
- 33 9. To review accountability measures and make any such recommendations
34 as may be necessary to the governor and the state legislature in order
35 to support the goals of the Recovery Act and to further the goals of
36 this section.
- 37 10. To conduct reviews of all state agencies receiving federal stimu-
38 lus funding in order to utilize the performance measures. The ombudsman
39 shall issue a report of each state agency receiving such funds on an
40 annual basis and make those reviews publicly available on the internet,
41 as well as to the governor, the state legislature, the comptroller and
42 the attorney general. The report shall detail the effectiveness of the
43 agency's investments made possible by the Recovery Act. Each agency
44 shall have an opportunity to review the ombudsman's report before it is
45 released and provide a response in writing to said draft. Any such
46 written response provided by an agency shall be included, in its entire-
47 ty, in the ombudsman's report.
- 48 11. To advise the governor, the legislature and agencies on opportu-
49 nities to improve the effectiveness of disbursement of Recovery Act
50 funds.
- 51 12. To refer all instances of waste, fraud, and abuse discovered by
52 the ombudsman to the office of the New York state attorney general or
53 other appropriate law enforcement bodies.
- 54 13. To examine other spending programs, including but not limited to
55 other agency programs and local government allocations of Recovery Act

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1 funding, that may duplicate, overlap or conflict with agency disburse-
2 ments of Recovery Act funds.

3 14. To perform any other functions that are necessary or appropriate
4 to fulfill the duties and responsibilities of the office of the federal
5 stimulus ombudsman.

6 § 130-f. Agency requirement. 1. Every agency receiving funds under the
7 Recovery Act and subsequent federal funding which the ombudsman deter-
8 mines to be of substantially equivalent intent by the Congress shall:

9 (a) provide, upon request, to the ombudsman all reports, documents,
10 budgets, proposed policies, data, estimates, statistics and other docu-
11 ments and materials relating to the disbursement, distribution and
12 expenditure of funds received under the Recovery Act and subsequent
13 federal funding which the ombudsman determines to be of substantially
14 equivalent intent by the Congress;

15 (b) notify the ombudsman, upon request, of the transfer of funds from
16 one fund or account to another;

17 (c) provide the ombudsman, upon request, with detailed information
18 about the programs, plans or mechanisms it will use to disburse or
19 distribute funds received, including any qualitative or oversight mech-
20 anisms;

21 (d) inform, upon request, the ombudsman of standards and performance
22 measures proposed to be included, or which have been included, in appro-
23 priations, contracts, programs, plans and mechanisms to disburse or
24 distribute funds received; and

25 (e) inform the ombudsman, upon request, of the hiring of additional
26 personnel to implement programs funded under the Recovery Act.

27 2. At a minimum, the ombudsman shall request from the following agen-
28 cies all information specified in paragraph (a) of subdivision one of
29 this section, and such information as specified in paragraphs (b), (c),
30 (d), and (e) of subdivision one of this section as the ombudsman deems
31 appropriate, and shall be provided with all such information in a timely
32 manner by:

33 (a) the department of transportation;

34 (b) the department of health;

35 (c) the state education department;

36 (d) the office of temporary and disability assistance;

37 (e) the office of children and family services;

38 (f) the division of housing and community renewal;

39 (g) the department of economic development;

40 (h) the empire state development corporation;

41 (i) the department of environmental conservation;

42 (j) the New York state energy research and development authority; and

43 (k) the New York power authority.

44 § 2. This act shall take effect immediately.