

5612--A

2015-2016 Regular Sessions

I N S E N A T E

May 19, 2015

Introduced by Sen. LATIMER -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public officers law, in relation to enacting the integrity in government act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be cited as the "integrity
2 in government act".
3 S 2. Paragraph (a) of subdivision 1 of section 89 of the public offi-
4 cers law, as amended by chapter 33 of the laws of 1984, is amended and
5 six new paragraphs (c), (d), (e), (f), (g) and (h) are added to read as
6 follows:
7 (a) The committee on open government is continued and shall consist of
8 the lieutenant governor or the delegate of such officer, the secretary
9 of state or the delegate of such officer, whose office shall act as
10 secretariat for the committee, the commissioner of the office of general
11 services or the delegate of such officer, the director of the budget or
12 the delegate of such officer, and seven other persons, none of whom
13 shall hold any other state or local public office except the represen-
14 tative of local governments as set forth herein, to be appointed as
15 follows: five by the governor, at least two of whom are or have been
16 representatives of the news media, one of whom shall be a representative
17 of local government who, at the time of appointment, is serving as a
18 duly elected officer of a local government, one by the temporary presi-
19 dent of the senate, and one by the speaker of the assembly. The persons
20 appointed by the temporary president of the senate and the speaker of
21 the assembly shall be appointed to serve, respectively, until the expi-

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

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1 ration of the terms of office of the temporary president and the speaker
2 to which the temporary president and speaker were elected. The four
3 persons presently serving by appointment of the governor for fixed terms
4 shall continue to serve until the expiration of their respective terms.
5 Thereafter, their respective successors shall be appointed for terms of
6 four years. The member representing local government shall be appointed
7 for a term of four years, so long as such member shall remain a duly
8 elected officer of a local government. The committee shall hold no less
9 than two meetings annually, but may meet at any time. The members of the
10 committee shall be entitled to reimbursement for actual expenses
11 incurred in the discharge of their duties. THE EXECUTIVE DIRECTOR OF
12 THE COMMITTEE SHALL MAINTAIN A PERMANENT OFFICE IN ALBANY IN SUCH SUIT-
13 ABLE SPACE AS THE COMMISSIONER OF THE DEPARTMENT OF STATE PROVIDES. ALL
14 PAPERS REQUIRED TO BE FILED WITH OR SERVED UPON THE COMMITTEE SHALL BE
15 DELIVERED TO SUCH OFFICE. EACH MEMBER SHALL RECEIVE TWO HUNDRED DOLLARS
16 PER DAY FOR EACH DAY SUCH MEMBER IS PRESENT AT A COMMITTEE HEARING OR
17 MEETING, AND SHALL BE ENTITLED TO REIMBURSEMENT FOR ACTUAL AND NECESSARY
18 EXPENSES INCURRED IN CONNECTION THEREWITH.

19 (C) THE COMMITTEE SHALL, SUBJECT TO THE CIVIL SERVICE LAW, EMPLOY SUCH
20 EMPLOYEES AS MAY BE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS
21 SECTION. THE COMMITTEE MAY ENTER INTO SUCH CONTRACTUAL AGREEMENTS AS MAY
22 BE NECESSARY FOR THE DISCHARGE OF ITS DUTIES, WITHIN THE LIMITS OF ITS
23 APPROPRIATED FUNDS AND IN ACCORDANCE WITH ESTABLISHED PROCEDURES.

24 (D) I. ANY PERSON DENIED THE RIGHT TO INSPECT OR COPY RECORDS, DENIED
25 THE RIGHT TO ATTEND ANY MEETING OF A PUBLIC AGENCY OR DENIED ANY OTHER
26 RIGHT CONFERRED BY THIS ARTICLE AND ARTICLE SEVEN OF THIS CHAPTER MAY
27 APPEAL THEREFROM TO THE COMMITTEE BY FILING A NOTICE OF APPEAL WITH THE
28 COMMITTEE. A NOTICE OF APPEAL SHALL BE FILED NOT LATER THAN THIRTY DAYS
29 AFTER SUCH DENIAL, EXCEPT IN THE CASE OF AN UNNOTICED OR SECRET MEETING,
30 IN WHICH CASE THE APPEAL SHALL BE FILED NOT LATER THAN THIRTY DAYS AFTER
31 THE PERSON FILING THE APPEAL RECEIVES NOTICE IN FACT THAT SUCH MEETING
32 WAS HELD. FOR PURPOSES OF THIS PARAGRAPH, SUCH NOTICE OF APPEAL SHALL BE
33 DEEMED TO BE FILED ON THE DATE IT IS RECEIVED BY SAID COMMITTEE OR ON
34 THE DATE IT IS POSTMARKED, IF RECEIVED MORE THAN THIRTY DAYS AFTER THE
35 DATE OF THE DENIAL FROM WHICH SUCH APPEAL IS TAKEN.

36 II. UPON RECEIPT OF SUCH NOTICE, THE COMMITTEE SHALL SERVE UPON ALL
37 PARTIES, BY CERTIFIED OR REGISTERED MAIL, A COPY OF SUCH NOTICE TOGETHER
38 WITH ANY OTHER NOTICE OR ORDER OF SUCH COMMITTEE. IN THE CASE OF THE
39 DENIAL OF A REQUEST TO INSPECT OR COPY RECORDS CONTAINED IN A PUBLIC
40 EMPLOYEE'S PERSONNEL OR MEDICAL FILE, THE COMMITTEE SHALL INCLUDE WITH
41 ITS NOTICE OR ORDER AN ORDER REQUIRING THE PUBLIC AGENCY TO NOTIFY ANY
42 EMPLOYEE WHOSE RECORDS ARE SUBJECT OF AN APPEAL, AND THE EMPLOYEE'S
43 COLLECTIVE BARGAINING REPRESENTATIVE, IF ANY, OF THE COMMITTEE'S
44 PROCEEDINGS AND, IF ANY SUCH EMPLOYEE OR COLLECTIVE BARGAINING REPRESENTATIVE HAS FILED AN OBJECTION, THE AGENCY SHALL PROVIDE THE REQUIRED
45 NOTICE TO SUCH EMPLOYEE AND COLLECTIVE BARGAINING REPRESENTATIVE BY
46 CERTIFIED MAIL, RETURN RECEIPT REQUESTED OR BY HAND DELIVERY WITH A
47 SIGNED RECEIPT. A PUBLIC EMPLOYEE WHOSE PERSONNEL OR MEDICAL FILE IS THE
48 SUBJECT OF AN APPEAL MAY INTERVENE AS A PARTY IN THE PROCEEDINGS ON THE
49 MATTER BEFORE THE COMMITTEE.

51 (E) I. THE COMMITTEE SHALL, AFTER DUE NOTICE TO THE PARTIES AND
52 SUBJECT TO THE PROVISIONS OF THIS ARTICLE AND ARTICLE SEVEN OF THIS
53 CHAPTER, PROMPTLY REVIEW THE ALLEGED VIOLATION OF SAID ARTICLES. THE
54 COMMITTEE SHALL HAVE THE POWER TO INVESTIGATE ALL ALLEGED VIOLATIONS OF
55 THIS ARTICLE AND ARTICLE SEVEN OF THIS CHAPTER AND MAY FOR THE PURPOSE
56 OF INVESTIGATING ANY VIOLATION HOLD A HEARING, ADMINISTER OATHS, EXAMINE

1 WITNESSES, RECEIVE ORAL AND DOCUMENTARY EVIDENCE, HAVE THE POWER TO
2 SUBPOENA WITNESSES UNDER PROCEDURAL RULES ADOPTED BY THE COMMITTEE TO
3 COMPEL ATTENDANCE AND TO REQUIRE THE PRODUCTION FOR EXAMINATION OF ANY
4 BOOKS AND PAPERS WHICH THE COMMITTEE DEEMS RELEVANT IN ANY MATTER UNDER
5 INVESTIGATION OR IN QUESTION. IN CASE OF A REFUSAL TO COMPLY WITH ANY
6 SUCH SUBPOENA OR TO TESTIFY WITH RESPECT TO ANY MATTER UPON WHICH THAT
7 PERSON MAY BE LAWFULLY INTERROGATED, A COURT OF COMPETENT JURISDICTION,
8 ON APPLICATION OF THE COMMITTEE, MAY ISSUE AN ORDER REQUIRING SUCH
9 PERSON TO COMPLY WITH SUCH SUBPOENA AND TO TESTIFY; FAILURE TO OBEY ANY
10 SUCH ORDER OF THE COURT MAY BE PUNISHED BY THE COURT AS A CONTEMPT THER-
11 EOF.

12 II. THE COMMITTEE SHALL HEAR AND DECIDE EACH APPEAL WITHIN SIX MONTHS
13 AFTER THE FILING OF THE NOTICE OF APPEAL. THE COMMITTEE SHALL ADOPT
14 REGULATIONS ESTABLISHING CRITERIA FOR THOSE APPEALS WHICH SHALL BE PRIV-
15 ILEGED IN THEIR ASSIGNMENT FOR HEARING. ANY SUCH PRIVILEGED APPEAL SHALL
16 BE HEARD NOT LATER THAN THIRTY DAYS AFTER RECEIPT OF A NOTICE OF APPEAL
17 AND DECIDED NOT LATER THAN SIXTY DAYS AFTER A HEARING.

18 III. IF A NOTICE OF APPEAL CONCERNS AN ANNOUNCED AGENCY DECISION TO
19 MEET IN EXECUTIVE SESSION OR AN ONGOING AGENCY PRACTICE OF MEETING IN
20 EXECUTIVE SESSIONS, FOR A STATED PURPOSE, THE COMMITTEE OR A MEMBER OR
21 MEMBERS OF THE COMMITTEE DESIGNATED BY ITS CHAIRPERSON SHALL SERVE
22 NOTICE UPON THE PARTIES AND HOLD A PRELIMINARY HEARING ON THE APPEAL NOT
23 LATER THAN SEVENTY-TWO HOURS AFTER RECEIPT OF THE NOTICE, PROVIDED SUCH
24 NOTICE SHALL BE GIVEN TO THE PARTIES AT LEAST FORTY-EIGHT HOURS PRIOR TO
25 SUCH HEARING. DURING SUCH PRELIMINARY HEARING, THE COMMITTEE SHALL TAKE
26 EVIDENCE AND RECEIVE TESTIMONY FROM THE PARTIES. IF AFTER THE PRELIMI-
27 NARY HEARING THE COMMITTEE FINDS PROBABLE CAUSE TO BELIEVE THAT THE
28 AGENCY DECISION OR PRACTICE IS IN VIOLATION OF ARTICLE SEVEN OF THIS
29 CHAPTER, THE AGENCY SHALL NOT MEET IN EXECUTIVE SESSION FOR SUCH PURPOSE
30 UNTIL THE COMMITTEE DECIDES THE APPEAL. IF PROBABLE CAUSE IS FOUND BY
31 THE COMMITTEE, IT SHALL CONDUCT A FINAL HEARING ON THE APPEAL AND RENDER
32 ITS DECISION NOT LATER THAN FIVE DAYS AFTER THE COMPLETION OF THE
33 PRELIMINARY HEARING. SUCH DECISION SHALL SPECIFY THE COMMITTEE'S FIND-
34 INGS OF FACT AND CONCLUSIONS OF LAW.

35 IV. THE COMMITTEE, AT ITS DISCRETION, MAY ISSUE AN ORDER TO DISCONTIN-
36 UE ALL WORK RESULTING FROM AN ALLEGED VIOLATION OF THIS ARTICLE AND
37 ARTICLE SEVEN OF THIS CHAPTER IF IRREPARABLE HARM IS DEEMED TO POTEN-
38 Tially OCCUR. THIS ORDER WILL HOLD UNTIL A DECISION IS RENDERED BY THE
39 COMMITTEE ON THE ALLEGED VIOLATION.

40 (F) I. IN ANY APPEAL TO THE COMMITTEE, THE COMMITTEE MAY CONFIRM THE
41 ACTION OF THE AGENCY OR ORDER THE AGENCY TO PROVIDE RELIEF THAT THE
42 COMMITTEE, IN ITS DISCRETION, BELIEVES APPROPRIATE TO RECTIFY THE DENIAL
43 OF ANY RIGHT CONFERRED BY THIS ARTICLE AND ARTICLE SEVEN OF THIS CHAP-
44 TER. THE COMMITTEE MAY DECLARE NULL AND VOID ANY ACTION TAKEN AT ANY
45 MEETING WHICH A PERSON WAS DENIED THE RIGHT TO ATTEND AND MAY REQUIRE
46 THE PRODUCTION OR COPYING OF ANY PUBLIC RECORD. IN ADDITION, UPON FIND-
47 ING THAT A DENIAL OF ANY RIGHT CREATED BY THIS ARTICLE AND ARTICLE SEVEN
48 OF THIS CHAPTER WAS WITHOUT REASONABLE GROUNDS AND AFTER THE CUSTODIAN
49 OR OTHER OFFICIAL DIRECTLY RESPONSIBLE FOR THE DENIAL HAS BEEN GIVEN AN
50 OPPORTUNITY TO BE HEARD AT A HEARING CONDUCTED IN ACCORDANCE WITH ARTI-
51 CLE SEVEN OF THIS CHAPTER THE COMMITTEE MAY, IN ITS DISCRETION, IMPOSE
52 AGAINST THE CUSTODIAN OR OTHER OFFICIAL A CIVIL PENALTY OF NOT LESS THAN
53 TWENTY DOLLARS NOR MORE THAN ONE THOUSAND DOLLARS.

54 II. IF THE COMMITTEE FINDS THAT A PERSON HAS TAKEN AN APPEAL FRIVO-
55 LOUSLY, WITHOUT REASONABLE GROUNDS, AFTER SUCH PERSON HAS BEEN GIVEN AN
56 OPPORTUNITY TO BE HEARD AT A HEARING CONDUCTED IN ACCORDANCE WITH ARTI-

1 CLE SEVEN OF THIS CHAPTER, THE COMMITTEE MAY, IN ITS DISCRETION, IMPOSE
2 AGAINST THAT PERSON A CIVIL PENALTY OF NOT LESS THAN TWENTY DOLLARS NOR
3 MORE THAN ONE THOUSAND DOLLARS.

4 III. THE COMMITTEE SHALL NOTIFY A PERSON OF A PENALTY LEVIED AGAINST
5 HIM PURSUANT TO THIS SUBDIVISION BY WRITTEN NOTICE SENT BY CERTIFIED OR
6 REGISTERED MAIL. IF A PERSON FAILS TO PAY THE PENALTY WITHIN THIRTY DAYS
7 OF RECEIVING SUCH NOTICE, A COURT OF COMPETENT JURISDICTION SHALL, ON
8 APPLICATION OF THE COMMITTEE, ISSUE AN ORDER REQUIRING THE PERSON TO PAY
9 THE PENALTY IMPOSED.

10 IV. THE COMMITTEE SHALL PROVIDE DUE NOTICE TO THE PARTIES AND REVIEW
11 AFFIDAVITS AND WRITTEN ARGUMENTS THAT THE PARTIES MAY SUBMIT AND GRANT
12 OR DENY SUCH LEAVE SUMMARILY AT ITS NEXT REGULAR MEETING. THE COMMITTEE
13 SHALL GRANT SUCH LEAVE UNLESS IT FINDS THAT THE APPEAL: (A) DOES NOT
14 PRESENT A CLAIM WITHIN THE COMMITTEE'S JURISDICTION; (B) WOULD PERPE-
15 TRATE AN INJUSTICE; OR (C) WOULD CONSTITUTE AN ABUSE OF THE COMMITTEE'S
16 ADMINISTRATIVE PROCESS. ANY PARTY AGGRIEVED BY THE COMMITTEE'S DENIAL OF
17 SUCH LEAVE MAY APPLY TO A COURT OF COMPETENT JURISDICTION, WITHIN
18 FIFTEEN DAYS OF THE COMMITTEE MEETING AT WHICH SUCH LEAVE WAS DENIED,
19 FOR AN ORDER REQUIRING THE COMMITTEE TO HEAR SUCH APPEAL.

20 V. IN MAKING THE FINDINGS AND DETERMINATION, THE COMMITTEE SHALL
21 CONSIDER THE NATURE OF ANY JUSTICE OR ABUSE OF ADMINISTRATIVE PROCESS,
22 INCLUDING BUT NOT LIMITED TO: (A) THE NATURE, CONTENT, LANGUAGE OR
23 SUBJECT MATTER OF THE REQUEST OR THE APPEAL; (B) THE NATURE, CONTENT,
24 LANGUAGE OR SUBJECT MATTER TO PRIOR OR CONTEMPORANEOUS REQUESTS OR
25 APPEALS BY THE PERSON MAKING THE REQUEST OR TAKING THE APPEAL; AND (C)
26 THE NATURE, CONTENT, LANGUAGE OR SUBJECT MATTER OF OTHER VERBAL AND
27 WRITTEN COMMUNICATIONS TO ANY AGENCY OR ANY OFFICIAL OF ANY AGENCY FROM
28 THE PERSON MAKING THE REQUEST OR TAKING THE APPEAL.

29 VI. NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, IN
30 THE CASE OF AN APPEAL TO THE COMMITTEE OF A DENIAL BY A PUBLIC AGENCY,
31 THE COMMITTEE MAY, UPON MOTION OF SUCH AGENCY, CONFIRM THE ACTION OF THE
32 AGENCY AND DISMISS THE APPEAL WITHOUT A HEARING IF IT FINDS, AFTER EXAM-
33 INING THE NOTICE OF APPEAL AND CONSTRUING ALL ALLEGATIONS MOST FAVORABLY
34 TO THE APPELLANT, THAT (A) THE AGENCY HAS NOT VIOLATED THIS ARTICLE AND
35 ARTICLE SEVEN OF THIS CHAPTER OR (B) THE AGENCY HAS COMMITTED A TECHNI-
36 CAL VIOLATION THAT CONSTITUTES A HARMLESS ERROR THAT DOES NOT INFRINGE
37 THE APPELLANT'S RIGHTS.

38 (G) I. IF IN THE JUDGMENT OF THE COMMITTEE CIRCUMSTANCES SO WARRANT,
39 IT MAY AT ANY TIME AFTER THE FILING OF A NOTICE OF APPEAL ENDEAVOR TO
40 RESOLVE THE APPEAL BY ANY METHOD OF DISPUTE RESOLUTION PRESCRIBED BY
41 RULE OF THE COMMITTEE INCLUDING, BUT NOT LIMITED TO, MEDIATION.

42 II. THE TERMS OF ANY MEDIATION AGREEMENT MAY CONTAIN SUCH PROVISIONS
43 AS MAY BE AGREED UPON BY THE COMMITTEE, THE APPELLANT AND THE RESPOND-
44 ENT.

45 III. THE MEMBERS OF THE COMMITTEE AND ITS STAFF SHALL NOT PUBLICLY
46 DISCLOSE WHAT TRANSPIRED IN THE COURSE OF MEDIATION EFFORTS.

47 IV. IF A MEDIATION AGREEMENT IS ENTERED INTO, THE COMMITTEE SHALL
48 EMBODY SUCH AGREEMENT IN AN ORDER AND SERVE A COPY OF SUCH ORDER UPON
49 ALL PARTIES TO THE AGREEMENT. VIOLATION OF SUCH AN ORDER MAY CAUSE THE
50 IMPOSITION OF CIVIL PENALTIES.

51 (H) ANY PARTY AGGRIEVED BY THE DECISION OF SAID COMMITTEE MAY APPEAL
52 TO THE JUDICIARY THEREFROM, THE COURT MAY CONDUCT AN IN CAMERA REVIEW OF
53 THE ORIGINAL OR A CERTIFIED COPY OF THE RECORDS WHICH ARE AT ISSUE IN
54 THE APPEAL BUT WERE NOT INCLUDED IN THE RECORD OF THE COMMITTEE'S
55 PROCEEDINGS, ADMIT THE RECORDS INTO EVIDENCE AND ORDER THE RECORDS TO BE
56 SEALED OR INSPECTED ON SUCH TERMS AS THE COURT DEEMS FAIR AND APPROPRI-

1 ATE, DURING THE APPEAL. THE COMMITTEE SHALL HAVE STANDING TO DEFEND,
2 PROSECUTE OR OTHERWISE PARTICIPATE IN ANY APPEAL OF ANY OF ITS DECISIONS
3 AND TO TAKE AN APPEAL FROM ANY JUDICIAL DECISION OVERTURNING OR MODIFY-
4 ING A DECISION OF THE COMMITTEE. IF AGREEMENT IS A JURISDICTIONAL
5 PREREQUISITE TO THE COMMITTEE TAKING ANY SUCH APPEAL, THE COMMITTEE
6 SHALL BE DEEMED TO BE AGGRIEVED. LEGAL COUNSEL EMPLOYED OR RETAINED BY
7 SAID COMMITTEE SHALL REPRESENT SAID COMMITTEE IN ALL SUCH APPEALS AND IN
8 ANY OTHER LITIGATION AFFECTING SAID COMMITTEE. ANY APPEAL TAKEN PURSU-
9 ANT TO THIS SECTION SHALL BE PRIVILEGED IN RESPECT TO ITS ASSIGNMENT FOR
10 TRIAL OVER ALL OTHER ACTIONS EXCEPT WRITS OF HABEAS CORPUS AND ACTIONS
11 BROUGHT BY OR ON BEHALF OF THE STATE, INCLUDING INFORMATION ON THE
12 RELATION OF PRIVATE INDIVIDUALS. IF THE COURT FINDS THAT ANY APPEAL
13 TAKEN PURSUANT TO THIS SECTION IS FRIVOLOUS OR TAKEN SOLELY FOR THE
14 PURPOSE OF DELAY, IT SHALL ORDER THE PARTY RESPONSIBLE THEREFOR TO PAY
15 TO THE PARTY INJURED BY SUCH FRIVOLOUS OR DILATORY APPEAL COSTS OR
16 ATTORNEY'S FEES OF NOT MORE THAN ONE THOUSAND DOLLARS. SUCH ORDER SHALL
17 BE IN ADDITION TO ANY OTHER REMEDY OR DISCIPLINARY ACTION REQUIRED OR
18 PERMITTED BY STATUTE OR BY RULES OF COURT.

19 S 3. Paragraphs (b) and (c) of subdivision 4 of section 89 of the
20 public officers law, paragraph (b) as amended by chapter 22 of the laws
21 of 2005 and paragraph (c) as amended by chapter 492 of the laws of 2006,
22 are amended to read as follows:

23 (b) Except as provided in subdivision five of this section, a person
24 denied access to a record in an appeal determination under the
25 provisions of paragraph (a) of this subdivision may [bring a proceeding
26 for review of such denial pursuant to article seventy-eight of the civil
27 practice law and rules. In the event that access to any record is denied
28 pursuant to the provisions of subdivision two of section eighty-seven of
29 this article, the agency involved shall have the burden of proving that
30 such record falls within the provisions of such subdivision two. Failure
31 by an agency to conform to the provisions of paragraph (a) of this
32 subdivision shall constitute a denial.

33 (c) The court in such a proceeding may assess, against such agency
34 involved, reasonable attorney's fees and other litigation costs reason-
35 ably incurred by such person in any case under the provisions of this
36 section in which such person has substantially prevailed, when:

37 i. the agency had no reasonable basis for denying access; or
38 ii. the agency failed to respond to a request or appeal within the
39 statutory time] APPEAL TO THE COMMITTEE ON OPEN GOVERNMENT PURSUANT TO
40 SUBDIVISION ONE OF THIS SECTION.

41 S 4. Section 107 of the public officers law, as added by chapter 511
42 of the laws of 1976, subdivision 1 as amended by chapter 44 of the laws
43 of 2010 and subdivision 2 as amended by chapter 397 of the laws of 2008
44 and such section as renumbered by chapter 652 of the laws of 1983, is
45 amended to read as follows:

46 S 107. Enforcement. [1.] Any aggrieved person shall have standing to
47 enforce the provisions of this article against a public body by the
48 commencement of [a proceeding pursuant to article seventy-eight of the
49 civil practice law and rules, or an action for declaratory judgment and
50 injunctive relief. In any such action or proceeding, if a court deter-
51 mines that a public body failed to comply with this article, the court
52 shall have the power, in its discretion, upon good cause shown, to
53 declare that the public body violated this article and/or declare the
54 action taken in relation to such violation void, in whole or in part,
55 without prejudice to reconsideration in compliance with this article. If
56 the court determines that a public body has violated this article, the

1 court may require the members of the public body to participate in a
2 training session concerning the obligations imposed by this article
3 conducted by the staff of the committee on open government.

4 An unintentional failure to fully comply with the notice provisions
5 required by this article shall not alone be grounds for invalidating any
6 action taken at a meeting of a public body. The provisions of this arti-
7 cle shall not affect the validity of the authorization, acquisition,
8 execution or disposition of a bond issue or notes.

9 2. In any proceeding brought pursuant to this section, costs and
10 reasonable attorney fees may be awarded by the court, in its discretion,
11 to the successful party. If a court determines that a vote was taken in
12 material violation of this article, or that substantial deliberations
13 relating thereto occurred in private prior to such vote, the court shall
14 award costs and reasonable attorney's fees to the successful petitioner,
15 unless there was a reasonable basis for a public body to believe that a
16 closed session could properly have been held.

17 3. The statute of limitations in an article seventy-eight proceeding
18 with respect to an action taken at executive session shall commence to
19 run from the date the minutes of such executive session have been made
20 available to the public] AN APPEAL TO THE COMMITTEE ON OPEN GOVERNMENT
21 PURSUANT TO SECTION EIGHTY-NINE OF THIS CHAPTER.

22 S 5. Paragraph (a) and the opening paragraph of paragraph (b) of
23 subdivision 1, paragraph (c) of subdivision 3, and paragraph (c) of
24 subdivision 4 of section 87 of the public officers law, paragraph (a)
25 and the opening paragraph of paragraph (b) of subdivision 1 as amended
26 by chapter 80 of the laws of 1983, paragraph (c) of subdivision 3 as
27 amended by chapter 499 of the laws of 2008, and paragraph (c) of subdi-
28 vision 4 as added by chapter 102 of the laws of 2007, are amended to
29 read as follows:

30 (a) Within sixty days after the effective date of this article, the
31 governing body of each public corporation shall promulgate uniform rules
32 and regulations for all agencies in such public corporation pursuant to
33 such general rules and regulations as may be promulgated by the commit-
34 tee on open government PURSUANT TO SECTION EIGHTY-NINE OF THIS ARTICLE
35 in conformity with the provisions of this article, pertaining to the
36 administration of this article.

37 Each agency shall promulgate rules and regulations, in conformity with
38 this article and applicable rules and regulations promulgated pursuant
39 to the provisions of paragraph (a) of this subdivision, and pursuant to
40 such general rules and regulations as may be promulgated by the commit-
41 tee on open government PURSUANT TO SECTION EIGHTY-NINE OF THIS ARTICLE
42 in conformity with the provisions of this article, pertaining to the
43 availability of records and procedures to be followed, including, but
44 not limited to:

45 (c) a reasonably detailed current list by subject matter of all
46 records in the possession of the agency, whether or not available under
47 this article. Each agency shall update its subject matter list annually,
48 and the date of the most recent update shall be conspicuously indicated
49 on the list. Each state agency as defined in subdivision four of this
50 section that maintains a website shall post its current list on its
51 website and such posting shall be linked to the website of the committee
52 on open government PURSUANT TO SECTION EIGHTY-NINE OF THIS ARTICLE. Any
53 such agency that does not maintain a website shall arrange to have its
54 list posted on the website of the committee on open government PURSUANT
55 TO SECTION EIGHTY-NINE OF THIS ARTICLE.

1 (c) Each state agency that maintains a website shall post information
2 related to this article and article six-A of this chapter on its
3 website. Such information shall include, at a minimum, contact informa-
4 tion for the persons from whom records of the agency may be obtained,
5 the times and places such records are available for inspection and copy-
6 ing, and information on how to request records in person, by mail, and,
7 if the agency accepts requests for records electronically, by e-mail.
8 This posting shall be linked to the website of the committee on open
9 government PURSUANT TO SECTION EIGHTY-NINE OF THIS ARTICLE.
10 S 6. This act shall take effect on the first of April next succeeding
11 the date on which it shall have become a law.