

STATE OF NEW YORK

5883

2025-2026 Regular Sessions

IN ASSEMBLY

February 24, 2025

Introduced by M. of A. LEE -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the public officers law, in relation to the payment of attorneys' fees by the state

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

1 Section 1. Paragraphs (a) and (b) of subdivision 2 of section 17 of
2 the public officers law, paragraph (a) as amended by chapter 768 of the
3 laws of 1985 and paragraph (b) as added by chapter 466 of the laws of
4 1978, are amended to read as follows:

5 (a) Upon compliance by the employee with the provisions of subdivision
6 four of this section, the state shall provide for the defense of the
7 employee in any civil action or proceeding in any state or federal court
8 arising out of any alleged act or omission which occurred or is alleged
9 in the complaint to have occurred while the employee was acting within
10 the scope of [~~his~~] their public employment or duties; or which is
11 brought to enforce a provision of section nineteen hundred eighty-one or
12 nineteen hundred eighty-three of title forty-two of the United States
13 code and the act or omission underlying the action occurred or is
14 alleged in the complaint to have occurred while the employee was acting
15 within the scope of [~~his~~] their public employment or duties. This duty
16 to provide for a defense shall not arise where such civil action or
17 proceeding is brought by or on behalf of the state. No attorneys' fees
18 or expenses shall be paid if incurred on behalf of an employee where the
19 employee has brought an action against the state.

20 (b) Subject to the conditions set forth in paragraph (a) of this
21 subdivision, the employee shall be entitled to be represented by the
22 attorney general, provided, however, that the employee shall be entitled
23 to representation by private counsel of [~~his~~] their choice in any civil
24 judicial proceeding whenever the attorney general determines based upon
25 [~~his~~] their investigation and review of the facts and circumstances of

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

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1 the case that representation by the attorney general would be inappro-
2 priate, or whenever a court of competent jurisdiction, upon appropriate
3 motion or by a special proceeding, determines that a conflict of inter-
4 est exists and that the employee is entitled to be represented by
5 private counsel of ~~his~~ their choice. The attorney general shall notify
6 the employee in writing of such determination that the employee is enti-
7 tled to be represented by private counsel. The attorney general may
8 require, as a condition to payment of the fees and expenses of such
9 representation, that appropriate groups of such employees be represented
10 by the same counsel. If the employee or group of employees is entitled
11 to representation by private counsel under the provisions of this
12 section, the attorney general shall so certify to the comptroller.
13 Reasonable attorneys' fees and litigation expenses shall be paid by the
14 state to such private counsel from time to time during the pendency of
15 the civil action or proceeding subject to certification that the employ-
16 ee is entitled to representation under the terms and conditions of this
17 section by the head of the department, commission, division, office or
18 agency in which such employee is employed and upon the audit and warrant
19 of the comptroller, which shall include a determination by the comp-
20 troller that any such fees paid by the state are proportional to the
21 needs of the case and consistent with the manner and methods of defense
22 employed in similar or representative cases. Attorneys' fees shall be
23 presumptively unreasonable where an individual hires or employs multiple
24 law firms on the same matter unless such employee can demonstrate the
25 need for additional attorneys with distinct subject matter expertise.
26 The state shall not pay any attorneys' fees deemed unreasonable by the
27 comptroller. Any dispute with respect to representation of multiple
28 employees by a single counsel or the amount of litigation expenses or
29 the reasonableness of attorneys' fees shall be resolved by the court
30 upon motion or by way of a special proceeding.

31 § 2. This act shall take effect immediately and shall apply to all
32 cases filed on or after such date.