S T A T E O F N E W Y O R K

7395

2009-2010 Regular Sessions

I N A S S E M B L Y

April 2, 2009

Introduced by M. of A. SCHIMMINGER, WEINSTEIN, TITONE, PAULIN, JAFFEE, CHRISTENSEN, LANCMAN -- Multi-Sponsored by -- M. of A. DelMONTE, GOTTFRIED, KOON, MAYERSOHN, MILLMAN, SWEENEY, WEISENBERG -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to the definition of "prevailing party" for purposes of counsel fees and expenses in certain actions against the state

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

Section 1. Subdivision (f) of section 8602 of the civil practice law and rules, as added by chapter 770 of the laws of 1989, is amended to read as follows:

(f) "Prevailing party" means a plaintiff or petitioner in the civil action against the state who prevails in whole or in substantial part where such party and the state prevail upon separate issues. THE TERM "PREVAILING PARTY" SHALL INCLUDE, IN ADDITION TO A PARTY WHO SUBSTANTIALLY PREVAILS THROUGH A JUDICIAL OR ADMINISTRATIVE JUDGMENT OR ORDER, OR AN ENFORCEABLE WRITTEN AGREEMENT, A PARTY WHOSE PURSUIT OF A NON-FRIVOLOUS CLAIM WAS A CATALYST FOR A VOLUNTARY OR UNILATERAL CHANGE IN POSITION BY THE OPPOSING PARTY THAT PROVIDES ANY SIGNIFICANT PART OF THE RELIEF SOUGHT.

S 2. This act shall take effect immediately.

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