

5827

2015-2016 Regular Sessions

I N A S S E M B L Y

March 5, 2015

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

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. Subdivision 1 of section 89 of the public officers law, as added
4 by chapter 933 of the laws of 1977, paragraph (a) as amended by chapter
5 33 of the laws of 1984 and paragraph (b) as amended by chapter 182 of
6 the laws of 2006, is amended to read as follows:
7 1. (a) [The committee on open government is continued and shall
8 consist of the lieutenant governor or the delegate of such officer, the
9 secretary of state or the delegate of such officer, whose office shall
10 act as secretariat for the committee, the commissioner of the office of
11 general services or the delegate of such officer, the director of the
12 budget or the delegate of such officer, and seven other persons, none of
13 whom shall hold any other state or local public office except the repre-
14 sentative 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-
22 ration of the terms of office of the temporary president and the speaker
23 to which the temporary president and speaker were elected. The four
24 persons presently serving by appointment of the governor for fixed terms
25 shall continue to serve until the expiration of their respective terms.

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

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1 Thereafter, their respective successors shall be appointed for terms of
2 four years. The member representing local government shall be appointed
3 for a term of four years, so long as such member shall remain a duly
4 elected officer of a local government. The committee shall hold no less
5 than two meetings annually, but may meet at any time. The members of the
6 committee shall be entitled to reimbursement for actual expenses
7 incurred in the discharge of their duties.

8 (b) The committee shall:

9 i. furnish to any agency advisory guidelines, opinions or other appro-
10 priate information regarding this article;

11 ii. furnish to any person advisory opinions or other appropriate
12 information regarding this article;

13 iii. promulgate rules and regulations with respect to the implementa-
14 tion of subdivision one and paragraph (c) of subdivision three of
15 section eighty-seven of this article;

16 iv. request from any agency such assistance, services and information
17 as will enable the committee to effectively carry out its powers and
18 duties;

19 v. develop a form, which shall be made available on the internet, that
20 may be used by the public to request a record; and

21 vi. report on its activities and findings regarding this article and
22 article seven of this chapter, including recommendations for changes in
23 the law, to the governor and the legislature annually, on or before
24 December fifteenth.] THERE IS ESTABLISHED WITHIN THE DEPARTMENT OF STATE
25 A FREEDOM OF INFORMATION AND OPEN MEETINGS COMMISSION, HEREAFTER
26 REFERRED TO AS THE "COMMISSION", WHICH SHALL HAVE AND EXERCISE THE
27 POWERS AND DUTIES SET FORTH IN THIS SECTION.

28 I. THE COMMISSION SHALL CONSIST OF THE LIEUTENANT GOVERNOR OR THE
29 DELEGATE OF SUCH OFFICER, THE SECRETARY OF STATE OR THE DELEGATE OF SUCH
30 OFFICER, WHOSE OFFICE SHALL ACT AS SECRETARIAT FOR THE COMMISSION, THE
31 COMMISSIONER OF THE OFFICE OF GENERAL SERVICES OR THE DELEGATE OF SUCH
32 OFFICER, THE DIRECTOR OF THE BUDGET OR THE DELEGATE OF SUCH OFFICER, AND
33 SEVEN OTHER PERSONS, NONE OF WHOM SHALL HOLD ANY OTHER STATE OR LOCAL
34 PUBLIC OFFICE EXCEPT THE REPRESENTATIVE OF LOCAL GOVERNMENTS AS SET
35 FORTH HEREIN, TO BE APPOINTED AS FOLLOWS: FIVE BY THE GOVERNOR, AT LEAST
36 THREE OF WHOM ARE OR HAVE BEEN REPRESENTATIVES OF THE NEWS MEDIA, ONE OF
37 WHOM SHALL BE A REPRESENTATIVE OF LOCAL GOVERNMENT WHO, AT THE TIME OF
38 APPOINTMENT, IS SERVING AS A DULY ELECTED OFFICER OF A LOCAL GOVERNMENT,
39 ONE BY THE TEMPORARY PRESIDENT OF THE SENATE, AND ONE BY THE SPEAKER OF
40 THE ASSEMBLY. THE PERSONS APPOINTED BY THE TEMPORARY PRESIDENT OF THE
41 SENATE AND THE SPEAKER OF THE ASSEMBLY SHALL BE APPOINTED TO SERVE,
42 RESPECTIVELY, UNTIL THE EXPIRATION OF THE TERMS OF OFFICE OF THE TEMPO-
43 RARY PRESIDENT AND THE SPEAKER TO WHICH THE TEMPORARY PRESIDENT AND
44 SPEAKER WERE ELECTED. THE PERSONS APPOINTED BY THE GOVERNOR SHALL BE
45 APPOINTED TO SERVE FOR TERMS OF FOUR YEARS. THE MEMBER REPRESENTING
46 LOCAL GOVERNMENT SHALL BE APPOINTED FOR A TERM OF FOUR YEARS, SO LONG AS
47 SUCH MEMBER SHALL REMAIN A DULY ELECTED OFFICER OF A LOCAL GOVERNMENT.
48 ANY VACANCY OCCURRING ON THE COMMISSION SHALL BE FILLED WITHIN THIRTY
49 DAYS BY THE APPOINTING AUTHORITY. ANY MEMBER CHOSEN TO FILL A VACANCY
50 CREATED OTHER THAN BY AN EXPIRATION OF TERM SHALL BE APPOINTED FOR THE
51 UNEXPIRED TERM OF THE MEMBER HE OR SHE IS TO SUCCEED. THE COMMISSION
52 SHALL HOLD NO LESS THAN TWO MEETINGS ANNUALLY, BUT MAY MEET AT ANY TIME.
53 THE CHAIRMAN OR ANY SEVEN MEMBERS MAY CALL A MEETING.

54 II. EACH MEMBER SHALL RECEIVE TWO HUNDRED DOLLARS PER DAY FOR EACH DAY
55 SUCH MEMBER IS PRESENT AT A COMMISSION HEARING OR MEETING, AND SHALL BE

1 ENTITLED TO REIMBURSEMENT FOR ACTUAL AND NECESSARY EXPENSES INCURRED IN
2 CONNECTION THEREWITH.

3 III. THE COMMISSION SHALL SELECT ONE OF ITS MEMBERS AS A CHAIRMAN, AND
4 SHALL MAINTAIN A PERMANENT OFFICE IN ALBANY IN SUCH SUITABLE SPACE AS
5 THE COMMISSIONER OF THE DEPARTMENT OF STATE PROVIDES. ALL PAPERS
6 REQUIRED TO BE FILED WITH OR SERVED UPON THE COMMISSION SHALL BE DELIV-
7 ERED TO SUCH OFFICE.

8 IV. THE COMMISSION SHALL, SUBJECT TO THE CIVIL SERVICE LAW, EMPLOY
9 SUCH EMPLOYEES AS MAY BE NECESSARY TO CARRY OUT THE PROVISIONS OF THIS
10 SECTION. THE COMMISSION MAY ENTER INTO SUCH CONTRACTUAL AGREEMENTS AS
11 MAY BE NECESSARY FOR THE DISCHARGE OF ITS DUTIES, WITHIN THE LIMITS OF
12 ITS APPROPRIATED FUNDS AND IN ACCORDANCE WITH ESTABLISHED PROCEDURES.

13 V. THE COMMISSION SHALL:

14 (A) FURNISH TO ANY AGENCY ADVISORY GUIDELINES, OPINIONS OR OTHER
15 APPROPRIATE INFORMATION REGARDING THIS ARTICLE;

16 (B) FURNISH TO ANY PERSON ADVISORY OPINIONS OR OTHER APPROPRIATE
17 INFORMATION REGARDING THIS ARTICLE;

18 (C) PROMULGATE RULES AND REGULATIONS WITH RESPECT TO THE IMPLEMENTA-
19 TION OF SUBDIVISION ONE AND PARAGRAPH (C) OF SUBDIVISION THREE OF
20 SECTION EIGHTY-SEVEN OF THIS ARTICLE;

21 (D) REQUEST FROM ANY AGENCY SUCH ASSISTANCE, SERVICES AND INFORMATION
22 AS WILL ENABLE THE COMMISSION TO EFFECTIVELY CARRY OUT ITS POWERS AND
23 DUTIES;

24 (E) DEVELOP A FORM, WHICH SHALL BE MADE AVAILABLE ON THE INTERNET,
25 THAT MAY BE USED BY THE PUBLIC TO REQUEST A RECORD; AND

26 (F) REPORT ON ITS ACTIVITIES AND FINDINGS REGARDING THIS ARTICLE AND
27 ARTICLE SEVEN OF THIS CHAPTER, INCLUDING RECOMMENDATIONS FOR CHANGES IN
28 THE LAW, TO THE GOVERNOR AND THE LEGISLATURE ANNUALLY, ON OR BEFORE
29 DECEMBER FIFTEENTH.

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

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

1 (C) I. THE COMMISSION SHALL, AFTER DUE NOTICE TO THE PARTIES AND
2 SUBJECT TO THE PROVISIONS OF THIS ARTICLE AND ARTICLE SEVEN OF THIS
3 CHAPTER, PROMPTLY REVIEW THE ALLEGED VIOLATION OF SAID ARTICLES. THE
4 COMMISSION SHALL HAVE THE POWER TO INVESTIGATE ALL ALLEGED VIOLATIONS OF
5 THIS ARTICLE AND ARTICLE SEVEN OF THIS CHAPTER AND MAY FOR THE PURPOSE
6 OF INVESTIGATING ANY VIOLATION HOLD A HEARING, ADMINISTER OATHS, EXAMINE
7 WITNESSES, RECEIVE ORAL AND DOCUMENTARY EVIDENCE, HAVE THE POWER TO
8 SUBPOENA WITNESSES UNDER PROCEDURAL RULES ADOPTED BY THE COMMISSION TO
9 COMPEL ATTENDANCE AND TO REQUIRE THE PRODUCTION FOR EXAMINATION OF ANY
10 BOOKS AND PAPERS WHICH THE COMMISSION DEEMS RELEVANT IN ANY MATTER UNDER
11 INVESTIGATION OR IN QUESTION. IN CASE OF A REFUSAL TO COMPLY WITH ANY
12 SUCH SUBPOENA OR TO TESTIFY WITH RESPECT TO ANY MATTER UPON WHICH THAT
13 PERSON MAY BE LAWFULLY INTERROGATED, A COURT OF COMPETENT JURISDICTION,
14 ON APPLICATION OF THE COMMISSION, MAY ISSUE AN ORDER REQUIRING SUCH
15 PERSON TO COMPLY WITH SUCH SUBPOENA AND TO TESTIFY; FAILURE TO OBEY ANY
16 SUCH ORDER OF THE COURT MAY BE PUNISHED BY THE COURT AS A CONTEMPT THER-
17 EOF.

18 II. THE COMMISSION SHALL HEAR AND DECIDE EACH APPEAL WITHIN ONE YEAR
19 AFTER THE FILING OF THE NOTICE OF APPEAL. THE COMMISSION SHALL ADOPT
20 REGULATIONS ESTABLISHING CRITERIA FOR THOSE APPEALS WHICH SHALL BE PRIV-
21 ILEGED IN THEIR ASSIGNMENT FOR HEARING. ANY SUCH PRIVILEGED APPEAL SHALL
22 BE HEARD NOT LATER THAN THIRTY DAYS AFTER RECEIPT OF A NOTICE OF APPEAL
23 AND DECIDED NOT LATER THAN SIXTY DAYS AFTER A HEARING.

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

41 IV. THE COMMISSION, AT ITS DISCRETION, MAY ISSUE AN ORDER TO DISCON-
42 TINUE ALL WORK RESULTING FROM AN ALLEGED VIOLATION OF THIS ARTICLE AND
43 ARTICLE SEVEN OF THIS CHAPTER IF IRREPARABLE HARM IS DEEMED TO POTEN-
44 Tially OCCUR. THIS ORDER WILL HOLD UNTIL A DECISION IS RENDERED BY THE
45 COMMISSION ON THE ALLEGED VIOLATION.

46 (D) I. IN ANY APPEAL TO THE COMMISSION, THE COMMISSION MAY CONFIRM THE
47 ACTION OF THE AGENCY OR ORDER THE AGENCY TO PROVIDE RELIEF THAT THE
48 COMMISSION, IN ITS DISCRETION, BELIEVES APPROPRIATE TO RECTIFY THE
49 DENIAL OF ANY RIGHT CONFERRED BY THIS ARTICLE AND ARTICLE SEVEN OF THIS
50 CHAPTER. THE COMMISSION MAY DECLARE NULL AND VOID ANY ACTION TAKEN AT
51 ANY MEETING WHICH A PERSON WAS DENIED THE RIGHT TO ATTEND AND MAY
52 REQUIRE THE PRODUCTION OR COPYING OF ANY PUBLIC RECORD. IN ADDITION,
53 UPON FINDING THAT A DENIAL OF ANY RIGHT CREATED BY THIS ARTICLE AND
54 ARTICLE SEVEN OF THIS CHAPTER WAS WITHOUT REASONABLE GROUNDS AND AFTER
55 THE CUSTODIAN OR OTHER OFFICIAL DIRECTLY RESPONSIBLE FOR THE DENIAL HAS
56 BEEN GIVEN AN OPPORTUNITY TO BE HEARD AT A HEARING CONDUCTED IN ACCORD-

ANCE WITH ARTICLE SEVEN OF THIS CHAPTER THE COMMISSION MAY, IN ITS DISCRETION, IMPOSE AGAINST THE CUSTODIAN OR OTHER OFFICIAL A CIVIL PENALTY OF NOT LESS THAN TWENTY DOLLARS NOR MORE THAN ONE THOUSAND DOLLARS.

II. IF THE COMMISSION FINDS THAT A PERSON HAS TAKEN AN APPEAL FRIVOLOUSLY, WITHOUT REASONABLE GROUNDS, AFTER SUCH PERSON HAS BEEN GIVEN AN OPPORTUNITY TO BE HEARD AT A HEARING CONDUCTED IN ACCORDANCE WITH ARTICLE SEVEN OF THIS CHAPTER, THE COMMISSION MAY, IN ITS DISCRETION, IMPOSE AGAINST THAT PERSON A CIVIL PENALTY OF NOT LESS THAN TWENTY DOLLARS NOR MORE THAN ONE THOUSAND DOLLARS.

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

IV. IF THE CHAIRMAN OF THE COMMISSION HAS REASON TO BELIEVE AN APPEAL PRESENTS A CLAIM BEYOND THE COMMISSION'S JURISDICTION; WOULD PERPETRATE AN INJUSTICE; OR WOULD CONSTITUTE AN ABUSE OF THE COMMISSION'S ADMINISTRATIVE PROCESS, THE CHAIRMAN SHALL NOT SCHEDULE THE APPEAL FOR A HEARING WITHOUT FIRST SEEKING AND OBTAINING LEAVE OF THE COMMISSION.

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

VI. IN MAKING THE FINDINGS AND DETERMINATION, THE COMMISSION SHALL CONSIDER THE NATURE OF ANY JUSTICE OR ABUSE OF ADMINISTRATIVE PROCESS, INCLUDING BUT NOT LIMITED TO: (A) THE NATURE, CONTENT, LANGUAGE OR SUBJECT MATTER OF THE REQUEST OR THE APPEAL; (B) THE NATURE, CONTENT, LANGUAGE OR SUBJECT MATTER TO PRIOR OR CONTEMPORANEOUS REQUESTS OR APPEALS BY THE PERSON MAKING THE REQUEST OR TAKING THE APPEAL; AND (C) THE NATURE, CONTENT, LANGUAGE OR SUBJECT MATTER OF OTHER VERBAL AND WRITTEN COMMUNICATIONS TO ANY AGENCY OR ANY OFFICIAL OF ANY AGENCY FROM THE PERSON MAKING THE REQUEST OR TAKING THE APPEAL.

VII. NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, IN THE CASE OF AN APPEAL TO THE COMMISSION OF A DENIAL BY A PUBLIC AGENCY, THE COMMISSION MAY, UPON MOTION OF SUCH AGENCY, CONFIRM THE ACTION OF THE AGENCY AND DISMISS THE APPEAL WITHOUT A HEARING IF IT FINDS, AFTER EXAMINING THE NOTICE OF APPEAL AND CONSTRUING ALL ALLEGATIONS MOST FAVORABLY TO THE APPELLANT, THAT (A) THE AGENCY HAS NOT VIOLATED THIS ARTICLE AND ARTICLE SEVEN OF THIS CHAPTER OR (B) THE AGENCY HAS COMMITTED A TECHNICAL VIOLATION THAT CONSTITUTES A HARMLESS ERROR THAT DOES NOT INFRINGE THE APPELLANT'S RIGHTS.

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

II. THE TERMS OF ANY MEDIATION AGREEMENT MAY CONTAIN SUCH PROVISIONS AS MAY BE AGREED UPON BY THE COMMISSION, THE APPELLANT AND THE RESPONDENT.

1 III. THE MEMBERS OF THE COMMISSION AND ITS STAFF SHALL NOT PUBLICLY
2 DISCLOSE WHAT TRANSPIRED IN THE COURSE OF MEDIATION EFFORTS.

3 IV. IF A MEDIATION AGREEMENT IS ENTERED INTO, THE COMMISSION SHALL
4 EMBODY SUCH AGREEMENT IN AN ORDER AND SERVE A COPY OF SUCH ORDER UPON
5 ALL PARTIES TO THE AGREEMENT. VIOLATION OF SUCH AN ORDER MAY CAUSE THE
6 IMPOSITION OF CIVIL PENALTIES.

7 (F) ANY PARTY AGGRIEVED BY THE DECISION OF SAID COMMISSION MAY APPEAL
8 TO THE JUDICIARY THEREFROM, THE COURT MAY CONDUCT AN IN CAMERA REVIEW OF
9 THE ORIGINAL OR A CERTIFIED COPY OF THE RECORDS WHICH ARE AT ISSUE IN
10 THE APPEAL BUT WERE NOT INCLUDED IN THE RECORD OF THE COMMISSION'S
11 PROCEEDINGS, ADMIT THE RECORDS INTO EVIDENCE AND ORDER THE RECORDS TO BE
12 SEALED OR INSPECTED ON SUCH TERMS AS THE COURT DEEMS FAIR AND APPROPRI-
13 ATE, DURING THE APPEAL. THE COMMISSION SHALL HAVE STANDING TO DEFEND,
14 PROSECUTE OR OTHERWISE PARTICIPATE IN ANY APPEAL OF ANY OF ITS DECISIONS
15 AND TO TAKE AN APPEAL FROM ANY JUDICIAL DECISION OVERTURNING OR MODIFY-
16 ING A DECISION OF THE COMMISSION. IF AGGRIEVEMENT IS A JURISDICTIONAL
17 PREREQUISITE TO THE COMMISSION TAKING ANY SUCH APPEAL, THE COMMISSION
18 SHALL BE DEEMED TO BE AGGRIEVED. LEGAL COUNSEL EMPLOYED OR RETAINED BY
19 SAID COMMISSION SHALL REPRESENT SAID COMMISSION IN ALL SUCH APPEALS AND
20 IN ANY OTHER LITIGATION AFFECTING SAID COMMISSION. ANY APPEAL TAKEN
21 PURSUANT TO THIS SECTION SHALL BE PRIVILEGED IN RESPECT TO ITS ASSIGN-
22 MENT FOR TRIAL OVER ALL OTHER ACTIONS EXCEPT WRITS OF HABEAS CORPUS AND
23 ACTIONS BROUGHT BY OR ON BEHALF OF THE STATE, INCLUDING INFORMATION ON
24 THE RELATION OF PRIVATE INDIVIDUALS. IF THE COURT FINDS THAT ANY APPEAL
25 TAKEN PURSUANT TO THIS SECTION IS FRIVOLOUS OR TAKEN SOLELY FOR THE
26 PURPOSE OF DELAY, IT SHALL ORDER THE PARTY RESPONSIBLE THEREFOR TO PAY
27 TO THE PARTY INJURED BY SUCH FRIVOLOUS OR DILATORY APPEAL COSTS OR
28 ATTORNEY'S FEES OF NOT MORE THAN ONE THOUSAND DOLLARS. SUCH ORDER SHALL
29 BE IN ADDITION TO ANY OTHER REMEDY OR DISCIPLINARY ACTION REQUIRED OR
30 PERMITTED BY STATUTE OR BY RULES OF COURT.

31 S 3. Paragraphs (b) of subdivision 3 and subdivision 4 of section 89
32 of the public officers law, paragraph (b) of subdivision 3 as amended by
33 chapter 223 of the laws of 2008 and subdivision 4 as amended by chapter
34 22 of the laws of 2005 and paragraph (c) of subdivision 4 as amended by
35 chapter 492 of the laws of 2006, are amended to read as follows:

36 (b) All entities shall, provided such entity has reasonable means
37 available, accept requests for records submitted in the form of elec-
38 tronic mail and shall respond to such requests by electronic mail, using
39 forms, to the extent practicable, consistent with the form or forms
40 developed by the [committee on open government] FREEDOM OF INFORMATION
41 AND OPEN MEETINGS COMMISSION pursuant to subdivision one of this section
42 and provided that the written requests do not seek a response in some
43 other form.

44 4. (a) Except as provided in subdivision five of this section, any
45 person denied access to a record may within thirty days appeal in writ-
46 ing such denial to the head, chief executive or governing body of the
47 entity, or the person therefor designated by such head, chief executive,
48 or governing body, who shall within ten business days of the receipt of
49 such appeal fully explain in writing to the person requesting the record
50 the reasons for further denial, or provide access to the record sought.
51 In addition, each agency shall immediately forward to the [committee on
52 open government] FREEDOM OF INFORMATION AND OPEN MEETINGS COMMISSION a
53 copy of such appeal when received by the agency and the ensuing determi-
54 nation thereon. Failure by an agency to conform to the provisions of
55 subdivision three of this section shall constitute a denial.

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

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

- i. the agency had no reasonable basis for denying access; or
 - ii. the agency failed to respond to a request or appeal within the statutory time]
- APPEAL TO THE FREEDOM OF INFORMATION AND OPEN MEETINGS COMMISSION PURSUANT TO SUBDIVISION ONE OF THIS SECTION.

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

S 107. Enforcement. [1.] Any aggrieved person shall have standing to enforce the provisions of this article against a public body by the commencement of [a proceeding pursuant to article seventy-eight of the civil practice law and rules, or an action for declaratory judgment and injunctive relief. In any such action or proceeding, if a court determines that a public body failed to comply with this article, the court shall have the power, in its discretion, upon good cause shown, to declare that the public body violated this article and/or declare the action taken in relation to such violation void, in whole or in part, without prejudice to reconsideration in compliance with this article. If the court determines that a public body has violated this article, the court may require the members of the public body to participate in a training session concerning the obligations imposed by this article conducted by the staff of the committee on open government.

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

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

3. The statute of limitations in an article seventy-eight proceeding with respect to an action taken at executive session shall commence to run from the date the minutes of such executive session have been made available to the public]

AN APPEAL TO THE FREEDOM OF INFORMATION AND OPEN MEETINGS COMMISSION PURSUANT TO SECTION EIGHTY-NINE OF THIS CHAPTER.

1 S 5. Section 109 of the public officers law, as amended by chapter 80
2 of the laws of 1983, such section as renumbered by chapter 652 of the
3 laws of 1983, is amended to read as follows:

4 S 109. [Committee on open government] FREEDOM OF INFORMATION AND OPEN
5 MEETINGS COMMISSION. The [committee on open government] FREEDOM OF
6 INFORMATION AND OPEN MEETINGS COMMISSION, created by paragraph (a) of
7 subdivision one of section eighty-nine of this chapter, shall issue
8 advisory opinions from time to time as, in its discretion, may be
9 required to inform public bodies and persons of the interpretations of
10 the provisions of the open meetings law.

11 S 6. Paragraph (a) and the opening paragraph of paragraph (b) of
12 subdivision 1, paragraph (c) of subdivision 3, and paragraph (c) of
13 subdivision 4 of section 87 of the public officers law, paragraph (a)
14 and the opening paragraph of paragraph (b) of subdivision 1 as amended
15 by chapter 80 of the laws of 1983, paragraph (c) of subdivision 3 as
16 amended by chapter 499 of the laws of 2008, and paragraph (c) of subdi-
17 vision 4 as added by chapter 102 of the laws of 2007, are amended to
18 read as follows:

19 (a) Within sixty days after the effective date of this article, the
20 governing body of each public corporation shall promulgate uniform rules
21 and regulations for all agencies in such public corporation pursuant to
22 such general rules and regulations as may be promulgated by the [commit-
23 tee on open government] FREEDOM OF INFORMATION AND OPEN MEETINGS COMMIS-
24 SION PURSUANT TO SECTION EIGHTY-NINE OF THIS ARTICLE in conformity with
25 the provisions of this article, pertaining to the administration of this
26 article.

27 Each agency shall promulgate rules and regulations, in conformity with
28 this article and applicable rules and regulations promulgated pursuant
29 to the provisions of paragraph (a) of this subdivision, and pursuant to
30 such general rules and regulations as may be promulgated by the [commit-
31 tee on open government] FREEDOM OF INFORMATION AND OPEN MEETINGS COMMIS-
32 SION PURSUANT TO SECTION EIGHTY-NINE OF THIS ARTICLE in conformity with
33 the provisions of this article, pertaining to the availability of
34 records and procedures to be followed, including, but not limited to:

35 (c) a reasonably detailed current list by subject matter of all
36 records in the possession of the agency, whether or not available under
37 this article. Each agency shall update its subject matter list annually,
38 and the date of the most recent update shall be conspicuously indicated
39 on the list. Each state agency as defined in subdivision four of this
40 section that maintains a website shall post its current list on its
41 website and such posting shall be linked to the website of the [commit-
42 tee on open government] FREEDOM OF INFORMATION AND OPEN MEETINGS COMMIS-
43 SION PURSUANT TO SECTION EIGHTY-NINE OF THIS ARTICLE. Any such agency
44 that does not maintain a website shall arrange to have its list posted
45 on the website of the [committee on open government] FREEDOM OF INFORMA-
46 TION AND OPEN MEETINGS COMMISSION PURSUANT TO SECTION EIGHTY-NINE OF
47 THIS ARTICLE.

48 (c) Each state agency that maintains a website shall post information
49 related to this article and article six-A of this chapter on its
50 website. Such information shall include, at a minimum, contact informa-
51 tion for the persons from whom records of the agency may be obtained,
52 the times and places such records are available for inspection and copy-
53 ing, and information on how to request records in person, by mail, and,
54 if the agency accepts requests for records electronically, by e-mail.
55 This posting shall be linked to the website of the [committee on open

government] FREEDOM OF INFORMATION AND OPEN MEETINGS COMMISSION PURSUANT TO SECTION EIGHTY-NINE OF THIS ARTICLE.

S 7. Subdivision 2 of section 92 of the public officers law, as added by chapter 652 of the laws of 1983, is amended to read as follows:

(2) [Committee] COMMISSION. The term ["committee"] "COMMISSION" means the [committee on open government] FREEDOM OF INFORMATION AND OPEN MEETINGS COMMISSION as constituted pursuant to subdivision one of section eighty-nine of this chapter.

S 8. Section 93 of the public officers law, as added by chapter 652 of the laws of 1983, is amended to read as follows:

S 93. Powers and duties of the [committee] COMMISSION. (1) The [committee] COMMISSION shall prepare a directory derived from the information provided pursuant to section three of chapter six hundred seventy-seven of the laws of nineteen hundred eighty and subdivision four of section ninety-four of this article. The directory shall include the name of each system of records subject to the provisions of this article, the name and subdivision of the agency maintaining it, the title and business address of the person responsible therefor, the approximate number of data subjects and the categories of information collected, and sufficient information for the identification of rules promulgated by agencies pursuant to this article. Individuals shall be permitted to purchase the directory for a reasonable price as set by the [committee] COMMISSION in accordance with law.

(2) The [committee] COMMISSION may, upon request of a data subject eligible to make a request under section ninety-five of this article, investigate, make findings and furnish an advisory opinion in connection with the requirements of section ninety-five of this article. Prior to the issuance of an advisory opinion, the [committee] COMMISSION may require an agency to provide additional information which the [committee] COMMISSION deems necessary to render an opinion. However, no system of records exempt from the [provisions] PROVISIONS of section ninety-five of this article shall be subject to the provisions of this subdivision.

(3) Within thirty business days of the receipt of a privacy impact statement or supplemental statement by an agency the [committee] COMMISSION shall review such statement to determine whether the maintenance of the system is within the lawful authority of the agency and to determine whether there have been established rules and procedures as required by section ninety-four of this article. However, such review by the [committee] COMMISSION shall not include examination of personal information or records collected or maintained by such agency. After review of such information the [committee] COMMISSION may notify the agency of the result of its review. Such notification and result shall not constitute an advisory opinion and shall not be reported as such by the [committee] COMMISSION and there shall be no obligation upon the agency to respond to such notification or result.

(4) The [committee] COMMISSION shall promulgate rules for the specification of the form of the privacy impact statement. Such privacy impact statement shall include the following:

(a) the name of the agency and the subdivision within the agency that will maintain the system of records, and the name or title of the system of records in which such information will be maintained;

(b) the title and business address of the official within the agency responsible for the system of records;

(c) where applicable, the procedures by which a data subject may gain access to personal information pertaining to such data subject in the

1 system of records and the procedures by which a data subject may seek to
2 amend or correct its contents;

3 (d) the categories and the approximate number of persons on whom
4 records will be maintained in the system of records;

5 (e) the categories of information which will be collected and main-
6 tained in the system of records;

7 (f) the purposes for which each category of information within the
8 system of records will be collected and maintained;

9 (g) the disclosures of personal information within the system of
10 records that the agency will regularly make for each category of infor-
11 mation, and the authority for such disclosures;

12 (h) the general or specific statutory authority for the collection,
13 maintenance and disclosure of each category of information within the
14 system of records;

15 (i) policies governing retention and timely disposal of information
16 within the system of records in accordance with law;

17 (j) each and every source for each category of information within the
18 system of records;

19 (k) a statement indicating whether the system of records will be main-
20 tained manually, by automated data system, or both.

21 (5) The [committee] COMMISSION shall report its activities and find-
22 ings, including recommendations for changes in the law, to the governor
23 and the legislature annually, on or before December fifteenth.

24 (6) In order to carry out the provisions of this article, the [commit-
25 tee] COMMISSION is authorized to:

26 (a) enter into contracts or other arrangements or modifications there-
27 of, with any government, any governmental unit, or any department of the
28 state, or with any individual, firm, association or corporation within
29 the amounts appropriated therefor and subject to the audit and warrant
30 of the state comptroller;

31 (b) delegate any of its functions to such officers and employees of
32 the [committee] COMMISSION as the [committee] COMMISSION may designate;

33 (c) establish model guidelines with respect to the implementation of
34 this article.

35 S 9. Subdivisions 4, 5 and 6 of section 94 of the public officers law,
36 as added by chapter 652 of the laws of 1983, are amended to read as
37 follows:

38 (4) (a) Any agency which established or substantially modified a
39 system of records after December fifteenth, nineteen hundred eighty, but
40 before the effective date of this article, or which did not report to
41 the [committee] COMMISSION a system of records which it maintained prior
42 to December fifteenth, nineteen hundred eighty, shall file notice with
43 the [committee] COMMISSION pursuant to chapter six hundred seventy-seven
44 of the laws of nineteen hundred eighty within thirty business days of
45 the effective date of this article.

46 (b) Any agency which seeks to establish a system of records subsequent
47 to the effective date of this article shall file with the [committee]
48 COMMISSION a privacy impact statement as prescribed by subdivision four
49 of section ninety-three of this article. Any agency which seeks to modi-
50 fy a system of records in a way which would render inaccurate any infor-
51 mation set forth in the privacy impact statement, in the notice
52 described in paragraph (a) of this subdivision or in the notice filed
53 pursuant to chapter six hundred seventy-seven of the laws of nineteen
54 hundred eighty, shall file with the [committee] COMMISSION a supple-
55 mental statement to conform the privacy impact statement or notice to
56 the proposed modification. Unless the date by which such proposed system

1 or modification is required by law to be instituted is less than thirty
2 business days from the date of the filing of the privacy impact state-
3 ment, no such proposed system or modification shall be instituted until
4 the completion of the procedures set forth in subdivision three of
5 section ninety-three of this article.

6 (5) Each agency shall, within fifteen business days of the receipt of
7 an advisory opinion issued by the [committee] COMMISSION, respond in
8 writing to the [committee] COMMISSION as to the following:

9 (a) the actions it has taken, or will take, to comply with the advi-
10 sory opinion; or

11 (b) the reasons for disagreement and noncompliance with the advisory
12 opinion.

13 (6) On or before the first day of September of each year, each agency
14 shall submit a report covering the preceding year to the [committee]
15 COMMISSION. The report shall include, with respect to requests for
16 access to records and with respect to requests for correction or amend-
17 ment of records pursuant to subdivisions one and two of section ninety-
18 five of this article, respectively, the following information:

19 (i) the number of determinations made to grant such requests; and

20 (ii) the number of determinations made to deny such requests, in whole
21 or in part, respectively.

22 S 10. Paragraph (d) of subdivision 1 and subdivision 3 of section 95
23 of the public officers law, paragraph (d) of subdivision 1 as added by
24 chapter 27 of the laws of 2009 and subdivision 3 as added by chapter 652
25 of the laws of 1983, are amended to read as follows:

26 (d) Each agency shall, provided such agency has reasonable means
27 available, accept requests for records submitted through electronic mail
28 and shall respond to such requests by electronic mail, using forms, to
29 the extent practicable, consistent with the form or forms developed by
30 the [committee on open government] COMMISSION, provided that the elec-
31 tronic mail requests do not seek a response in some other form.

32 (3) Any data subject whose request under subdivision one or two of
33 this section is denied in whole or in part may, within thirty business
34 days, appeal such denial in writing to the head, chief executive or
35 governing body of the agency, or the person designated as the reviewing
36 official by such head, chief executive or governing body. Such official
37 shall within seven business days of the receipt of an appeal concerning
38 denial of access, or within thirty business days of the receipt of an
39 appeal concerning denial of correction or amendment, either provide
40 access to or correction or amendment of the record sought and inform the
41 data subject that, upon his or her request, such correction or amendment
42 will be provided to any or all persons or governmental units to which
43 the record or personal information has been or is disclosed, pursuant to
44 paragraph (c) of subdivision three of section ninety-four of this arti-
45 cle, or fully explain in writing to the data subject the factual and
46 statutory reasons for further denial and inform the data subject of his
47 or her right to thereupon seek judicial review of the agency's determi-
48 nation under section ninety-seven of this article. Each agency shall
49 immediately forward to the [committee] COMMISSION a copy of such appeal,
50 the determination thereof and the reasons therefor.

51 S 11. Paragraph 2 of subdivision (d) of section 103 of the public
52 officers law, as added by chapter 43 of the laws of 2010, is amended to
53 read as follows:

54 2. A public body may adopt rules, consistent with recommendations from
55 the [committee on open government] FREEDOM OF INFORMATION AND OPEN MEET-
56 INGS COMMISSION, reasonably governing the location of equipment and

1 personnel used to photograph, broadcast, webcast, or otherwise record a
2 meeting so as to conduct its proceedings in an orderly manner. Such
3 rules shall be conspicuously posted during meetings and written copies
4 shall be provided upon request to those in attendance.
5 S 12. This act shall take effect on the sixtieth day after it shall
6 have become a law.