STATE OF NEW YORK

2965

2017-2018 Regular Sessions

IN SENATE

January 18, 2017

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

AN ACT to amend the civil rights law, in relation to actions involving public petition and participation

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

Section 1. Subdivision 1 of section 70-a of the civil rights law, as added by chapter 767 of the laws of 1992, is amended to read as follows:

1. A defendant in an action involving public petition and participation, as defined in paragraph (a) of subdivision one of section seventy-six-a of this article, may maintain an action, claim, cross claim or counterclaim to recover damages, including costs and attorney's fees, from any person who commenced or continued such action; provided that:

(a) costs and **reasonable** attorney's fees [~~may~~] **shall** be recovered upon a demonstration**, including an adjudication pursuant to subdivision (g) of rule thirty-two hundred eleven or subdivision (h) of rule thirty-two hundred twelve of the civil practice law and rules,** that the action involving public petition and participation was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification or reversal of existing law;

(b) **an action, claim, cross claim or counterclaim made pursuant to this subdivision may be filed within sixty days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper;**

(c) other compensatory damages may only be recovered upon an additional demonstration that the action involving public petition and participation was commenced or continued for the purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights; and

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

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[~~(c)~~] **(d)** punitive damages may only be recovered upon an additional demonstration that the action involving public petition and participation was commenced or continued for the sole purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights.

§ 2. Subdivision 1 of section 76-a of the civil rights law, as added by chapter 767 of the laws of 1992, is amended to read as follows:

1. For purposes of this section:

(a) An "action involving public petition and participation" is [~~an action,~~] **a** claim[~~, cross claim or counterclaim for damages that is brought by a public applicant or permittee, and is materially related to any efforts of the defendant to report on, comment on, rule on, challenge or oppose such application or permission~~] **based upon:**

(1) any communication in a place open to the public or a public forum in connection with an issue of public interest; or

(2) any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern, or in furtherance of the exercise of the constitutional right of petition.

(b) [~~"Public applicant or permittee" shall mean any person who has applied for or obtained a permit, zoning change, lease, license, certificate or other entitlement for use or permission to act from any government body, or any person with an interest, connection or affiliation with such person that is materially related to such application or permission~~] **"Claim" shall mean any lawsuit, cause of action, cross claim, counterclaim, or other judicial pleading or filing requesting relief**.

(c) "Communication" shall mean any statement, claim, allegation in a proceeding, decision, protest, writing, argument, contention or other expression.

[~~(d) "Government body" shall mean any municipality, the state, any other political subdivision or agency of such, the federal government, any public benefit corporation, or any public authority, board, or commission.~~]

§ 3. This act shall take effect immediately and shall apply to actions, cross claims or counterclaims commenced on or after such date.