

# STATE OF NEW YORK

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7245

## IN SENATE

January 5, 2018

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Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government 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 § 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-  
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.  
26 Thereafter, their respective successors shall be appointed for terms of  
27 four years. The member representing local government shall be appointed

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

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1 for a term of four years, so long as such member shall remain a duly  
2 elected officer of a local government. The committee shall hold no less  
3 than two meetings annually, but may meet at any time. The members of the  
4 committee shall be entitled to reimbursement for actual expenses  
5 incurred in the discharge of their duties. The executive director of  
6 the committee shall maintain a permanent office in Albany in such suit-  
7 able space as the commissioner of the department of state provides. All  
8 papers required to be filed with or served upon the committee shall be  
9 delivered to such office. Each member shall receive two hundred dollars  
10 per day for each day such member is present at a committee hearing or  
11 meeting, and shall be entitled to reimbursement for actual and necessary  
12 expenses incurred in connection therewith.

13 (c) The committee shall, subject to the civil service law, employ such  
14 employees as may be necessary to carry out the provisions of this  
15 section. The committee may enter into such contractual agreements as may  
16 be necessary for the discharge of its duties, within the limits of its  
17 appropriated funds and in accordance with established procedures.

18 (d) i. Any person denied the right to inspect or copy records, denied  
19 the right to attend any meeting of a public agency or denied any other  
20 right conferred by this article and article seven of this chapter may  
21 appeal therefrom to the committee by filing a notice of appeal with the  
22 committee. A notice of appeal shall be filed not later than thirty days  
23 after such denial, except in the case of an unnoticed or secret meeting,  
24 in which case the appeal shall be filed not later than thirty days after  
25 the person filing the appeal receives notice in fact that such meeting  
26 was held. For purposes of this paragraph, such notice of appeal shall be  
27 deemed to be filed on the date it is received by said committee or on  
28 the date it is postmarked, if received more than thirty days after the  
29 date of the denial from which such appeal is taken.

30 ii. Upon receipt of such notice, the committee shall serve upon all  
31 parties, by certified or registered mail, a copy of such notice together  
32 with any other notice or order of such committee. In the case of the  
33 denial of a request to inspect or copy records contained in a public  
34 employee's personnel or medical file, the committee shall include with  
35 its notice or order an order requiring the public agency to notify any  
36 employee whose records are subject of an appeal, and the employee's  
37 collective bargaining representative, if any, of the committee's  
38 proceedings and, if any such employee or collective bargaining represen-  
39 tative has filed an objection, the agency shall provide the required  
40 notice to such employee and collective bargaining representative by  
41 certified mail, return receipt requested or by hand delivery with a  
42 signed receipt. A public employee whose personnel or medical file is the  
43 subject of an appeal may intervene as a party in the proceedings on the  
44 matter before the committee.

45 (e) i. The committee shall, after due notice to the parties and  
46 subject to the provisions of this article and article seven of this  
47 chapter, promptly review the alleged violation of said articles. The  
48 committee shall have the power to investigate all alleged violations of  
49 this article and article seven of this chapter and may for the purpose  
50 of investigating any violation hold a hearing, administer oaths, examine  
51 witnesses, receive oral and documentary evidence, have the power to  
52 subpoena witnesses under procedural rules adopted by the committee to  
53 compel attendance and to require the production for examination of any  
54 books and papers which the committee deems relevant in any matter under  
55 investigation or in question. In case of a refusal to comply with any  
56 such subpoena or to testify with respect to any matter upon which that

1 person may be lawfully interrogated, a court of competent jurisdiction,  
2 on application of the committee, may issue an order requiring such  
3 person to comply with such subpoena and to testify; failure to obey any  
4 such order of the court may be punished by the court as a contempt ther-  
5 eof.

6 ii. The committee shall hear and decide each appeal within six months  
7 after the filing of the notice of appeal. The committee shall adopt  
8 regulations establishing criteria for those appeals which shall be priv-  
9 ileged in their assignment for hearing. Any such privileged appeal shall  
10 be heard not later than thirty days after receipt of a notice of appeal  
11 and decided not later than sixty days after a hearing.

12 iii. If a notice of appeal concerns an announced agency decision to  
13 meet in executive session or an ongoing agency practice of meeting in  
14 executive sessions, for a stated purpose, the committee or a member or  
15 members of the committee designated by its chairperson shall serve  
16 notice upon the parties and hold a preliminary hearing on the appeal not  
17 later than seventy-two hours after receipt of the notice, provided such  
18 notice shall be given to the parties at least forty-eight hours prior to  
19 such hearing. During such preliminary hearing, the committee shall take  
20 evidence and receive testimony from the parties. If after the prelimi-  
21 nary hearing the committee finds probable cause to believe that the  
22 agency decision or practice is in violation of article seven of this  
23 chapter, the agency shall not meet in executive session for such purpose  
24 until the committee decides the appeal. If probable cause is found by  
25 the committee, it shall conduct a final hearing on the appeal and render  
26 its decision not later than five days after the completion of the  
27 preliminary hearing. Such decision shall specify the committee's find-  
28 ings of fact and conclusions of law.

29 iv. The committee, at its discretion, may issue an order to discontin-  
30 ue all work resulting from an alleged violation of this article and  
31 article seven of this chapter if irreparable harm is deemed to poten-  
32 tially occur. This order will hold until a decision is rendered by the  
33 committee on the alleged violation.

34 (f) i. In any appeal to the committee, the committee may confirm the  
35 action of the agency or order the agency to provide relief that the  
36 committee, in its discretion, believes appropriate to rectify the denial  
37 of any right conferred by this article and article seven of this chap-  
38 ter. The committee may declare null and void any action taken at any  
39 meeting which a person was denied the right to attend and may require  
40 the production or copying of any public record. In addition, upon find-  
41 ing that a denial of any right created by this article and article seven  
42 of this chapter was without reasonable grounds and after the custodian  
43 or other official directly responsible for the denial has been given an  
44 opportunity to be heard at a hearing conducted in accordance with arti-  
45 cle seven of this chapter the committee may, in its discretion, impose  
46 against the custodian or other official a civil penalty of not less than  
47 twenty dollars nor more than one thousand dollars.

48 ii. If the committee finds that a person has taken an appeal frivo-  
49 lously, without reasonable grounds, after such person 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 that person a civil penalty of not less than twenty dollars nor  
53 more than one thousand dollars.

54 iii. The committee shall notify a person of a penalty levied against  
55 him pursuant to this subdivision by written notice sent by certified or  
56 registered mail. If a person fails to pay the penalty within thirty days

1 of receiving such notice, a court of competent jurisdiction shall, on  
2 application of the committee, issue an order requiring the person to pay  
3 the penalty imposed.

4 iv. The committee shall provide due notice to the parties and review  
5 affidavits and written arguments that the parties may submit and grant  
6 or deny such leave summarily at its next regular meeting. The committee  
7 shall grant such leave unless it finds that the appeal: (A) does not  
8 present a claim within the committee's jurisdiction; (B) would perpe-  
9 trate an injustice; or (C) would constitute an abuse of the committee's  
10 administrative process. Any party aggrieved by the committee's denial of  
11 such leave may apply to a court of competent jurisdiction, within  
12 fifteen days of the committee meeting at which such leave was denied,  
13 for an order requiring the committee to hear such appeal.

14 v. In making the findings and determination, the committee shall  
15 consider the nature of any justice or abuse of administrative process,  
16 including but not limited to: (A) the nature, content, language or  
17 subject matter of the request or the appeal; (B) the nature, content,  
18 language or subject matter to prior or contemporaneous requests or  
19 appeals by the person making the request or taking the appeal; and (C)  
20 the nature, content, language or subject matter of other verbal and  
21 written communications to any agency or any official of any agency from  
22 the person making the request or taking the appeal.

23 vi. Notwithstanding any provision of this section to the contrary, in  
24 the case of an appeal to the committee of a denial by a public agency,  
25 the committee may, upon motion of such agency, confirm the action of the  
26 agency and dismiss the appeal without a hearing if it finds, after exam-  
27 ining the notice of appeal and construing all allegations most favorably  
28 to the appellant, that (A) the agency has not violated this article and  
29 article seven of this chapter or (B) the agency has committed a techni-  
30 cal violation that constitutes a harmless error that does not infringe  
31 the appellant's rights.

32 (g) i. If in the judgment of the committee circumstances so warrant,  
33 it may at any time after the filing of a notice of appeal endeavor to  
34 resolve the appeal by any method of dispute resolution prescribed by  
35 rule of the committee including, but not limited to, mediation.

36 ii. The terms of any mediation agreement may contain such provisions  
37 as may be agreed upon by the committee, the appellant and the respond-  
38 ent.

39 iii. The members of the committee and its staff shall not publicly  
40 disclose what transpired in the course of mediation efforts.

41 iv. If a mediation agreement is entered into, the committee shall  
42 embody such agreement in an order and serve a copy of such order upon  
43 all parties to the agreement. Violation of such an order may cause the  
44 imposition of civil penalties.

45 (h) Any party aggrieved by the decision of said committee may appeal  
46 to the judiciary therefrom, the court may conduct an in camera review of  
47 the original or a certified copy of the records which are at issue in  
48 the appeal but were not included in the record of the committee's  
49 proceedings, admit the records into evidence and order the records to be  
50 sealed or inspected on such terms as the court deems fair and appropri-  
51 ate, during the appeal. The committee shall have standing to defend,  
52 prosecute or otherwise participate in any appeal of any of its decisions  
53 and to take an appeal from any judicial decision overturning or modify-  
54 ing a decision of the committee. If agreement is a jurisdictional  
55 prerequisite to the committee taking any such appeal, the committee  
56 shall be deemed to be aggrieved. Legal counsel employed or retained by

1 said committee shall represent said committee in all such appeals and in  
2 any other litigation affecting said committee. Any appeal taken pursu-  
3 ant to this section shall be privileged in respect to its assignment for  
4 trial over all other actions except writs of habeas corpus and actions  
5 brought by or on behalf of the state, including information on the  
6 relation of private individuals. If the court finds that any appeal  
7 taken pursuant to this section is frivolous or taken solely for the  
8 purpose of delay, it shall order the party responsible therefor to pay  
9 to the party injured by such frivolous or dilatory appeal costs or  
10 attorney's fees of not more than one thousand dollars. Such order shall  
11 be in addition to any other remedy or disciplinary action required or  
12 permitted by statute or by rules of court.

13 § 3. Paragraphs (b) and (c) of subdivision 4 of section 89 of the  
14 public officers law, paragraph (b) as amended by chapter 22 of the laws  
15 of 2005 and paragraph (c) as amended by chapter 453 of the laws of 2017,  
16 are amended to read as follows:

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

27 [~~(c) The court in such a proceeding: (i) may assess, against such agen-~~  
28 ~~cy involved, reasonable attorney's fees and other litigation costs~~  
29 ~~reasonably incurred by such person in any case under the provisions of~~  
30 ~~this section in which such person has substantially prevailed, and when~~  
31 ~~the agency failed to respond to a request or appeal within the statutory~~  
32 ~~time, and (ii) shall assess, against such agency involved, reasonable~~  
33 ~~attorney's fees and other litigation costs reasonably incurred by such~~  
34 ~~person in any case under the provisions of this section in which such~~  
35 ~~person has substantially prevailed and the court finds that the agency~~  
36 ~~had no reasonable basis for denying access]~~ appeal to the committee on  
37 open government pursuant to subdivision one of this section.

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

43 § 107. Enforcement. [~~1-~~] Any aggrieved person shall have standing to  
44 enforce the provisions of this article against a public body by the  
45 commencement of [~~a proceeding pursuant to article seventy-eight of the~~  
46 ~~civil practice law and rules, or an action for declaratory judgment and~~  
47 ~~injunctive relief. In any such action or proceeding, if a court deter-~~  
48 ~~mines that a public body failed to comply with this article, the court~~  
49 ~~shall have the power, in its discretion, upon good cause shown, to~~  
50 ~~declare that the public body violated this article and/or declare the~~  
51 ~~action taken in relation to such violation void, in whole or in part,~~  
52 ~~without prejudice to reconsideration in compliance with this article. If~~  
53 ~~the court determines that a public body has violated this article, the~~  
54 ~~court may require the members of the public body to participate in a~~  
55 ~~training session concerning the obligations imposed by this article~~  
56 ~~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 committee on open government pursuant to section eighty-nine of this chapter.

§ 5. Paragraph (a) and the opening paragraph of paragraph (b) of subdivision 1, paragraph (c) of subdivision 3, and paragraph (c) of subdivision 4 of section 87 of the public officers law, paragraph (a) and the opening paragraph of paragraph (b) of subdivision 1 as amended by chapter 80 of the laws of 1983, paragraph (c) of subdivision 3 as amended by chapter 499 of the laws of 2008, and paragraph (c) of subdivision 4 as added by chapter 102 of the laws of 2007, are amended to read as follows:

(a) Within sixty days after the effective date of this article, the governing body of each public corporation shall promulgate uniform rules and regulations for all agencies in such public corporation pursuant to such general rules and regulations as may be promulgated by the committee on open government pursuant to section eighty-nine of this article in conformity with the provisions of this article, pertaining to the administration of this article.

Each agency shall promulgate rules and regulations, in conformity with this article and applicable rules and regulations promulgated pursuant to the provisions of paragraph (a) of this subdivision, and pursuant to such general rules and regulations as may be promulgated by the committee on open government pursuant to section eighty-nine of this article in conformity with the provisions of this article, pertaining to the availability of records and procedures to be followed, including, but not limited to:

(c) a reasonably detailed current list by subject matter of all records in the possession of the agency, whether or not available under this article. Each agency shall update its subject matter list annually, and the date of the most recent update shall be conspicuously indicated on the list. Each state agency as defined in subdivision four of this section that maintains a website shall post its current list on its website and such posting shall be linked to the website of the committee on open government pursuant to section eighty-nine of this article. Any such agency that does not maintain a website shall arrange to have its list posted on the website of the committee on open government pursuant to section eighty-nine of this article.

(c) Each state agency that maintains a website shall post information related to this article and article six-A of this chapter on its website. Such information shall include, at a minimum, contact information for the persons from whom records of the agency may be obtained,

1 the times and places such records are available for inspection and copy-  
2 ing, and information on how to request records in person, by mail, and,  
3 if the agency accepts requests for records electronically, by e-mail.  
4 This posting shall be linked to the website of the committee on open  
5 government pursuant to section eighty-nine of this article.  
6 § 6. This act shall take effect on the first of April next succeeding  
7 the date on which it shall have become a law.