

# STATE OF NEW YORK

52--A

2019-2020 Regular Sessions

## IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil rights law, in relation to actions involving public petition and participation; and to amend the civil practice law and rules, in relation to stay of proceedings

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

1 Section 1. Paragraph (a) of subdivision 1 of section 70-a of the civil  
2 rights law, as added by chapter 767 of the laws of 1992, is amended to  
3 read as follows:

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

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

14 1. For purposes of this section:

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

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

22 (2) any other lawful conduct in furtherance of the exercise of the  
23 constitutional right of free speech in connection with an issue of

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

LBD04075-04-0

1 public interest, or in furtherance of the exercise of the constitutional  
2 right of petition.

3 ~~(b) ["Public applicant or permittee" shall mean any person who has~~  
4 ~~applied for or obtained a permit, zoning change, lease, license, certifi-~~  
5 ~~cate or other entitlement for use or permission to act from any govern-~~  
6 ~~ment body, or any person with an interest, connection or affiliation~~  
7 ~~with such person that is materially related to such application or~~  
8 ~~permission]~~ "Claim" includes any lawsuit, cause of action, cross-claim,  
9 counterclaim, or other judicial pleading or filing requesting relief.

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

13 ~~[(d) "Government body" shall mean any municipality, the state, any~~  
14 ~~other political subdivision or agency of such, the federal government,~~  
15 ~~any public benefit corporation, or any public authority, board, or~~  
16 ~~commission.]~~ (d) "Public interest" shall be construed broadly, and shall  
17 mean any subject other than a purely private matter.

18 § 3. Subdivision (g) of rule 3211 of the civil practice law and rules,  
19 as added by chapter 767 of the laws of 1992, is amended to read as  
20 follows:

21 (g) ~~Standards~~ Stay of proceedings and standards for motions to  
22 dismiss in certain cases involving public petition and participation. 1.  
23 A motion to dismiss based on paragraph seven of subdivision (a) of this  
24 section, in which the moving party has demonstrated that the action,  
25 claim, cross claim or counterclaim subject to the motion is an action  
26 involving public petition and participation as defined in paragraph (a)  
27 of subdivision one of section seventy-six-a of the civil rights law,  
28 shall be granted unless the party responding to the motion demonstrates  
29 that the cause of action has a substantial basis in law or is supported  
30 by a substantial argument for an extension, modification or reversal of  
31 existing law. The court shall grant preference in the hearing of such  
32 motion.

33 2. In making its determination on a motion to dismiss made pursuant to  
34 paragraph one of this subdivision, the court shall consider the plead-  
35 ings, and supporting and opposing affidavits stating the facts upon  
36 which the action or defense is based. No determination made by the court  
37 on a motion to dismiss brought under this section, nor the fact of that  
38 determination, shall be admissible in evidence at any later stage of the  
39 case, or in any subsequent action, and no burden of proof or degree of  
40 proof otherwise applicable shall be affected by that determination in  
41 any later stage of the case or in any subsequent proceeding.

42 3. All discovery, pending hearings, and motions in the action shall be  
43 stayed upon the filing of a motion made pursuant to this section. The  
44 stay shall remain in effect until notice of entry of the order ruling on  
45 the motion. The court, on noticed motion and upon a showing by the  
46 nonmoving party, by affidavit or declaration under penalty of perjury  
47 that, for specified reasons, it cannot present facts essential to justi-  
48 fy its opposition, may order that specified discovery be conducted  
49 notwithstanding this subdivision. Such discovery, if granted, shall be  
50 limited to the issues raised in the motion to dismiss.

51 4. For purposes of this section, "complaint" includes "cross-comp-  
52 laint" and "petition", "plaintiff" includes "cross-complainant" and  
53 "petitioner", and "defendant" includes "cross-defendant" and "respon-  
54 dent."

55 § 4. This act shall take effect immediately.