STATE OF NEW YORK

950--A

2025-2026 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 8, 2025

Introduced by M. of A. STECK, SIMON, MAGNARELLI, KELLES -- read once and referred to the Committee on Governmental Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public officers law, in relation to the award of reasonable attorneys' fees in certain proceedings

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

Section 1. Paragraph (c) of subdivision 4 of section 89 of the public officers law, as amended by chapter 453 of the laws of 2017, is amended to read as follows:

(c) The court in such a proceeding:

(i) [~~may~~] **shall** 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**, via voluntary production of any records after the commencement of litigation, settlement resulting in production of any records, or judgement ordering production of any records**, and when **either:**

(A) the agency failed to respond to a request or appeal within the statutory time; [~~and (ii) shall 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 and~~] **or**

(B) the court finds that the agency had no reasonable basis for denying access.

(ii) For the purposes of this paragraph, a reasonable basis for denying access means:

(A) the agency reasonably relied upon a published opinion of an appellate court of the state based on substantially similar facts; or

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

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(B) the agency reasonably relied upon a published opinion by the committee on open government based on substantially similar facts.

§ 2. Subdivision 2 of section 107 of the public officers law, as amended by chapter 397 of the laws of 2008, is amended to read as follows:

2. In any proceeding brought pursuant to this section, costs and reasonable attorney fees [~~may~~] **shall** be awarded by the court, [~~in its discretion,~~] to the successful [~~party~~] **petitioner and against the public body**. [~~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. This act shall take effect immediately.