

STATE OF NEW YORK

7011--A

Cal. No. 597

IN SENATE

March 15, 2006

Introduced by Sens. DeFRANCISCO, BONACIC, HANNON, LITTLE, MORAHAN, NOZZOLIO, SPANO -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the public officers law, in relation to court costs for freedom of information litigation

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

- 1 Section 1. Paragraph (c) of subdivision 4 of section 89 of the public
2 officers law, as amended by chapter 22 of the laws of 2005, is amended
3 to read as follows:
4 (c) The court in such a proceeding may assess, against such agency
5 involved, reasonable attorney's fees and other litigation costs reason-
6 ably incurred by such person in any case under the provisions of this
7 section in which such person has substantially prevailed, [~~provided,~~
8 ~~that such attorney's fees and litigation costs may be recovered only~~
9 ~~where the court finds that~~] when:
10 i. [~~the record involved was, in fact, of clearly significant interest~~
11 ~~to the general public; and~~] the agency had no reasonable basis for deny-
12 ing access; or
13 ii. the agency [~~lacked a reasonable basis in law for withholding the~~
14 ~~record~~] failed to respond to a request or appeal within the statutory
15 time.
16 § 2. This act shall take effect immediately.

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

LBD14168-02-6

NEW YORK STATE SENATE INTRODUCER'S MEMORANDUM IN SUPPORT submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S7011A

SPONSOR: DEFRANCISCO

PURPOSE:

To strengthen compliance with the Freedom of Information Law.

SUMMARY OF PROVISIONS:

Section 1 __ Amends Public Officers Law section 89, subdivision 4. This bill would allow for the court to award attorney's fees and other litigation costs when a government agency had no reasonable basis for denying a Freedom of Information Law (FOIL) request or a government agency failed to respond to a FOIL request within the time permitted by statute.

Section 2 -- Effective date.

EXISTING LAW:

Currently, Public Officers Law Section 89, subdivision 4 states that a court may grant attorney's fees to citizens whose FOIL requests have been denied when the record involved was of interest to the general public and the agency denying the request lacked a reasonable basis for denying the FOIL request.

JUSTIFICATION:

The Freedom of Information Law (FOIL) reaffirms a citizen's right to know how the government operates by providing access to records reflective of governmental decision and policies. Government agencies should not be allowed to ignore requests made pursuant to FOIL or delay responding for so long a time that the accountability the law seeks to ensure is lost. This

proposal would create a clear deterrent to unreasonable delays and denials of access. In doing so, this bill would encourage every unit of government to make a good faith effort to comply with the requirements of FOIL.

LEGISLATIVE HISTORY:

New bill.

FISCAL IMPLICATIONS:

None, as long as government agencies comply with the Freedom of Information Law.

EFFECTIVE DATE:

Immediately.
