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Tri-State Transportation Campaign
National Freedom of Information Coalition
New York Civil Liberties Union · New York Public Interest Group
Pace Environmental Litigation Clinic
Reinvent Albany · Riverkeeper · Sunlight Foundation**

Memorandum of Support

A.2750A-2017 (Paulin) S.2392A-2017 (Gallivan)

Awarding attorneys' fees in FOIL lawsuits

Title

An act to amend the public officers law, in relation to freedom of information requests and attorneys' fees.

Summary

This bill amends the New York State Freedom of Information Law to require the mandatory award of attorneys' fees to a plaintiff when a court finds that an agency had no reasonable basis for denying access to public records.

Statement of Support

New York's Freedom of Information Law is the single most important transparency tool the public has. Unfortunately, it is common for government agencies in New York to defy FOIL. Agencies are able to violate the Freedom of Information Law because they know it is prohibitively expensive for the public to go to court to order the release public records.

Currently, even when the public proves in court that an agency had no reasonable basis for denying access to public records, a judge may or may not decide to award attorneys' fees. This means the public risks significant legal costs, even when they win a FOIL case. The high legal cost and the high risk of not recovering fees, means that only a very small share of the FOILING public ever seeks to enforce FOIL via the courts.

This bill corrects this problem, and guarantees attorneys' fees to petitioners who prove at trial that an agency unreasonably denied access to public records. It also continues to allow judges to use their discretion in awarding attorneys' fees in cases where agencies fail to meet statutory deadlines.

We strongly support A.2750A-2017/S.2392A-2017, and urge its immediate passage.