



MEMO IN SUPPORT

Expedites Judicial Proceedings to Determine if Disclosure of Records Under the Freedom of Information Law Should Be Stopped Under the Trade Secrets Exemption

[A.414-A\(Paulin\)/S.4685-A\(Skoufis\)](#)

June 2019

TITLE OF BILL

An act to amend the public officers law and the civil practice law and rules, in relation to preference given to an appeal to the appellate division of the supreme court regarding a denial of an exception from disclosure.

SUMMARY OF PROVISIONS

Sections 1 of the bill requires that proceedings brought by an individual or entity seeking to prevent disclosure of records must be given preference and brought on for argument within 45 days. When the party seeking an exemption from disclosure fails to file a brief within 60 days of the appeal, the proceeding shall be abandoned, unless an extension is granted by the court.

Section 2 amends the civil practice law so that proceedings to stop disclosure are given preference, pursuant to certain sections of the Public Officers Law.

Section 3 requires the act go into effect 180 days after passage, applying to all appeals for which notice was filed after that date.

STATEMENT OF SUPPORT

Reinvent Albany supports this legislation, as it will expedite legal proceedings that often delay the release of records sought under FOIL.

After a state agency decides to disclose records, Section 89(5) of FOIL gives commercial entities 15 days to initiate a proceeding to block the disclosure if they believe the information disclosed is a trade secret or will cause substantial harm to their competitive position. As a result, the release of some records is delayed for years. Under this bill, courts will be required to bring on proceedings for arguments within 45 days, meaning that the cases will be resolved in a prompt manner rather than being delayed interminably. The requirement that cases be deemed abandoned when a party neglects to provide a brief within sixty days is another strong safeguard against delays.

Every year, hundreds of commercial enterprises enter in contracts with New York state that require certain trade secrets to be submitted to state agencies. The trade secrets, if released, can substantially harm a company's competitive position, and companies have a right to seek the protection of those secrets. But extended proceedings can delay disclosure of information that is not a trade secret or will not cause substantial injury to the company's competitive position. This information is valuable to the public's understanding of how tax dollars are being spent. This bill will ensure that proceedings are resolved in a timely manner.

We urge that the Governor sign the bill into law.