



Pace Environmental Litigation Clinic



Memorandum of Support

A.5854-2017 (Schimminger)/ S.4775-2017 (Boyle)

Clarifies that state created or controlled non-profit organizations are subject to Freedom of Information Law

Title

An act to amend the public officers law, in relation to expanding the definition of agency.

Summary

This bill would require that an entity created by a government agency or a subsidiary or affiliate of a government agency would be subject to the Freedom of Information Law (FOIL).

Statement of Support

New York's Freedom of Information Law (FOIL) is one of the most important transparency tools the public has. While FOIL broadly defines an "agency" as "any state or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the state or any one or more municipalities", some government-controlled entities have asserted they are not subject to the law. Among these are SUNY-affiliated not-for-profit organizations like Fort Schuyler and Fuller Road Management Corporations, which were the focus of investigations and indictments by U.S. Attorney Preet Bharara's Office.

The NYS Committee on Open Government therefore recommended as a high priority that government subsidiaries and affiliates with a board of directors or similar managing structure, a majority of whose members are appointed by state and local officers, be made subject to FOIL. The Committee's report identifies several court decisions that hold that not-for-profit organizations

effectively controlled by government are already subject to FOIL.

This bill establishes more precisely the criteria which makes government affiliates and subsidiaries subject to FOIL, and therefore improves access to government records and transparency. Our groups, BetaNYC, Citizens Union, Common Cause - New York, Consumers Union, League of Women Voters of New York State, National Freedom of Information Coalition, New York Civil Liberties Union, New York Public Interest Research Group, Pace Environmental Litigation Clinic, Reinvent Albany, and Sunlight Foundation, strongly support A.5854-2017/S.4775-2017 and urge its immediate passage.