

A1438-B Paulin (MS) Same as [S 533-B](#) GALLIVAN

Public Officers Law

TITLE....Authorizes the court to issue reasonable attorneys' fees when an agency fails to respond to certain freedom of information requests

This bill is not active in the current session.

01/12/15 referred to governmental operations
02/19/15 amend and recommit to governmental operations
02/19/15 print number 1438a
05/28/15 amend and recommit to governmental operations
05/28/15 print number 1438b
06/03/15 reported referred to codes
06/08/15 reported referred to ways and means
06/10/15 reported referred to rules
06/15/15 reported
06/15/15 rules report cal.326
06/15/15 ordered to third reading rules cal.326
06/15/15 passed assembly
06/15/15 delivered to senate
06/15/15 REFERRED TO RULES
06/16/15 SUBSTITUTED FOR S533B
06/16/15 PASSED SENATE
06/16/15 RETURNED TO ASSEMBLY
11/30/15 delivered to governor
12/11/15 vetoed memo.278
12/11/15 tabled

VETO MESSAGE - No. 278

TO THE ASSEMBLY:

I am returning herewith, without my approval, the following bill:

Assembly Bill Number 114, entitled:

"AN ACT to amend the public officers law, in relation to limiting the amount of time to appeal certain judgments regarding freedom of information violations"

Assembly Bill Number 1438-B, entitled:

"AN ACT to amend the public officers law, in relation to freedom of information requests and attorneys' fees"

NOT APPROVED

These bills would amend the Public Officers Law in relation to FOIL. While I appreciate the Legislature's attempt to further transparency in government, these bills provide an unworkable, inequitable, and piece-meal approach to FOIL reform. Specifically, the bills are limited to one branch of government further advancing a fractured system, substantially alter the due process rights of the parties and requestors, eliminate judicial discretion in processing appeals under existing law, and create inconsistencies in judicial determinations. These concerns are not limited to the executive, but also shared by the judiciary. Specifically, the Office of Court Administration expressed strong concerns that the bills, among other things, divest the appellate division of its current direct authority and discretion in reviewing and processing appeals, even upon consent from the parties.

The purpose of the FOIL laws is, and has always been, to create an open and transparent government that all New Yorkers can hold proud. However, in addition to radically transforming the litigation process, these bills are myopic in their scope and focus only on one branch of government. This would only serve to perpetuate a fractured system of transparency and data production by intentionally excluding other branches of government.

This is directly contrary to what the Executive has proposed to do. As I stated repeatedly, any reform to the State's FOIL laws must apply uniformly and equitably to all parties, and ensure that both the legislative and executive branches of state government are subject to the same FOIL provisions. To that end, I will be advancing comprehensive FOIL reform in the next legislative session that applies equally to the Executive and the Legislature, improves transparency, and increases accountability. I look forward to working with the bills' sponsors and interested stakeholders to address these important issues.

A.114

This bill would substantially alter the balance of appellate rights between state agencies and non-state agency requestors. The condensed timeframe would only apply when a state agency appeals an adverse deci-

sion, which is necessarily an inequitable outcome. Conversely, a non-state agency party would continue to have the longer time periods for appeal that are currently allowed by law.

Second, this bill would eliminate judicial discretion regarding the time available to perfect an appeal. For example, it would conflict with Civil Practice Law and Rules Section 5530(c), which allows each department of the appellate divisions to set their own rules governing the time to perfect an appeal, and/or when an appeal is subject to dismissal for failure to prosecute and/or deemed abandoned. It also fails to provide for an extension of the 60-day timeframe, even on consent.

Finally, the bill would put a substantial burden on state agencies to perfect their appeals and may make it difficult for agencies to serve and file appellate records and briefs, possibly compromising a state agency's due process rights. Before a brief is filed, the parties to a civil appeal must settle the record on appeal. It is not uncommon for this process alone to take more than 60 days.

A.1438-B

There are also several problems with this bill. Not only does this bill allow for attorney's fees to be assessed solely against a state agency, rather than uniformly against both parties, but it would allow attorney's fees to be assessed against a state agency, even if the state agency ultimately prevails. It would also require a trial court to assess attorney's fees against an agency when an agency denies access to FOIL requests in "material violation" of FOIL and with no reasonable basis for denying such access. However, the bill fails to define what a "material violation" is; thus, allowing each court to define the scope of the term, and leaving litigants without any clarity.

For all of the reasons outlined above, the bills are disapproved.

(signed) ANDREW M. CUOMO
