S T A T E O F N E W Y O R K

10384

I N A S S E M B L Y

March 22, 2010

Introduced by M. of A. KELLNER -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the public officers law, in relation to requiring public disclosure of certain state agency materials; and to amend the state technology law, in relation to authorizing the office for technology to publish a technical standards manual for the publishing of records on the internet by state agencies

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act shall be known and may be cited as the "Open New York Act".

S 2. Section 86 of the public officers law is amended by adding four new subdivisions 6, 7, 8 and 9 to read as follows:

6. "CONSENSUS" MEANS GENERAL AGREEMENT, BUT NOT NECESSARILY UNANIMITY, AND INCLUDES A PROCESS FOR ATTEMPTING TO RESOLVE OBJECTIONS BY INTERESTED PARTIES, AS LONG AS ALL COMMENTS HAVE BEEN FAIRLY CONSIDERED.

7. "TECHNICAL STANDARD" MEANS (A) THE COMMON AND REPEATED USE OF RULES, CONDITIONS, GUIDELINES OR CHARACTERISTICS FOR PRODUCTS OR RELATED PROCESSES AND PRODUCTION METHODS, AND RELATED MANAGEMENT SYSTEMS PRACTICES AND (B) THE DEFINITION OF TERMS; CLASSIFICATION OF COMPONENTS, DELINEATION OF PROCEDURES; SPECIFICATIONS OF DIMENSIONS, MATERIALS, PERFORMANCE, DESIGNS OR OPERATIONS; MEASUREMENT OF QUALITY AND QUANTITY IN DESCRIBING MATERIALS, PROCESSES, PRODUCTS, SYSTEMS, SERVICES OR PRACTICES; TEST METHODS AND SAMPLING PROCEDURES; OR DESCRIPTIONS OF FIT AND MEASUREMENTS OF SIZE OR STRENGTH.

8. "VOLUNTARY CONSENSUS STANDARDS" MEANS STANDARDS DEVELOPED OR ADOPTED BY VOLUNTARY CONSENSUS STANDARDS BODIES, BOTH DOMESTIC AND INTERNATIONAL. THESE STANDARDS INCLUDE PROVISIONS REQUIRING THAT OWNERS OF RELEVANT INTELLECTUAL PROPERTY AGREE TO MAKE SUCH INTELLECTUAL PROPERTY AVAILABLE ON A NON-DISCRIMINATORY, ROYALTY-FREE OR REASONABLE ROYALTY BASIS TO ALL INTERESTED PARTIES.

9. "VOLUNTARY CONSENSUS STANDARDS BODIES" MEANS DOMESTIC OR INTERNATIONAL ORGANIZATIONS WHICH PLAN, DEVELOP, ESTABLISH, OR COORDINATE VOLUNTARY CONSENSUS STANDARDS USING AGREED-UPON PROCEDURES.

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

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S 3. The opening paragraph of paragraph c of subdivision 1 of section 87 of the public officers law, as added by chapter 223 of the laws of 2008, is amended and a new subdivision 2-a is added to read as follows:

In determining the actual cost of reproducing a PHYSICAL COPY OF A record, an agency may include only:

2-A. ALL RECORDS AVAILABLE PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL BE AVAILABLE IN ELECTRONIC FORM PURSUANT TO THE PROVISIONS OF THIS SECTION AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION EIGHTY-SEVEN-A OF THIS ARTICLE.

S 4. The public officers law is amended by adding a new section 87-a to read as follows:

S 87-A. STATE INTERNET RECORDS POLICY. 1. (A) THE COMMITTEE ON OPEN GOVERNMENT SHALL PROMULGATE RULES ESTABLISHING AN INTERNET RECORD POLICY FOR THE STATE OF NEW YORK NO LATER THAN JANUARY THIRD, TWO THOUSAND ELEVEN, FOR THE PURPOSES OF MAKING AGENCY RECORDS AVAILABLE ON THE INTERNET AND ENSURING AGENCY COMPLIANCE WITH THE PROVISIONS OF THIS ARTICLE. SUCH POLICY SHALL INCLUDE, BUT NOT BE LIMITED TO, GUIDELINES TO ASSIST AGENCIES IN CLASSIFYING THEIR RECORDS EITHER AS IMMEDIATE, PRIORITY, LEGACY OR EXEMPT PURSUANT TO THE AGENCY COMPLIANCE PLAN DESCRIBED IN SUBDIVISION TWO OF THIS SECTION.

(B) THE COMMITTEE ON OPEN GOVERNMENT SHALL CONSULT WITH THE OFFICE FOR TECHNOLOGY REGARDING THE PREPARATION, PUBLICATION AND PERIODIC UPDATING OF A TECHNICAL STANDARDS MANUAL FOR THE PUBLISHING OF RECORDS ON THE INTERNET BY STATE AGENCIES AS PROVIDED IN SUBDIVISION TWELVE-C OF SECTION ONE HUNDRED THREE OF THE STATE TECHNOLOGY LAW.

(C) EACH STATE AGENCY, IN CONSULTATION WITH THE OFFICE FOR TECHNOLOGY AND THE COMMITTEE ON OPEN GOVERNMENT, SHALL REVIEW ALL RECORDS UNDER ITS CONTROL AND SHALL CLASSIFY THEM AS IMMEDIATE, PRIORITY, LEGACY OR EXEMPT IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION THREE OF THIS SECTION.

(D) EACH STATE AGENCY, IN CONSULTATION WITH THE OFFICE FOR TECHNOLOGY AND THE COMMITTEE ON OPEN GOVERNMENT, SHALL SUBMIT AN AGENCY COMPLIANCE PLAN TO THE GOVERNOR AND THE LEGISLATURE NO LATER THAN JANUARY THIRD, TWO THOUSAND ELEVEN. SUCH PLAN SHALL DESCRIBE HOW SUCH AGENCY INTENDS TO ACHIEVE FULL COMPLIANCE WITH THE PROVISIONS OF THIS SECTION BY JULY SEVENTH, TWO THOUSAND FOURTEEN, AND SHALL INCLUDE AN ACCOUNTING OF ALL RECORDS UNDER THE CONTROL OF THE AGENCY AND HOW SUCH RECORDS HAVE BEEN CLASSIFIED PURSUANT TO SUBDIVISION TWO OF THIS SECTION.

2. (A) EACH STATE AGENCY SHALL MAKE ITS RECORDS AVAILABLE FOR INSPECTION BY THE PUBLIC ON THE INTERNET THROUGH A SINGLE WEB PORTAL PURSUANT TO THE TIMETABLE ESTABLISHED BY THE AGENCY IN ITS AGENCY COMPLIANCE PLAN.

(B) ALL RECORDS SHALL BE AVAILABLE ON A PERMANENT BASIS, IN MACHINE-READABLE AND UNPROCESSED ELECTRONIC FORMAT AND IN THEIR COMPLETE FORM, EXCEPT FOR THOSE RECORDS OR PORTIONS OF RECORDS CLASSIFIED AS EXEMPT PURSUANT TO SUBDIVISION THREE OF THIS SECTION.

(C) ALL RECORDS SHALL BE AVAILABLE TO THE PUBLIC WITHOUT ANY REGISTRATION REQUIREMENT, LICENSE REQUIREMENT, FEES, OR RESTRICTIONS ON THEIR USE UNLESS OTHERWISE PROVIDED BY LAW.

3. STATE AGENCY RECORDS SHALL BE CLASSIFIED AS FOLLOWS:

(A) IMMEDIATE: ANY RECORD IN POSSESSION OF AN AGENCY AS OF THE EFFECTIVE DATE OF THIS SECTION AND ANY RECORD SUCH AGENCY ACQUIRES OR CREATES AFTER SUCH EFFECTIVE DATE THROUGH JANUARY THIRD, TWO THOUSAND ELEVEN, THAT CAN BE MADE AVAILABLE ON THE INTERNET PURSUANT TO THE PROVISIONS OF SECTION EIGHTY-SEVEN OF THIS ARTICLE WITHIN THIRTY DAYS OF THE AGENCY ACQUIRING OR CREATING SUCH RECORD SHALL BE CLASSIFIED AS IMMEDIATE. AGENCIES SHOULD MAKE BEST EFFORTS TO CLASSIFY AS MANY RECORDS AS IMMEDI-

ATE AS IS POSSIBLE. ANY RECORD ACQUIRED OR CREATED AFTER JANUARY THIRD, TWO THOUSAND ELEVEN, SHALL BE CLASSIFIED AS IMMEDIATE, AND SHALL BE MADE AVAILABLE PURSUANT TO THE PROVISIONS OF SECTION EIGHTY-SEVEN OF THIS ARTICLE IN AS CLOSE TO REAL-TIME AS POSSIBLE;

(B) LEGACY: ANY RECORD THAT, DUE TO ITS SIZE OR COMPLEXITY, OR DUE TO TECHNOLOGY CONSTRAINTS, CANNOT BE MADE AVAILABLE ON THE INTERNET PURSUANT TO THE PROVISIONS OF SECTION EIGHTY-SEVEN OF THIS ARTICLE BY JULY SEVENTH, TWO THOUSAND FOURTEEN, SHALL BE CLASSIFIED AS LEGACY. AGENCIES SHALL MAKE BEST EFFORTS TO AVOID PLACING RECORDS INTO THE LEGACY CLASSIFICATION;

(C) PRIORITY: ANY RECORD THAT IS NOT CLASSIFIED AS IMMEDIATE, LEGACY OR EXEMPT SHALL BE CLASSIFIED AS PRIORITY; OR

(D) EXEMPT: ANY RECORD OR PORTION OF A RECORD WHICH IS NOT REQUIRED TO BE DISCLOSED PURSUANT TO THE PROVISIONS OF SUBDIVISION TWO OF SECTION EIGHTY-SEVEN OF THIS ARTICLE SHALL BE CLASSIFIED AS EXEMPT.

4. STATE AGENCY RECORDS SHALL BE MADE AVAILABLE ON THE INTERNET ACCORDING TO THE FOLLOWING SCHEDULE:

(A) RECORDS CLASSIFIED AS IMMEDIATE SHALL BE AVAILABLE NO LATER THAN JULY FOURTH, TWO THOUSAND ELEVEN;

(B) RECORDS CLASSIFIED AS PRIORITY SHALL BE AVAILABLE NO LATER THAN JULY SECOND, TWO THOUSAND TWELVE;

(C) RECORDS CLASSIFIED AS LEGACY SHALL BE AVAILABLE NO LATER THAN JULY SEVENTH, TWO THOUSAND FOURTEEN;

(D) RECORDS OR PORTIONS OF RECORDS SPECIFIED AS EXEMPT SHALL BE EXEMPT FROM THE PROVISIONS OF THIS SECTION.

5. NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION EIGHTY-SEVEN OF THIS ARTICLE, NO FEES MAY BE CHARGED FOR PHYSICAL COPIES OF RECORDS:

(A) WHICH ARE CLASSIFIED AS IMMEDIATE ACCORDING TO THE PROVISIONS OF THIS SECTION AND WHICH ARE NOT AVAILABLE PURSUANT TO PROVISIONS OF THIS SECTION ON OR AFTER JULY FOURTH, TWO THOUSAND ELEVEN;

(B) WHICH ARE CLASSIFIED AS PRIORITY ACCORDING TO THE PROVISIONS OF THIS SECTION AND WHICH ARE NOT AVAILABLE PURSUANT TO PROVISIONS OF THIS SECTION ON OR AFTER JULY SECOND, TWO THOUSAND TWELVE; OR

(C) WHICH ARE CLASSIFIED AS LEGACY ACCORDING TO THE PROVISIONS OF THIS SECTION AND WHICH ARE NOT AVAILABLE PURSUANT TO PROVISIONS OF THIS SECTION ON OR AFTER JULY SEVENTH, TWO THOUSAND FOURTEEN.

S 5. Section 103 of the state technology law is amended by adding a new subdivision 12-c to read as follows:

12-C. IN CONSULTATION WITH THE COMMITTEE ON OPEN GOVERNMENT, TO PREPARE AND PUBLISH A TECHNICAL STANDARDS MANUAL FOR THE PUBLISHING OF RECORDS ON THE INTERNET BY STATE AGENCIES AS PROVIDED IN ARTICLE SIX OF THE PUBLIC OFFICERS LAW NO LATER THAN JANUARY THIRD, TWO THOUSAND ELEVEN, AND SHALL BASE SUCH MANUAL ON TECHNICAL STANDARDS FOR WEB PUBLISHING AND E-GOVERNMENT THAT HAVE BEEN DEVELOPED OR ADOPTED BY VOLUNTARY CONSENSUS STANDARDS BODIES. SUCH MANUAL SHALL BE UPDATED BY THE OFFICE, IN CONJUNCTION WITH THE COMMITTEE ON OPEN GOVERNMENT, AS NECESSARY. THE OFFICE SHALL CONSULT WITH VOLUNTARY CONSENSUS STANDARDS BODIES AND SHALL, WHEN SUCH PARTICIPATION IS FEASIBLE, IN THE PUBLIC INTEREST AND IS COMPATIBLE WITH AGENCY AND DEPARTMENTAL MISSIONS, AUTHORITIES, PRIORITIES, AND BUDGET RESOURCES, PARTICIPATE WITH SUCH BODIES IN THE DEVELOPMENT OF TECHNICAL STANDARDS.

S 6. This act shall take effect immediately.