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

11397

I N A S S E M B L Y

June 9, 2010

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Gordon) -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the state technology law, in relation to establishing a statewide technology policy to ensure greater access by persons with disabilities to data and information of state agencies through the use of electronic and information technology compatible with the needs of such persons

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

Section 1. Sections 101, 102, 103, 104, 105, 106 and 107 of the state technology law are designated title 1 of article 1 and a new title heading is added to read as follows:

GENERAL PROVISIONS

S 2. Subdivisions 4 and 5 of section 101 of the state technology law, as added by chapter 430 of the laws of 1997 and such section as renumbered by chapter 437 of the laws of 2004 are amended to read as follows:

4. "State agency", EXCEPT AS OTHERWISE MORE INCLUSIVELY DEFINED IN SUBDIVISION SEVEN OF SECTION ONE HUNDRED ELEVEN OF THIS ARTICLE, means any department, board, bureau, commission, division, office, council, committee or officer of the state. Such term shall not include the legislature or judiciary.

5. "Technology" means a good, service, or good and service that results in a digital, electronic or similar technical method of achieving a practical purpose or in improvements in productivity, including but not limited to information management, equipment, software, operating systems, interface systems, interconnected systems, telecommunications, data management, networks, and network management, consulting, supplies, facilities, maintenance and training. FOR THE PURPOSES OF TITLE TWO OF THIS ARTICLE, THE TERM "TECHNOLOGY" SHALL ALSO INCLUDE ELECTRONIC AND INFORMATION TECHNOLOGY, AS SUCH TERM IS DEFINED IN SUBDIVISION FOUR OF SECTION ONE HUNDRED ELEVEN OF THIS ARTICLE.

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

LBD16927-01-0

S 3. Subdivisions 15, 16 and 17 of section 103 of the state technology law, subdivisions 15 and 16 as added by chapter 430 of the laws of 1997, subdivision 17 as added by chapter 4 of the laws of 1999, such section as renumbered by chapter 437 of the laws of 2004, are amended and a new subdivision 18 is added to read as follows:

15. To conduct selective evaluations of technology activities in state agencies; [and]

16. To perform such acts, directly or by other means, as are necessary or convenient to carry out the office's functions, powers and duties[.];

17. To enter into contracts with any person, firm, corporation, not-for-profit corporation, political subdivision of the state, or governmental entity[.]; AND

18. TO ESTABLISH A SEPARATE AND DISTINCT STATEWIDE TECHNOLOGY POLICY DESIGNED TO INCREASE ACCESS BY PERSONS WITH DISABILITIES TO STATE AGENCY RESOURCES THE CONTENT OF WHICH IS MADE AVAILABLE TO THE PERSONS WITHOUT SUCH DISABILITIES THROUGH THE DEVELOPMENT, PROCUREMENT, MAINTENANCE AND UTILIZATION OF ELECTRONIC AND INFORMATION TECHNOLOGY, AS DEFINED IN TITLE TWO OF THIS ARTICLE, THAT SHALL ENSURE DISSEMINATION OF SUCH INFORMATION TO PERSONS WITH DISABILITIES IN THE MANNER PROVIDED BY TITLE TWO OF THIS ARTICLE.

S 4. Article 1 of the state technology law is amended by adding a new title 2 to read as follows:

TITLE 2

ACCESS BY PERSONS WITH DISABILITIES

SECTION 110. POLICY.

111. DEFINITIONS.

112. ACCESS BY PERSONS WITH DISABILITIES TO INTERNET, INTRANET AND OTHER ELECTRONIC INFORMATION MAINTAINED BY THE STATE.

113. BEST PRACTICE GUIDELINES; ELECTRONIC AND INFORMATION TECHNOLOGY.

114. COMPUTER SYSTEM PROCUREMENT, REDESIGN, ALTERATION OR UPGRADE.

115. UNDUE FINANCIAL OR ADMINISTRATIVE BURDEN; BUDGET REQUEST TO RELIEVE SUCH BURDEN.

116. ANNUAL REPORTS.

S 110. POLICY. 1. THE PURPOSE OF THIS TITLE IS TO DIRECT THE OFFICE TO ESTABLISH A SEPARATE AND DISTINCT STATEWIDE TECHNOLOGY POLICY THE OBJECTIVE OF WHICH IS TO INCREASE ACCESS BY PERSONS WITH DISABILITIES TO STATE AGENCY INFORMATION AND APPLICATION RESOURCES THE CONTENT OF WHICH IS AVAILABLE TO PERSONS WITHOUT SUCH DISABILITIES. CONSISTENT WITH SUCH OFFICE POLICY, STATE AGENCIES SHALL DEVELOP, PROCURE, REDESIGN, MAINTAIN AND UTILIZE TECHNOLOGY INFRASTRUCTURE RELATING TO ELECTRONIC AND INFORMATION TECHNOLOGY AND TO TELECOMMUNICATION EQUIPMENT, HARDWARE AND DEVICES THAT IS BEST CAPABLE OF FULFILLING THE POLICY OBJECTIVES PROVIDED FOR IN THIS TITLE. IN FURTHERANCE OF SUCH POLICY OBJECTIVES, STATE AGENCIES SHALL ENDEAVOR TO ENSURE, TO THE EXTENT PRACTICABLE, THAT PERSONS WITH DISABILITIES WHO ARE MEMBERS OF THE PUBLIC SEEKING INFORMATION OR SERVICES FROM A STATE AGENCY, SHALL HAVE ACCESS TO AND USE OF INFORMATION AND DATA OF THE STATE AGENCY THAT IS COMPARABLE TO THAT PROVIDED TO THE PUBLIC WHO ARE NOT PERSONS WITH DISABILITIES, UNLESS AN UNDUE FINANCIAL OR ADMINISTRATIVE BURDEN WOULD BE IMPOSED UPON THE AGENCY AND ACCESS TO THE TELECOMMUNICATIONS EQUIPMENT, HARDWARE AND DEVICES USEFUL OR NECESSARY TO CARRY OUT THE PROGRAMS AND MISSION OF THE STATE AGENCY.

2. NOTHING IN THIS TITLE SHALL BE CONSTRUED TO ABROGATE, RESCIND, MODIFY OR IN ANY MANNER INTERFERE WITH THE APPLICATION OF "STATEWIDE

TECHNOLOGY POLICY PO 4-002 ACCESSIBILITY OF STATE AGENCY WEB-BASED INTRANET AND INTRANET INFORMATION AND APPLICATIONS", FORMULATED BY THE OFFICE AND PUBLISHED AND MADE EFFECTIVE JUNE TWENTY-FIRST, TWO THOUSAND FOUR AS REVISED THEREAFTER. THE OFFICE MAY IMPLEMENT THE POLICY OBJECTIVES OF THIS TITLE BY AMENDING SUCH POLICY PO-4-002 TO THE EXTENT NECESSARY TO COMPLY WITH THIS TITLE. THE OFFICE SHALL ADOPT, AMEND OR RESCIND RULES AND REGULATIONS NECESSARY OR CONVENIENT IN FURTHERANCE OF EFFECTING THE POLICY OBJECTIVES OF THIS TITLE.

3. THE OFFICE SHALL GENERALLY OVERSEE THE IMPLEMENTATION OF THE STATEWIDE TECHNOLOGY POLICY ESTABLISHED PURSUANT TO THIS TITLE IN ORDER TO PROMOTE CONSISTENCY IN THE AUTOMATION OF STATE AGENCY'S HARDWARE AND SOFTWARE INFRASTRUCTURE THAT IS BEST ABLE TO PROMOTE THE POLICY OBJECTIVES OF THIS TITLE TO ASSIST PERSONS WITH DISABILITIES IN GAINING ACCESS TO THE CONTENT OF ELECTRONIC INFORMATION AND APPLICATIONS MADE AVAILABLE BY STATE AGENCIES TO PERSONS WITHOUT DISABILITIES.

4. UNLESS AN EXEMPTION FROM THE STATEWIDE TECHNOLOGY POLICY ESTABLISHED UNDER THIS TITLE IS CLAIMED BY A STATE AGENCY DUE TO UNDUE FINANCIAL OR ADMINISTRATIVE BURDEN, STATE AGENCIES SHALL ADHERE TO THE PROVISIONS OF SUCH POLICY BY USE OF EXISTING TECHNOLOGY INFRASTRUCTURE OR BY UPGRADING OR REPLACING SUCH EXISTING SYSTEMS BY REDESIGN OF SUCH SYSTEMS OR BY NEW SYSTEM ACQUISITIONS, INCLUDING THE ACQUISITION OF NEW AND ADDITIONAL TELECOMMUNICATIONS EQUIPMENT, HARDWARE AND DEVICES IN ACCORDANCE WITH GUIDELINES ESTABLISHED BY THE OFFICE.

5. THE OFFICE IS HEREBY AUTHORIZED TO PROMULGATE SUCH RULES OR REGULATIONS AS MAY BE NECESSARY TO EFFECTUATE THE POLICY OBJECTIVES OF THIS TITLE AND THE STATEWIDE TECHNOLOGY POLICY ESTABLISHED PURSUANT TO THIS TITLE.

S 111. DEFINITIONS. AS USED IN THIS TITLE THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "ALTERNATE FORMATS" MEANS FORMATS USABLE BY PERSONS WITH DISABILITIES WHICH MAY INCLUDE, BUT ARE NOT LIMITED TO, BRAILLE, ASC11 TEXT, LARGE PRINT, RECORDED AUDIO AND ELECTRONIC FORMATS.

2. "ALTERNATE METHODS" MEANS DIFFERENT MEANS OF PROVIDING INFORMATION, INCLUDING PRODUCT DOCUMENTATION, TO PEOPLE WITH DISABILITIES. ALTERNATE METHODS MAY INCLUDE, BUT ARE NOT LIMITED TO, VOICE, FACSIMILE, RELAY SERVICE, TTY, INTERNET POSTING, CAPTIONING, TEXT-TO-SPEECH SYNTHESIS AND AUDIO DESCRIPTION.

3. "ASSISTIVE TECHNOLOGY" MEANS ANY ITEM, PIECE OF EQUIPMENT OR SYSTEM, WHETHER ACQUIRED COMMERCIALLY, MODIFIED OR CUSTOMIZED, THAT IS COMMONLY USED TO INCREASE, MAINTAIN OR IMPROVE THE FUNCTIONAL CAPABILITIES OF PERSONS WITH DISABILITIES.

4. "ELECTRONIC AND INFORMATION TECHNOLOGY" MEANS AND INCLUDES INFORMATION TECHNOLOGY, AND ANY EQUIPMENT OR INTERCONNECTED SYSTEM OR SUBSYSTEM OF EQUIPMENT, THAT IS DEVELOPED, REDESIGNED, PROCURED OR MAINTAINED FOR USE BY A STATE AGENCY IN THE CREATION, CONVERSION OR DUPLICATION OF DATA OR INFORMATION. THE TERM ELECTRONIC AND INFORMATION TECHNOLOGY INCLUDES, BUT IS NOT LIMITED TO, TELECOMMUNICATIONS PRODUCTS, INFORMATION KIOSKS AND TRANSACTION MACHINES, WORLD WIDE WEB INTERNET SITES, MULTIMEDIA AND OFFICE EQUIPMENT SUCH AS COPIERS, FACSIMILE MACHINES, ALTERNATE FORMATS AND ALTERNATE METHODS. SUCH TERM SHALL NOT INCLUDE ANY EQUIPMENT WHICH CONTAINS EMBEDDED INFORMATION TECHNOLOGY THAT IS USED AS AN INTEGRAL PART OF THE PRODUCT, BUT THE PRINCIPAL FUNCTION OF WHICH IS NOT THE ACQUISITION, STORAGE, MANIPULATION, MANAGEMENT, MOVEMENT, CONTROL, DISPLAY, SWITCHING, INTERCHANGE, TRANSMISSION OR RECEPTION OF DATA OR INFORMATION. FOR EXAMPLE, HEATING, VENTILATION, AND AIR CONDITIONING EQUIPMENT, SUCH AS THERMOSTATS OR TEMPERATURE CONTROL DEVICES, AND

MEDICAL EQUIPMENT WHERE INFORMATION TECHNOLOGY IS INTEGRAL TO ITS OPERATION, IS NOT INFORMATION TECHNOLOGY. SUCH TERM SHALL INCLUDE ANY TELECOMMUNICATIONS EQUIPMENT, HARDWARE AND DEVICES NECESSARY FOR USE BY A PERSON WITH A DISABILITY TO ACCESS INFORMATION OTHERWISE AVAILABLE TO THE NON-DISABLED PUBLIC. THE TERM "TECHNOLOGY" SHALL BE DEEMED TO INCLUDE ALL TASKS AND PRODUCTS ENCOMPASSED WITHIN THE TERM "SERVICES" AS DEFINED IN SUBDIVISION SEVEN OF SECTION ONE HUNDRED SIXTY OF THE STATE FINANCE LAW.

5. "INFORMATION TECHNOLOGY" MEANS ANY EQUIPMENT OR INTERCONNECTED SYSTEM OR SUBSYSTEM OF EQUIPMENT, THAT IS DEVELOPED, REDESIGNED, PROCURED OR MAINTAINED FOR USE BY A STATE AGENCY IN THE AUTOMATIC ACQUISITION, STORAGE, MANIPULATION, MANAGEMENT, MOVEMENT, CONTROL, DISPLAY, SWITCHING, INTERCHANGE, TRANSMISSION OR RECEPTION OF DATA OR INFORMATION. THE TERM INFORMATION TECHNOLOGY INCLUDES TELECOMMUNICATION EQUIPMENT, HARDWARE AND DEVICES, COMPUTERS, ANCILLARY EQUIPMENT, SOFTWARE, FIRMWARE AND SIMILAR PROCEDURES, SERVICES (INCLUDING SUPPORT SERVICES), AND RELATED RESOURCES. SUCH TERM SHALL ALSO INCLUDE ANY TELECOMMUNICATION EQUIPMENT, HARDWARE, DEVICE, ITEM, PIECE OF EQUIPMENT OR SYSTEM THAT MAY SERVE AS ASSISTIVE TECHNOLOGY.

6. "UNDUE FINANCIAL OR ADMINISTRATIVE BURDEN" MEANS SIGNIFICANT DIFFICULTY OR EXPENSE WHICH IS LIKELY TO RESULT IN A FUNDAMENTAL ALTERATION IN THE SERVICE, PROGRAM OR ACTIVITY OF THE STATE AGENCY WITH RESPECT TO ITS ELECTRONIC INFORMATION. SUCH AN ALTERATION SHALL MEAN A MAJOR CHANGE OR MODIFICATION OF THE CRITICAL FUNCTION OR NATURE OF THE SERVICE, PROGRAM OR ACTIVITY. IN DETERMINING WHETHER AN ACTION WOULD RESULT IN AN UNDUE FINANCIAL AND ADMINISTRATIVE BURDEN, AN AGENCY SHALL CONSIDER ALL AGENCY FINANCIAL RESOURCES, AND ADMINISTRATIVE AND OTHER PERSONNEL AVAILABLE TO THE PROGRAM OR COMPONENT FOR WHICH THE PRODUCT IS BEING DEVELOPED, REDESIGNED, PROCURED, MAINTAINED OR USED. HOWEVER, IN DETERMINING THE AMOUNT OF ANY UNDUE FINANCIAL OR ADMINISTRATIVE BURDEN, A STATE AGENCY SHALL OFFSET ANY READILY DETERMINABLE NET SAVINGS WHICH MAY BE REALIZED TO THE STATE IN ANY OTHER PROGRAM OR AREA OF GOVERNMENT CONCERN OR ENTITLEMENT RESULTING FROM THE INCREASED ACCESS PROVIDED FOR PERSONS WITH DISABILITIES AS A RESULT OF THE STATE AGENCY'S COMPLIANCE WITH THE POLICY DIRECTIVES ESTABLISHED IN THIS TITLE. IN DETERMINING SUCH NET SAVINGS, ANY STATE AGENCY MAY REQUEST AND SECURE SUCH DATA AND ASSISTANCE FROM OTHER STATE AGENCIES AS IT DEEMS NECESSARY IN MAKING ITS DETERMINATION.

7. "STATE AGENCY" MEANS ANY STATE BOARD, BUREAU, COMMITTEE, COMMISSION, COUNCIL, DEPARTMENT, PUBLIC AUTHORITY, PUBLIC BENEFIT CORPORATION, DIVISION, OFFICE OR ANY OTHER GOVERNMENTAL ENTITY PERFORMING A GOVERNMENTAL OR PROPRIETARY FUNCTION FOR THE STATE OF NEW YORK OVER WHICH THE GOVERNOR HAS EXECUTIVE POWER, EXCEPT THE JUDICIARY OR THE STATE LEGISLATURE. A PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION SHALL ONLY BE INCLUDED WITHIN THE DEFINITION OF STATE AGENCY IF THE GOVERNOR APPOINTS THE HEAD OF SUCH AUTHORITY OR CORPORATION. THE STATE UNIVERSITY OF NEW YORK AND THE CITY UNIVERSITY OF NEW YORK SHALL BE INCLUDED WITHIN THIS DEFINITION ONLY TO THE EXTENT OF BUSINESS AND ADMINISTRATIVE FUNCTIONS OF SUCH UNIVERSITIES COMMON TO THE STATE GOVERNMENT.

8. "PERSON WITH A DISABILITY" MEANS ANY PERSON WHO HAS (A) A PHYSICAL, MENTAL OR MEDICAL IMPAIRMENT RESULTING FROM ANATOMICAL, PHYSIOLOGICAL, GENETIC OR NEUROLOGICAL CONDITIONS WHICH PREVENTS THE EXERCISE OF A NORMAL BODILY FUNCTION OR IS DEMONSTRABLE BY MEDICALLY ACCEPTED CLINICAL OR LABORATORY DIAGNOSTIC TECHNIQUES, OR (B) A RECORD OF SUCH AN IMPAIRMENT, OR (C) A CONDITION REGARDED BY OTHERS AS SUCH AN IMPAIRMENT.

9. "EXTERNET" MEANS AN INTRANET THAT IS AVAILABLE TO AN AUTHORIZED USER OUTSIDE THE FORMAL BOUNDARIES OF A STATE AGENCY OR ANY OF ITS INCLUDED ORGANIZATIONS.

10. "INTERNET" MEANS A SYSTEM OF LINKED COMPUTER NETWORKS, INTERNATIONAL IN SCOPE THAT FACILITATES DATA TRANSMISSION AND EXCHANGE.

11. "INTRANET" MEANS A NETWORK BELONGING TO A STATE AGENCY OR ANY OF ITS ORGANIZATIONAL MEMBERS, OFFICERS, EMPLOYEES OR OTHERS WITH AUTHORIZATION.

12. "FUNDAMENTAL ALTERATION" MEANS A CRITICAL CHANGE OR MODIFICATION TO A FUNCTION OR NATURE OF A PROGRAM OR SERVICE.

S 112. ACCESS BY PERSONS WITH DISABILITIES TO INTERNET, INTRANET AND OTHER ELECTRONIC INFORMATION MAINTAINED BY THE STATE. 1. EACH STATE AGENCY SHALL PROVIDE MEMBERS OF THE PUBLIC WHO ARE PERSONS WITH DISABILITIES WHO ARE COMMUNICATING WITH SUCH STATE AGENCY, OR SEEKING ALL WEB-BASED INTERNET, INTRANET AND OTHER ELECTRONIC INFORMATION FROM SUCH STATE AGENCY WITH ACCESS THERETO OR WHO MAY COMMUNICATE WITH A STATE AGENCY BY MEANS OF TELECOMMUNICATIONS EQUIPMENT, HARDWARE OR DEVICES AVAILABLE TO SUCH PERSON WHICH IS COMPARABLE TO SUCH ACCESS AS IS PROVIDED TO MEMBERS OF THE PUBLIC WHO ARE NOT DISABLED, UNLESS COMPLIANCE WITH THIS SECTION WOULD IMPOSE AN UNDUE FINANCIAL OR ADMINISTRATIVE BURDEN UPON THE STATE AGENCY. SUCH ACCESS SHALL BE EFFECTED BY MEANS OF TELECOMMUNICATIONS EQUIPMENT, HARDWARE OR DEVICES, OR ELECTRONIC AND INFORMATION TECHNOLOGY AS SUCH EVOLVES AND IMPROVES FROM TIME TO TIME. ANY STATE AGENCY MAKING SUCH A DETERMINATION SHALL DO SO ONLY UPON CLEAR AND CONVINCING PROOF THAT SUCH BURDEN IS IN FACT AN UNDUE FINANCIAL OR ADMINISTRATIVE BURDEN WHILE ALSO CONSIDERING THE NET SAVINGS TO THE STATE AS REQUIRED IN SUBDIVISION SIX OF SECTION ONE HUNDRED ELEVEN OF THIS TITLE.

2. EACH STATE AGENCY SHALL POST ITS CONTACT INFORMATION, INCLUDING ITS TELEPHONE NUMBER AND ELECTRONIC MAIL ADDRESS, WITH RESPECT TO ACCESSIBILITY FOR PERSONS WITH DISABILITIES ON THEIR WEB SITES TO ENABLE INDIVIDUALS TO CONTACT THE STATE AGENCY. SUCH LINKS WILL BE POSTED AT A MINIMUM, IN THE FOOTER OF THE STATE AGENCY'S INTERNET HOME PAGE AND BE CLEARLY DISTINGUISHABLE FROM ANY OTHER LINK FOUND IN THAT FOOTER.

3. THE PROVISIONS OF THIS SECTION SHALL NOT BE DEEMED TO REQUIRE A STATE AGENCY TO:

(A) MAKE TELECOMMUNICATIONS EQUIPMENT, HARDWARE OR DEVICES, OR AN ELECTRONIC SERVICE, PROGRAM OR ACTIVITY OWNED OR IMPLEMENTED BY SUCH AGENCY AVAILABLE FOR ACCESS AND USE BY PERSONS WITH DISABILITIES AT A LOCATION OTHER THAN THE LOCATION WHERE INFORMATION SERVICES ARE PROVIDED TO THE GENERAL PUBLIC; OR

(B) PROCURE, ACQUIRE, PURCHASE OR REDESIGN ANY ELECTRONIC AND INFORMATION TECHNOLOGY FOR THE PURPOSE OF PROVIDING SUCH ACCESS TO PERSONS WITH DISABILITIES AT A LOCATION OTHER THAN THE LOCATION WHERE THE STATE AGENCY PROVIDES SUCH ACCESS TO THE GENERAL PUBLIC.

4. IF COMPLIANCE WITH THIS SECTION IMPOSES AN UNDUE FINANCIAL OR ADMINISTRATIVE BURDEN UPON THE STATE AGENCY, THE STATE AGENCY SHALL NOT BE REQUIRED TO COMPLY WITH THIS SECTION, BUT SUCH STATE AGENCY SHALL PROVIDE PERSONS WITH DISABILITIES WITH ALTERNATIVE METHODS OF ACCESS UNTIL SUCH TIME AS SUCH BURDEN HAS BEEN RELIEVED.

5. IN DETERMINING WHETHER COMPLIANCE WITH THIS SECTION IMPOSES AN UNDUE FINANCIAL OR ADMINISTRATIVE BURDEN UPON THE STATE AGENCY, SUCH AGENCY SHALL CONSIDER ALL APPROPRIATIONS AND OTHER FINANCIAL RESOURCES AVAILABLE TO THE AGENCY, WHICH MAY BE DEVOTED TO EFFECTUATE THE PROVISIONS OF THIS TITLE AND THE NET SAVINGS REALIZED IN ANY OTHER STATE PROGRAM OR AREA OF ENTITLEMENT REALIZED FROM THE IMPLEMENTATION OF SUCH

PROVISIONS. ANY STATE AGENCY MAKING A DETERMINATION OF EXEMPTION DUE TO UNDUE FINANCIAL OR ADMINISTRATIVE BURDEN UNDER THIS SECTION SHALL DOCUMENT SUCH DETERMINATION AND MAINTAIN SUCH DOCUMENTATION USED TO SUPPORT SUCH DETERMINATION. IN THE EVENT OF SUCH DETERMINATION, THE STATE AGENCY SHALL IDENTIFY THE INFORMATION OR SERVICES SUBJECT TO SUCH DETERMINATION ON THE RELEVANT INTERNET WEB PAGES AND SPECIFY THE ALTERNATIVE METHOD FOR OBTAINING SUCH INFORMATION OR SERVICES.

6. NOTHING IN THIS SECTION SHALL ALTER A STATE AGENCY'S INDEPENDENT AUTHORITY AND RESPONSIBILITY TO DETERMINE WHAT CONSTITUTES AN UNDUE FINANCIAL OR ADMINISTRATIVE BURDEN.

7. THE OFFICE MAY REQUEST TO REVIEW ANY STATE AGENCY DETERMINATION OF EXEMPTION. SUCH REVIEW MAY INCLUDE, BUT NOT BE LIMITED TO, A REVIEW OF THE FINANCIAL, ADMINISTRATIVE AND OTHER PERSONNEL STAFF RESOURCES AVAILABLE TO THE STATE AGENCY. UPON REQUEST OF ANY RECOGNIZED PUBLIC OR PRIVATE ENTITY, NOT-FOR-PROFIT CORPORATION OR ADVOCACY GROUP REPRESENTING PERSONS WITH DISABILITIES, THE OFFICE SHALL DETERMINE IF ANY SYSTEM CHANGE OR UPGRADE AT LEAST COMPLIES WITH THE REQUIREMENTS IMPOSED BY 36 CFR PART 1194. THE OFFICE MAY SUBMIT NOTIFICATION TO THE DIRECTOR OF THE BUDGET THAT SUCH STATE AGENCY DETERMINATION IS WARRANTED DUE TO AN INADEQUATE LEVEL OF FINANCIAL RESOURCES AND THAT AN EXEMPTION IS THEREFORE WARRANTED AND NECESSARY; PROVIDED, HOWEVER, THAT SUCH EXEMPTION SHALL BE SUBJECT TO STRICT SCRUTINY AND REVIEW AND SHALL NOT BE GRANTED EXCEPT AFTER EXTENSIVE STUDY BASED ON CLEAR AND CONVINCING EVIDENCE.

S 113. BEST PRACTICE GUIDELINES; ELECTRONIC AND INFORMATION TECHNOLOGY. 1. THE OFFICE SHALL FORMULATE BEST PRACTICE GUIDELINES TO ASSIST STATE AGENCIES IN COMPLYING WITH THE PROVISIONS OF THIS TITLE. SUCH GUIDELINES SHALL PERTAIN TO:

(A) THE DEVELOPMENT, PROCUREMENT, MAINTENANCE AND USE OF ELECTRONIC AND INFORMATION TECHNOLOGY BY STATE AGENCIES THAT ARE CAPABLE OF PROVIDING ACCESS TO PERSONS WITH DISABILITIES OF ELECTRONIC INFORMATION MAINTAINED BY THE STATE AGENCY COMPARABLE TO THAT WHICH MAY BE ACCESSED BY THE GENERAL PUBLIC; AND

(B) A PROCUREMENT ACCESSIBILITY POLICY WHICH THE OFFICE RECOMMENDS TO BE FOLLOWED BY STATE AGENCIES WITH RESPECT TO THE PROCUREMENT, ACQUISITION, REDESIGN, DEPLOYMENT, IMPLEMENTATION OR USE OF COMPUTER HARDWARE AND SOFTWARE INFRASTRUCTURE.

2. IN ADOPTING SUCH BEST PRACTICE GUIDELINES UNDER THIS SECTION, THE OFFICE SHALL:

(A) REQUIRE THAT ALL STATE AGENCIES FULLY COMPLY WITH AND CONSIDER THE PROVISIONS OF 36 CFR PART 1194 WHICH ESTABLISHES ELECTRONIC AND INFORMATION TECHNOLOGY STANDARDS FOR AGENCIES OF THE FEDERAL GOVERNMENT DESIGNED TO ASSIST PERSONS WITH DISABILITIES;

(B) REQUIRE PROVIDERS OF ELECTRONIC AND INFORMATION TECHNOLOGY OR TELECOMMUNICATIONS EQUIPMENT, HARDWARE AND DEVICES TO SUPPLY THE STATE AGENCY WITH A VOLUNTARY PRODUCT ACCESSIBILITY TEMPLATE WHICH DETAILS ITS COMPLIANCE WITH APPLICABLE FEDERAL LAW, RULES AND REGULATIONS; AND

(C) WITH RESPECT TO THE PROCUREMENT AND UTILIZATION OF NEW TELECOMMUNICATION EQUIPMENT, HARDWARE AND DEVICES, REQUIRE STATE AGENCIES TO FIRST MAKE A DETERMINATION THAT THE ACQUISITION AND USE OF SUCH NEW EQUIPMENT, HARDWARE AND DEVICES WILL IN NO EVENT NEGATIVELY AFFECT THE THEN CURRENT LEVEL OF ACCESSIBILITY BY PERSONS WITH DISABILITIES AS REQUIRED BY THE FEDERAL COMMUNICATIONS COMMISSION AND ANY RULES, REGULATIONS OR GUIDELINES ESTABLISHED BY SUCH COMMISSION.

3. IN COMPLIANCE WITH SUCH GUIDELINES, STATE AGENCIES SHALL DEVELOP, PROCURE, MAINTAIN AND USE ELECTRONIC AND INFORMATION TECHNOLOGY CAPABLE

OF ASSISTING PERSONS WITH DISABILITIES IN FURTHERANCE OF THE POLICY SET FORTH IN THIS TITLE.

4. THE OFFICE SHALL ESTABLISH ADVISORY MATERIALS AND FORWARD PERIODIC NOTIFICATIONS TO STATE AGENCIES REGARDING EMERGING ELECTRONIC AND INFORMATION TECHNOLOGIES.

S 114. COMPUTER SYSTEM PROCUREMENT, REDESIGN, ALTERATION OR UPGRADE. 1. UNLESS A STATE AGENCY EXEMPTS ITSELF FROM THE APPLICATION OF THIS TITLE BECAUSE COMPLIANCE WITH THE PROVISIONS THEREOF HAS BEEN DETERMINED TO CONSTITUTE AN UNDUE FINANCIAL OR ADMINISTRATIVE BURDEN, EACH STATE AGENCY SHALL BE REQUIRED TO: (A) PROCURE AND ACQUIRE NEW COMPUTER HARDWARE AND/OR SOFTWARE SYSTEMS THAT ARE NECESSARY TO COMPLY WITH THE PROVISIONS OF THIS TITLE IN THE EVENT THAT EXISTING SYSTEMS ARE INCAPABLE OF SUCH COMPLIANCE; OR (B) REDESIGN, ALTER OR UPGRADE EITHER ON A MAJOR OR MINIMAL BASIS, AS MAY BE NECESSARY, EXISTING SYSTEMS IN ORDER TO COMPLY WITH THE PROVISIONS OF THIS TITLE.

2. THE OFFICE SHALL ESTABLISH BY RULE OR REGULATION AN IMPLEMENTATION TIME SCHEDULE OR SCHEDULES THAT SHALL APPLY TO STATE AGENCIES FOR EITHER THE NEW PROCUREMENT AND ACQUISITION OF NEW REQUIRED COMPUTER HARDWARE AND/OR SOFTWARE SYSTEMS OR FOR SUCH REDESIGN, ALTERATION OR UPGRADING OF EXISTING SYSTEMS.

3. THE SCHEDULES ESTABLISHED BY THE OFFICE SHALL BE SUFFICIENTLY FLEXIBLE, ON A STATE AGENCY BY STATE AGENCY BASIS IF THE OFFICE DETERMINES SUCH DEGREE OF FLEXIBILITY TO BE ADVISABLE, SO AS TO ENABLE A STATE AGENCY TO COMPLY THEREWITH WITHOUT CAUSING THE STATE AGENCY TO DETERMINE A NEED FOR AN EXEMPTION DUE TO UNDUE FINANCIAL OR ADMINISTRATIVE BURDEN.

4. THE OFFICE SHALL ALSO ESTABLISH AN ELECTRONIC INFORMATION AND RESOURCE CONTENT SCHEDULE TO BE COMPLIED WITH BY A STATE AGENCY AFTER EFFECTUATION BY THE STATE AGENCY OF THE OPTIONS PROVIDED TO IT UNDER SUBDIVISION ONE OF THIS SECTION. SUCH CONTENT SCHEDULE MAY BE SIMILAR TO THAT TYPE OF SCHEDULE AS WAS ESTABLISHED BY THE OFFICE. THE CONTENT SCHEDULE POLICY ESTABLISHED PURSUANT TO THIS SUBDIVISION SHALL APPLY TO ALL STATE AGENCIES.

5. IF COMPLIANCE WITH THIS SECTION IMPOSES AN UNDUE FINANCIAL OR ADMINISTRATIVE BURDEN UPON THE STATE AGENCY, THE STATE AGENCY SHALL NOT BE REQUIRED TO COMPLY WITH THIS SECTION, BUT SUCH STATE AGENCY MAY PROVIDE PERSONS WITH DISABILITIES WITH ALTERNATIVE METHODS OF ACCESS.

6. IN DETERMINING WHETHER COMPLIANCE WITH THIS SECTION IMPOSES AN UNDUE FINANCIAL OR ADMINISTRATIVE BURDEN UPON A STATE AGENCY, SUCH AGENCY SHALL CONSIDER ALL APPROPRIATIONS AND OTHER FINANCIAL RESOURCES AVAILABLE TO THE AGENCY, WHICH MAY BE DEVOTED TO EFFECTUATE THE PROVISIONS OF THIS TITLE. ANY STATE AGENCY MAKING A DETERMINATION OF EXEMPTION DUE TO UNDUE FINANCIAL OR ADMINISTRATIVE BURDEN UNDER THIS SECTION SHALL DOCUMENT SUCH DETERMINATION AND MAINTAIN SUCH DOCUMENTATION USED TO SUPPORT SUCH DETERMINATION. IN THE EVENT OF SUCH DETERMINATION, THE STATE AGENCY SHALL SPECIFY THE ALTERNATIVE METHOD FOR OBTAINING SUCH INFORMATION OR SERVICES.

7. NOTHING IN THIS SECTION SHALL ALTER A STATE AGENCY'S INDEPENDENT AUTHORITY AND RESPONSIBILITY TO DETERMINE WHAT CONSTITUTES AN UNDUE FINANCIAL AND ADMINISTRATIVE BURDEN.

8. THE OFFICE MAY REQUEST TO REVIEW ANY STATE AGENCY DETERMINATION OF EXEMPTION. SUCH REVIEW MAY INCLUDE, BUT NOT BE LIMITED TO, A REVIEW OF THE FINANCIAL AND ADMINISTRATIVE AND OTHER PERSONNEL STAFF RESOURCES AVAILABLE TO THE STATE AGENCY. THE OFFICE MAY SUBMIT NOTIFICATION TO THE DIRECTOR OF THE BUDGET THAT SUCH STATE AGENCY DETERMINATION IS WARRANTED DUE TO AN INADEQUATE LEVEL OF FINANCIAL RESOURCES.

S 115. UNDUE FINANCIAL OR ADMINISTRATIVE BURDEN; BUDGET REQUEST TO RELIEVE SUCH BURDEN. IN THE EVENT IN ANY FISCAL YEAR A STATE AGENCY CLAIMS AN EXEMPTION FROM THE REQUIREMENTS OF THIS TITLE BASED UPON A DETERMINATION OF UNDUE FINANCIAL OR ADMINISTRATIVE BURDEN, SUCH AGENCY AS PART OF ITS ANNUAL SUBMISSION TO THE DIVISION OF BUDGET FOR ITS NEXT SUCCEEDING FISCAL YEAR APPROPRIATION REQUEST, SHALL INCLUDE A REQUEST FOR AN AMOUNT WHICH INCLUDES FUNDS SUFFICIENT TO ENABLE SUCH AGENCY TO FULLY COMPLY WITH THE PROVISIONS OF THIS TITLE.

S 116. ANNUAL REPORTS. 1. ANNUALLY ON OR BEFORE APRIL FIRST, EACH STATE AGENCY SHALL SUBMIT TO THE OFFICE A WRITTEN REPORT IN THE FORM REQUIRED BY THE OFFICE WHICH SHALL INDICATE THAT: (A) SUCH STATE AGENCY IS IN COMPLIANCE WITH THE PROVISIONS OF THIS TITLE; OR (B) SUCH STATE AGENCY HAS EXEMPTED ITSELF FROM SUCH COMPLIANCE DUE TO UNDUE FINANCIAL OR ADMINISTRATIVE BURDEN. IF A STATE AGENCY IS NOT IN COMPLIANCE WITH THE PROVISIONS OF THIS TITLE AS OF THE DATE OF ITS REPORT BUT HAS NOT EXEMPTED ITSELF FROM COMPLIANCE DUE TO FINANCIAL OR ADMINISTRATIVE BURDEN, SUCH STATE AGENCY SHALL INDICATE IN ITS REPORT THAT IT HAS UNDERTAKEN ACTION TO COMPLY WITH THIS TITLE BY THE METHOD DESCRIBED IN SECTION ONE HUNDRED FIFTEEN OF THIS TITLE AND SHALL FURTHER INDICATE TO THE OFFICE THE ESTIMATED TIME PERIOD NECESSARY TO COMPLETE SUCH COMPLIANCE.

2. ON OR BEFORE JUNE FIRST OF THE CALENDAR YEAR NEXT SUCCEEDING THE YEAR IN WHICH THIS SECTION TAKES EFFECT AND ANNUALLY THEREAFTER, THE OFFICE SHALL SUBMIT A WRITTEN REPORT TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY INDICATING WITH SPECIFICITY THE ANNUAL STATUS OF STATE AGENCY COMPLIANCE BASED UPON THE WRITTEN REPORTS SUBMITTED TO THE OFFICE BY THE STATE AGENCIES FOR THE APPLICABLE REPORTING PERIOD PURSUANT TO SUBDIVISION ONE OF THIS SECTION.

3. THE OFFICE MAY REQUIRE STATE AGENCIES TO INCLUDE IN THE REPORT REQUIRED BY SUBDIVISION ONE OF THIS SECTION SUCH OTHER INFORMATION AS WILL ENABLE THE OFFICE TO ASCERTAIN THE EFFECTIVENESS OF ENSURING MAXIMUM COMPLIANCE WITH THE PROVISIONS OF THIS TITLE BY STATE AGENCIES.

S 5. This act shall take effect immediately.