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

S. 6846 A. 9928

S E N A T E - A S S E M B L Y

February 12, 2010

IN SENATE -- Introduced by Sen. BRESLIN -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

IN ASSEMBLY -- Introduced by M. of A. HOYT, McENENY, MAGEE, SCHIMMINGER, KAVANAGH -- Multi-Sponsored by -- M. of A. GALEF -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to the records of the governor and executive chamber and the arts and cultural affairs law in relation to establishing record keeping policies and procedures relating to certain records of the legislature and civil departments; and to repeal section 5 of the executive law relating thereto

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

Section 1. Section 5 of the executive law is REPEALED and a new section 5 is added to read as follows:

S 5. GOVERNOR AND EXECUTIVE CHAMBER RECORDS. 1. RECORDS OF THE GOVERNOR AND THE EXECUTIVE CHAMBER STAFF ARE OF SPECIAL IMPORTANCE TO THE GOVERNMENT AND CITIZENS OF NEW YORK STATE, BECAUSE THE RECORDS DOCUMENT THE ACTIVITIES AND DECISIONS OF STATE GOVERNMENT'S CHIEF EXECUTIVE OFFICER. MANY RECORDS OF THE GOVERNOR AND THE EXECUTIVE CHAMBER STAFF ARE OF ENDURING VALUE AND WARRANT ARCHIVAL PRESERVATION BECAUSE SUCH RECORDS CONTAIN DOCUMENTARY EVIDENCE ABOUT SIGNIFICANT POLICIES, PROGRAMS, AND DECISIONS MADE OR INSTITUTED BY THE GOVERNOR.

2. AS USED IN THIS SECTION:

A. THE TERM "GOVERNOR'S RECORDS" MEANS ALL CORRESPONDENCE, MEMORANDA, REPORTS, PROPOSALS, OR OTHER DOCUMENTARY MATERIALS OR REASONABLY SEGREGABLE PORTIONS THEREOF, REGARDLESS OF PHYSICAL FORM OR CHARACTERISTICS, CREATED OR RECEIVED BY THE GOVERNOR, HIS OR HER IMMEDIATE STAFF, OR A UNIT OR INDIVIDUAL IN THE EXECUTIVE CHAMBER WHOSE FUNCTION IS TO ADVISE AND ASSIST THE GOVERNOR, IN THE COURSE OF TRANSACTING BUSINESS OR CONDUCTING ACTIVITIES WHICH RELATE TO OR HAVE AN EFFECT UPON THE CARRYING OUT OF THE CONSTITUTIONAL, STATUTORY, ADMINISTRATIVE, OR OTHER OFFICIAL OR CEREMONIAL DUTIES OF THE GOVERNOR. SUCH RECORDS INCLUDE DOCUMENTARY MATERIALS RELATING TO POLITICAL ACTIVITIES OF THE GOVERNOR OR A

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

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MEMBER OF THE STAFF, BUT ONLY IF SUCH ACTIVITIES RELATE TO OR HAVE A DIRECT IMPACT UPON THE CONSTITUTIONAL, STATUTORY OR OTHER OFFICIAL OR CEREMONIAL DUTIES OF THE GOVERNOR AND DOES NOT INCLUDE DOCUMENTARY MATERIALS THAT ARE (I) OFFICIAL RECORDS OF AN AGENCY; (II) PERSONAL RECORDS; (III) STOCKS OF PUBLICATIONS, FORMS, AND STATIONERY; (IV) EXTRA COPIES OF DOCUMENTS PRODUCED ONLY FOR CONVENIENCE OF REFERENCE; AND (V) LIBRARY OR MUSEUM MATERIAL MADE OR ACQUIRED SOLELY FOR REFERENCE AND EXHIBITION PURPOSES.

B. THE TERM "PERSONAL RECORDS" MEANS ALL DOCUMENTARY MATERIALS OR REASONABLY SEGREGABLE PORTIONS THEREOF, OF A PURELY PRIVATE OR NONPUBLIC CHARACTER WHICH DO NOT RELATE TO OR HAVE AN EFFECT UPON THE CARRYING OUT OF THE CONSTITUTIONAL, STATUTORY, OR OTHER OFFICIAL OR CEREMONIAL DUTIES OF THE GOVERNOR INCLUDING PERSONAL DIARIES, JOURNALS AND NOTES; MATERIALS RELATING TO PRIVATE POLITICAL ASSOCIATIONS; AND MATERIALS RELATING EXCLUSIVELY TO THE GOVERNOR'S OWN ELECTION TO THE OFFICE OF GOVERNOR AND MATERIALS RELATING DIRECTLY TO THE ELECTION OF INDIVIDUALS TO FEDERAL, STATE OR LOCAL OFFICE.

C. THE TERM "FORMER GOVERNOR", WHEN USED WITH RESPECT TO GOVERNOR'S RECORDS, MEANS THE FORMER GOVERNOR DURING WHOSE TERM OR TERMS OF OFFICE SUCH RECORDS WERE CREATED.

D. THE TERM "ARCHIVIST" SHALL MEAN THE HEAD OF THE STATE ARCHIVES IN THE STATE EDUCATION DEPARTMENT.

3. GOVERNOR'S RECORDS ARE OWNED BY THE STATE OF NEW YORK AND SHALL BE ADMINISTERED IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION AND OF SECTION 57.05 OF THE ARTS AND CULTURAL AFFAIRS LAW.

4. THE GOVERNOR AND HIS OR HER EXECUTIVE CHAMBER STAFF SHALL ESTABLISH RECORDKEEPING POLICIES AND PROCEDURES TO ASSURE THAT:

A. RECORDS AND RECORDKEEPING SYSTEMS ARE CREATED TO PROVIDE COMPLETE AND COMPREHENSIVE DOCUMENTARY EVIDENCE OF THE SIGNIFICANT ACTIVITIES, DELIBERATIONS, DECISIONS, AND DEVELOPMENT AND IMPLEMENTATION OF POLICIES THAT REFLECT THE PERFORMANCE OF CONSTITUTIONAL, STATUTORY, AND THE OFFICIAL AND CEREMONIAL DUTIES OF THE GOVERNOR;

B. DOCUMENTARY MATERIALS PRODUCED OR RECEIVED BY THE GOVERNOR AND EXECUTIVE CHAMBER STAFF ARE CATEGORIZED AS GOVERNOR'S RECORDS;

C. RECORDS AND RECORDKEEPING SYSTEMS REMAIN USABLE AND ACCESSIBLE AS LONG AS NEEDED FOR BUSINESS OR RESEARCH PURPOSES;

D. RECORDS AND RECORDKEEPING SYSTEMS ARE EVALUATED BY THE STATE ARCHIVES IN ORDER TO ENSURE THAT RECORDS ARE RETAINED FOR THE LENGTH OF TIME NECESSARY TO MEET LEGAL, FISCAL, AND ADMINISTRATIVE NEEDS AND TO CONFORM WITH ANY LEGAL MANDATES; TO ENSURE THAT RECORDKEEPING SYSTEMS MAINTAIN RECORDS IN USABLE AND ACCESSIBLE FORM; AND TO IDENTIFY AND PROTECT RECORDS THAT HAVE ENDURING RESEARCH VALUE AND WARRANT PRESERVATION IN THE STATE ARCHIVES; AND

E. RECORDS IDENTIFIED BY THE STATE ARCHIVES AS HAVING ENDURING, EVIDENTIAL, INFORMATIONAL, HISTORICAL, OR OTHER RESEARCH VALUE ARE TRANSFERRED TO THE STATE ARCHIVES DURING OR AT THE END OF A GUBERNATORIAL ADMINISTRATION CONSISTENT WITH THE PROVISIONS OF SECTION 57.05 OF THE ARTS AND CULTURAL AFFAIRS LAW AND RECORDS RETENTION AND DISPOSITION SCHEDULES PROMULGATED PURSUANT TO SUCH LAW.

5. UPON COMPLETION OF A TERM OF OFFICE OR IF SERVING CONSECUTIVE TERMS UPON CONCLUSION OF THE LAST TERM, THE STATE ARCHIVES SHALL ASSUME RESPONSIBILITY FOR CUSTODY, CONTROL, AND PRESERVATION OF, AND ACCESS TO, GOVERNOR'S RECORDS. THE STATE ARCHIVES SHALL HAVE AN AFFIRMATIVE DUTY TO MAKE SURE SUCH RECORDS ARE AVAILABLE TO THE PUBLIC AS RAPIDLY AS POSSIBLE, CONSISTENT WITH THE PROVISIONS OF THIS SECTION.

6. THE STATE ARCHIVIST MAY DEPOSIT SUCH RECORDS IN A REPOSITORY OTHER THAN THE STATE ARCHIVES PROVIDED THAT THE STATE OF NEW YORK SHALL RETAIN OWNERSHIP AND THE ARCHIVIST HAS ASCERTAINED THAT THE REPOSITORY MEETS GENERALLY ACCEPTED STANDARDS AND FOLLOWS ACCEPTED PRACTICES FOR ARCHIVAL ADMINISTRATION, THAT THE RECORDS ARE AVAILABLE FOR PUBLIC ACCESS PURSUANT TO THE PROVISIONS OF THIS SECTION, AND THAT THE RECORDS MAY BE RETURNED TO THE STATE ARCHIVES IF THE REPOSITORY IS UNABLE TO PROVIDE ACCEPTABLE CONDITIONS.

7. THE STATE ARCHIVIST MAY DISPOSE OF RECORDS THAT ARE DEEMED OF NO FURTHER RESEARCH VALUE CONSISTENT WITH THE PROVISIONS OF SECTION 57.05 OF THE ARTS AND CULTURAL AFFAIRS LAW.

8. RECORDS TRANSFERRED TO THE STATE ARCHIVES SHALL BE ADMINISTERED PURSUANT TO THE PROVISIONS OF ARTICLE SIX OF THE PUBLIC OFFICERS LAW, EXCEPT THAT PRIOR TO THE CONCLUSIONS OF TERM OR TERMS OF OFFICE, A GOVERNOR MAY SPECIFY DURATIONS, NOT TO EXCEED FIFTEEN YEARS FROM THE LAST DAY OF THE GOVERNOR'S TERM IN OFFICE, FOR WHICH ACCESS SHALL BE RESTRICTED WITH RESPECT TO INFORMATION IN GOVERNOR'S RECORDS IN ONE OR MORE OF THE FOLLOWING CATEGORIES:

A. RELATING TO APPOINTMENT TO STATE OFFICE; AND

B. EXEMPTED FROM DISCLOSURE PURSUANT TO THE PUBLIC OFFICERS LAW.

9. DURING THE PERIOD OF RESTRICTED ACCESS, THE ARCHIVIST SHALL ESTABLISH PROCEDURES WHEREBY ANY PERSON DENIED ACCESS MAY REQUEST A WRITTEN DETERMINATION BY THE ARCHIVIST OR DESIGNEE WITHIN THIRTY DAYS OF REQUEST, SETTING FORTH THE BASIS FOR THE DETERMINATION.

10. THE FOLLOWING SHALL BE EXCEPTED FROM RESTRICTIONS ON ACCESS:

A. EMPLOYEES OF THE STATE ARCHIVES IN THE PERFORMANCE OF NORMAL WORK TO ADMINISTER THE RECORDS;

B. FORMER GOVERNORS OR THEIR DESIGNEES FOR RECORDS RELATING TO THEIR TERMS OF OFFICE;

C. SUBJECT TO ANY RIGHTS, DEFENSES, OR PRIVILEGES WHICH AN AGENCY OR INDIVIDUAL MAY INVOKE, GOVERNOR'S RECORDS SHALL BE MADE AVAILABLE:

(1) PURSUANT TO SUBPOENA OR OTHER JUDICIAL PROCESS ISSUED BY A COURT OF COMPETENT JURISDICTION FOR THE PURPOSES OF ANY CIVIL OR CRIMINAL INVESTIGATION OR PROCEEDING;

(2) TO AN INCUMBENT GOVERNOR IF SUCH RECORDS CONTAIN INFORMATION THAT IS NEEDED FOR THE CONDUCT OF CURRENT BUSINESS OF THE OFFICE AND THAT IS NOT OTHERWISE AVAILABLE; AND

(3) TO EITHER HOUSE OF THE STATE LEGISLATURE, TO THE EXTENT OF MATTER WITHIN ITS JURISDICTION, IF SUCH RECORDS CONTAIN INFORMATION THAT IS NEEDED FOR THE CONDUCT OF CURRENT BUSINESS AND IS NOT OTHERWISE AVAILABLE.

11. UPON THE DEATH OR DISABILITY OF A GOVERNOR OR FORMER GOVERNOR, ANY DISCRETION OR AUTHORITY THE GOVERNOR OR FORMER GOVERNOR MAY HAVE HAD UNDER THIS SECTION SHALL BE EXERCISED BY THE ARCHIVIST.

12. LIEUTENANT GOVERNOR'S RECORDS SHALL BE SUBJECT TO THE PROVISIONS OF THIS SECTION IN THE SAME MANNER AS GOVERNOR'S RECORDS.

S 2. Subdivision 4 of section 57.05 of the arts and cultural affairs law is amended to read as follows:

4. (A) Except as otherwise provided by law, the state archives shall acquire and assume the official custody and responsibility for preserving and making available for reference and use those official records of the legislature, the judiciary and the civil departments of the state government which are deemed to have sufficient historical value or other value to warrant their continued preservation by the state.

(B) EXCEPT AS OTHERWISE PROVIDED BY LAW, THE STATE ARCHIVES SHALL ASSIST THE LEGISLATURE AND CIVIL DEPARTMENTS OF THE STATE GOVERNMENT TO ESTABLISH RECORDKEEPING POLICIES AND PROCEDURES TO ENSURE THAT:

(1) RECORDS AND RECORDKEEPING SYSTEMS ARE CREATED TO PROVIDE COMPLETE AND COMPREHENSIVE DOCUMENTARY EVIDENCE OF THE SIGNIFICANT ACTIVITIES, DELIBERATIONS, DECISIONS, AND DEVELOPMENT AND IMPLEMENTATION OF POLICIES THAT REFLECT THE PERFORMANCE OF CONSTITUTIONAL, STATUTORY, AND THE OFFICIAL AND CEREMONIAL DUTIES OF THE LEGISLATURE AND CIVIL DEPARTMENTS OF THE STATE GOVERNMENT;

(2) RECORDS AND RECORDKEEPING SYSTEMS REMAIN USABLE AND ACCESSIBLE AS LONG AS NEEDED FOR BUSINESS OR RESEARCH PURPOSES;

(3) RECORDS AND RECORDKEEPING SYSTEMS ARE EVALUATED BY THE STATE ARCHIVES IN ORDER TO ENSURE THAT RECORDS ARE RETAINED FOR THE LENGTH OF TIME NECESSARY TO MEET, LEGAL, FISCAL AND ADMINISTRATIVE NEEDS AND TO CONFORM WITH ANY LEGAL MANDATES; TO ENSURE THAT RECORDKEEPING SYSTEMS MAINTAIN RECORDS IN USABLE AND ACCESSIBLE FORM; AND TO IDENTIFY AND PROTECT RECORDS THAT HAVE ENDURING RESEARCH VALUE AND WARRANT PRESERVATION IN THE STATE ARCHIVES.

S 3. This act shall take effect immediately.