

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

735--A

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. KELLNER, CAHILL, MILLMAN, GALEF, MAISEL, GABRYS-ZAK -- Multi-Sponsored by -- M. of A. AMEDORE, CROUCH, LUPARDO, MURRAY, REILLY, THIELE -- read once and referred to the Committee on Governmental Operations -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

1 Section 1. This act shall be known as and may be cited as the "open
2 New York act".
3 S 2. Section 86 of the public officers law is amended by adding two
4 new subdivisions 6 and 7 to read as follows:
5 6. "DATA" MEANS FINAL VERSIONS OF STATISTICAL OR FACTUAL INFORMATION
6 (A) IN ALPHANUMERIC FORM REFLECTED IN A LIST, TABLE, GRAPH, CHART OR
7 OTHER NON-NARRATIVE FORM, THAT CAN BE DIGITALLY TRANSMITTED OR PROC-
8 ESSED; AND (B) REGULARLY CREATED OR MAINTAINED BY OR ON BEHALF OF AND
9 OWNED BY AN AGENCY THAT RECORDS A MEASUREMENT, TRANSACTION, OR DETERMI-
10 NATION RELATED TO THE MISSION OF AN AGENCY. SUCH TERM SHALL NOT INCLUDE
11 INFORMATION PROVIDED TO AN AGENCY BY OTHER GOVERNMENTAL ENTITIES, NOR
12 SHALL IT INCLUDE IMAGE FILES, SUCH AS DESIGNS, DRAWINGS, MAPS, PHOTOS,
13 OR SCANNED COPIES OF ORIGINAL DOCUMENTS, PROVIDED THAT IT SHALL INCLUDE
14 STATISTICAL OR FACTUAL INFORMATION ABOUT SUCH IMAGE FILES AND SHALL
15 INCLUDE GEOGRAPHIC INFORMATION SYSTEM DATA. NOTHING IN THIS ARTICLE
16 SHALL BE DEEMED TO PROHIBIT AN AGENCY FROM VOLUNTARILY DISCLOSING INFOR-

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

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1 MATION NOT OTHERWISE DEFINED AS "DATA" IN THIS SUBDIVISION, NOR SHALL IT
2 BE DEEMED TO PROHIBIT AN AGENCY FROM MAKING SUCH VOLUNTARILY DISCLOSED
3 INFORMATION ACCESSIBLE THROUGH THE SINGLE WEB PORTAL ESTABLISHED PURSU-
4 ANT TO SUBDIVISION FIVE-A OF SECTION ONE HUNDRED THREE OF THE STATE
5 TECHNOLOGY LAW.

6 7. "MACHINE-READABLE" MEANS DATA IN A FORM THAT A COMPUTER CAN ACCEPT
7 WHICH IS COMPATIBLE WITH WIDELY USED COMPUTER PROGRAMS THAT PROCESS,
8 STORE AND CAUSE TO BE PRINTED INFORMATION SIMILAR TO THAT WHICH IS
9 REQUIRED BY THIS SECTION. MACHINE-READABLE SHALL ALSO MEAN DATA IN A
10 FORM THAT A DATABASE MANAGEMENT SYSTEM OR PROGRAM CAN ORGANIZE, STORE
11 AND RETRIEVE FROM A COMPUTER-MAINTAINED DATABASE OR DATA BANK.

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

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

18 2-A. ALL DATA AVAILABLE PURSUANT TO THE PROVISIONS OF THIS SECTION
19 SHALL BE AVAILABLE IN ELECTRONIC FORM PURSUANT TO THE PROVISIONS OF THIS
20 SECTION AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION EIGHTY-SEVEN-A
21 OF THIS ARTICLE.

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

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

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

38 (C) EACH STATE AGENCY, IN CONSULTATION WITH THE OFFICE FOR TECHNOLOGY
39 AND THE COMMITTEE ON OPEN GOVERNMENT, SHALL REVIEW ALL DATA ACQUIRED OR
40 CREATED BY SUCH AGENCY ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION
41 UNDER ITS CONTROL AND SHALL CLASSIFY IT AS IMMEDIATE, PRIORITY, LEGACY
42 OR EXEMPT IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION THREE OF THIS
43 SECTION.

44 (D) EACH STATE AGENCY, IN CONSULTATION WITH THE OFFICE FOR TECHNOLOGY,
45 THE COMMITTEE ON OPEN GOVERNMENT AND THE STATE ARCHIVIST, SHALL REVIEW
46 ALL DATA WHICH WAS IN THE POSSESSION OF SUCH AGENCY PRIOR TO THE EFFEC-
47 TIVE DATE OF THIS SECTION TO DETERMINE, OF SUCH DATA, WHAT CAN AND
48 SHOULD BE MADE AVAILABLE FOR INSPECTION BY THE PUBLIC ON THE INTERNET.
49 SUCH DETERMINATIONS SHALL CONSIDER AND ASSIGN PRIORITY TO DATA THAT CAN
50 BE USED TO: INCREASE AGENCY ACCOUNTABILITY AND RESPONSIVENESS; IMPROVE
51 PUBLIC KNOWLEDGE OF THE AGENCY AND ITS OPERATIONS; FURTHER THE CORE
52 MISSION OF THE AGENCY; CREATE ECONOMIC OPPORTUNITY; OR RESPOND TO NEED
53 AND DEMAND AS IDENTIFIED THROUGH PUBLIC CONSULTATION.

54 (E) EACH STATE AGENCY, IN CONSULTATION WITH THE OFFICE FOR TECHNOLOGY
55 AND THE COMMITTEE ON OPEN GOVERNMENT, SHALL SUBMIT AN AGENCY COMPLIANCE
56 PLAN TO THE GOVERNOR AND THE LEGISLATURE NO LATER THAN JANUARY THIRD,

1 TWO THOUSAND FOURTEEN. SUCH PLAN SHALL DESCRIBE HOW SUCH AGENCY INTENDS
2 TO ACHIEVE FULL COMPLIANCE WITH THE PROVISIONS OF THIS SECTION BY JULY
3 SEVENTH, TWO THOUSAND SIXTEEN, AND SHALL INCLUDE AN ACCOUNTING OF ALL
4 DATA UNDER THE CONTROL OF THE AGENCY AND HOW SUCH DATA HAS BEEN CLASSI-
5 FIED PURSUANT TO SUBDIVISION TWO OF THIS SECTION.

6 (F) EACH STATE AGENCY, IN CONSULTATION WITH THE OFFICE FOR TECHNOLOGY,
7 THE COMMITTEE ON OPEN GOVERNMENT AND THE STATE ARCHIVIST, SHALL PERIOD-
8 ICALLY REVIEW DATA PREVIOUSLY DESIGNATED AS EXEMPT TO DETERMINE WHETHER
9 THE PROVISIONS OF SUBDIVISION TWO OF SECTION EIGHTY-SEVEN OF THIS ARTI-
10 CLE REMAIN APPLICABLE AND, THEREFORE, WHETHER THE DATA MAY BE DISCLOSED.

11 2. (A) EACH STATE AGENCY SHALL MAKE ITS DATA AVAILABLE FOR INSPECTION
12 BY THE PUBLIC ON THE INTERNET THROUGH THE SINGLE CENTRALIZED WEB PORTAL,
13 ESTABLISHED PURSUANT TO SUBDIVISION FIVE-A OF SECTION ONE HUNDRED THREE
14 OF THE STATE TECHNOLOGY LAW, PURSUANT TO THE TIMETABLE ESTABLISHED BY
15 THE AGENCY IN ITS AGENCY COMPLIANCE PLAN.

16 (B) ALL DATA SHALL BE AVAILABLE ON A PERMANENT BASIS, IN MACHINE-READ-
17 ABLE AND UNPROCESSED ELECTRONIC FORMAT AND IN ITS COMPLETE FORM, EXCEPT
18 FOR DATA OR PORTIONS OF DATA CLASSIFIED AS EXEMPT OR LEGACY PURSUANT TO
19 SUBDIVISION THREE OF THIS SECTION.

20 (C) ALL DATA SHALL BE AVAILABLE TO THE PUBLIC WITHOUT ANY REGISTRATION
21 REQUIREMENT, LICENSE REQUIREMENT, FEES, OR RESTRICTIONS ON ITS USE
22 UNLESS OTHERWISE PROVIDED BY LAW.

23 3. STATE AGENCY DATA ACQUIRED OR CREATED BY AN AGENCY ON OR AFTER THE
24 EFFECTIVE DATE OF THIS SECTION SHALL BE CLASSIFIED AS FOLLOWS:

25 (A) IMMEDIATE: ANY DATA THAT CAN BE MADE AVAILABLE ON THE INTERNET
26 PURSUANT TO THE PROVISIONS OF SECTION EIGHTY-SEVEN OF THIS ARTICLE WITH-
27 IN THIRTY DAYS OF THE AGENCY ACQUIRING OR CREATING SUCH DATA SHALL BE
28 CLASSIFIED AS IMMEDIATE. AGENCIES SHOULD MAKE BEST EFFORTS TO CLASSIFY
29 AS MUCH DATA AS IMMEDIATE AS IS POSSIBLE. ANY DATA ACQUIRED OR CREATED
30 AFTER JANUARY THIRD, TWO THOUSAND THIRTEEN, SHALL BE CLASSIFIED AS IMME-
31 DIATE, AND SHALL BE MADE AVAILABLE PURSUANT TO THE PROVISIONS OF SECTION
32 EIGHTY-SEVEN OF THIS ARTICLE IN AS CLOSE TO REAL-TIME AS POSSIBLE;

33 (B) LEGACY: ANY DATA THAT, DUE TO ITS SIZE OR COMPLEXITY, OR DUE TO
34 TECHNOLOGY CONSTRAINTS, CANNOT BE MADE AVAILABLE ON THE INTERNET. AGEN-
35 CIES SHALL MAKE BEST EFFORTS TO AVOID PLACING DATA INTO THE LEGACY CLAS-
36 SIFICATION;

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

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

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

44 (A) DATA CLASSIFIED AS IMMEDIATE SHALL BE AVAILABLE NO LATER THAN JULY
45 FOURTH, TWO THOUSAND SIXTEEN;

46 (B) DATA CLASSIFIED AS PRIORITY SHALL BE AVAILABLE NO LATER THAN JULY
47 SECOND, TWO THOUSAND SEVENTEEN;

48 (C) DATA CLASSIFIED AS LEGACY SHALL BE EXEMPT FROM THE PROVISIONS OF
49 THIS SECTION;

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

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

1 (A) WHICH IS CLASSIFIED AS IMMEDIATE ACCORDING TO THE PROVISIONS OF
2 THIS SECTION AND WHICH IS NOT AVAILABLE PURSUANT TO PROVISIONS OF THIS
3 SECTION ON OR AFTER JULY FOURTH, TWO THOUSAND SIXTEEN; OR

4 (B) WHICH IS CLASSIFIED AS PRIORITY ACCORDING TO THE PROVISIONS OF
5 THIS SECTION AND WHICH IS NOT AVAILABLE PURSUANT TO PROVISIONS OF THIS
6 SECTION ON OR AFTER JULY SECOND, TWO THOUSAND SEVENTEEN.

7 S 5. Section 101 of the state technology law is amended by adding four
8 new subdivisions 6, 7, 8 and 9 to read as follows:

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

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

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

27 9. "VOLUNTARY CONSENSUS STANDARDS BODIES" MEANS DOMESTIC OR INTERNA-
28 TIONAL ORGANIZATIONS WHICH PLAN, DEVELOP, ESTABLISH, OR COORDINATE
29 VOLUNTARY CONSENSUS STANDARDS USING AGREED-UPON PROCEDURES.

30 S 6. Section 103 of the state technology law is amended by adding two
31 new subdivisions 5-a and 12-c to read as follows:

32 5-A. TO ESTABLISH, OVERSEE, MANAGE, COORDINATE AND FACILITATE THE
33 PLANNING, DESIGN AND IMPLEMENTATION OF A SINGLE CENTRALIZED WEB PORTAL
34 FOR USE BY STATE AGENCIES IN MAKING DATA AVAILABLE TO THE PUBLIC AS
35 PROVIDED IN SECTION EIGHTY-SEVEN-A OF THE PUBLIC OFFICERS LAW;

36 12-C. IN CONSULTATION WITH THE COMMITTEE ON OPEN GOVERNMENT, TO
37 PREPARE AND PUBLISH A TECHNICAL STANDARDS MANUAL FOR THE PUBLISHING OF
38 DATA ON THE INTERNET BY STATE AGENCIES AS PROVIDED IN ARTICLE SIX OF THE
39 PUBLIC OFFICERS LAW NO LATER THAN JANUARY THIRD, TWO THOUSAND THIRTEEN,
40 AND SHALL BASE SUCH MANUAL ON TECHNICAL STANDARDS FOR WEB PUBLISHING AND
41 E-GOVERNMENT THAT HAVE BEEN DEVELOPED OR ADOPTED BY VOLUNTARY CONSENSUS
42 STANDARDS BODIES. SUCH MANUAL SHALL BE UPDATED BY THE OFFICE, IN
43 CONJUNCTION WITH THE COMMITTEE ON OPEN GOVERNMENT, AS NECESSARY. THE
44 OFFICE SHALL CONSULT WITH VOLUNTARY CONSENSUS STANDARDS BODIES AND
45 SHALL, WHEN SUCH PARTICIPATION IS FEASIBLE, IN THE PUBLIC INTEREST AND
46 IS COMPATIBLE WITH AGENCY AND DEPARTMENTAL MISSIONS, AUTHORITIES, PRIOR-
47 ITIES, AND BUDGET RESOURCES, PARTICIPATE WITH SUCH BODIES IN THE DEVEL-
48 OPMENT OF TECHNICAL STANDARDS. THE OFFICE SHALL PROMULGATE AND ADOPT
49 ALL NECESSARY RULES AND REGULATIONS TO ENSURE THAT STATE AGENCIES
50 PUBLISH THEIR DATA ON THE INTERNET IN ACCORDANCE WITH SUCH TECHNICAL
51 STANDARDS MANUAL;

52 S 7. To the extent possible, implementation of the provisions of this
53 act shall be accomplished utilizing existing resources and employees of
54 the state and its agencies.

55 S 8. This act shall take effect immediately.