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2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

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Introduced by M. of A. KELLNER, CAHILL, MILLMAN, GALEF, GABRYSZAK --
Multi-Sponsored by -- M. of A. CROUCH, LUPARDO, THIELE -- 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 ASSEM-
BLY, 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-
17 MATION NOT OTHERWISE DEFINED AS "DATA" IN THIS SUBDIVISION, NOR SHALL IT
18 BE DEEMED TO PROHIBIT AN AGENCY FROM MAKING SUCH VOLUNTARILY DISCLOSED
19 INFORMATION ACCESSIBLE THROUGH THE SINGLE WEB PORTAL ESTABLISHED PURSU-

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

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1 ANT TO SUBDIVISION FIVE-A OF SECTION ONE HUNDRED THREE OF THE STATE
2 TECHNOLOGY LAW.

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

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

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

15 2-A. ALL DATA AVAILABLE PURSUANT TO THE PROVISIONS OF THIS SECTION
16 SHALL BE AVAILABLE IN ELECTRONIC FORM PURSUANT TO THE PROVISIONS OF THIS
17 SECTION AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION EIGHTY-SEVEN-A
18 OF THIS ARTICLE.

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

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

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

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

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

51 (E) EACH STATE AGENCY, IN CONSULTATION WITH THE OFFICE FOR TECHNOLOGY
52 AND THE COMMITTEE ON OPEN GOVERNMENT, SHALL SUBMIT AN AGENCY COMPLIANCE
53 PLAN TO THE GOVERNOR AND THE LEGISLATURE NO LATER THAN JANUARY THIRD,
54 TWO THOUSAND FIFTEEN. SUCH PLAN SHALL DESCRIBE HOW SUCH AGENCY INTENDS
55 TO ACHIEVE FULL COMPLIANCE WITH THE PROVISIONS OF THIS SECTION BY JULY
56 SEVENTH, TWO THOUSAND SEVENTEEN, AND SHALL INCLUDE AN ACCOUNTING OF ALL

1 DATA UNDER THE CONTROL OF THE AGENCY AND HOW SUCH DATA HAS BEEN CLASSI-
2 FIED PURSUANT TO SUBDIVISION TWO OF THIS SECTION.

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

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

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

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

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

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

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

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

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

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

41 (A) DATA CLASSIFIED AS IMMEDIATE SHALL BE AVAILABLE NO LATER THAN JULY
42 FOURTH, TWO THOUSAND SEVENTEEN;

43 (B) DATA CLASSIFIED AS PRIORITY SHALL BE AVAILABLE NO LATER THAN JULY
44 SECOND, TWO THOUSAND EIGHTEEN;

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

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

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

52 (A) WHICH IS CLASSIFIED AS IMMEDIATE ACCORDING TO THE PROVISIONS OF
53 THIS SECTION AND WHICH IS NOT AVAILABLE PURSUANT TO PROVISIONS OF THIS
54 SECTION ON OR AFTER JULY FOURTH, TWO THOUSAND SEVENTEEN; OR

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

S 5. Section 101 of the state technology 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.

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

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

12-C. IN CONSULTATION WITH THE COMMITTEE ON OPEN GOVERNMENT, TO PREPARE AND PUBLISH A TECHNICAL STANDARDS MANUAL FOR THE PUBLISHING OF DATA ON THE INTERNET BY STATE AGENCIES AS PROVIDED IN ARTICLE SIX OF THE PUBLIC OFFICERS LAW NO LATER THAN JANUARY THIRD, TWO THOUSAND FOURTEEN, 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. THE OFFICE SHALL PROMULGATE AND ADOPT ALL NECESSARY RULES AND REGULATIONS TO ENSURE THAT STATE AGENCIES PUBLISH THEIR DATA ON THE INTERNET IN ACCORDANCE WITH SUCH TECHNICAL STANDARDS MANUAL;

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

S 8. This act shall take effect immediately.