

# STATE OF NEW YORK

4062

2019-2020 Regular Sessions

## IN ASSEMBLY

January 31, 2019

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

AN ACT to amend the public officers law and the state technology law, in relation to establishing the open data law

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The public officers law is amended by adding a new article 6-B to read as follows:

### ARTICLE 6-B OPEN DATA LAW

#### Section 99-a. Short title.

#### 99-b. Definitions.

#### 99-c. Open data website.

#### 99-d. Data working group.

#### 99-e. Publication of data.

#### 99-f. Participation by other state entities and political subdivisions.

#### 99-g. Guidelines.

#### 99-h. Reporting requirements.

#### 99-i. Severability.

§ 99-a. Short title. This article shall be known and may be cited as the "open data law".

§ 99-b. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Covered state entity" shall mean any state department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the state except the judiciary or the state legislature.

2. "Data" shall mean final versions of statistical or factual information that:

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

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1 (a) are in alphanumeric form reflected in a list, table, graph, chart  
2 or other non-narrative form, that can be digitally transmitted or proc-  
3 essed;

4 (b) are regularly created or maintained by or on behalf of a covered  
5 state entity and are controlled by such entity; and

6 (c) record a measurement, transaction or determination related to the  
7 mission of the covered state entity.

8 The term "data" shall not include image files, such as designs, draw-  
9 ings, and photos or scanned copies of original documents; provided,  
10 however, that the term "data" shall include statistical or factual  
11 information about image files and geographic information system data.

12 3. "Data set" shall mean a named collection of related records main-  
13 tained on a storage device, with the collection containing data organ-  
14 ized or formatted in a specific or prescribed way, often in tabular  
15 form.

16 4. "Publishable state data" shall mean a comprehensive collection of  
17 interrelated data that is available for inspection by the public in  
18 accordance with any provision of law and is maintained on a computer  
19 system by, or on behalf of, a covered state entity. Such term shall not  
20 be publishable state data if making such data available on the open data  
21 website would violate statute or regulation, endanger the public health,  
22 safety or welfare, interfere with a criminal or civil investigation or  
23 impose an undue financial, operational, or administrative burden on a  
24 covered state entity or the state. Such term shall also not include:

25 (a) any portion of data to which a covered state entity may deny  
26 access pursuant to article six or six-A of this chapter or any other  
27 federal or state law, rule or regulation;

28 (b) any data set that contains a significant amount of data to which a  
29 covered state entity may deny access pursuant to article six or six-A of  
30 this chapter or any other provision of a federal or state law, and where  
31 removing such data would impose undue financial or administrative  
32 burden;

33 (c) data that reflects the internal deliberative process of a covered  
34 state entity including but not limited to negotiating positions, future  
35 procurements, or pending or reasonably anticipated legal or administra-  
36 tive proceedings;

37 (d) data stored on a covered state entity-owned personal computing  
38 device, or data stored on a portion of a network that has been exclu-  
39 sively assigned to a single covered state entity employee or a single  
40 covered state entity owned or controlled computing device;

41 (e) materials that have been subject to copyright, patent, trademark,  
42 confidentiality agreements or trade secret protection;

43 (f) proprietary applications, computer code, software, operating  
44 systems or similar materials; or

45 (g) employment records, internal employee-related directories or  
46 lists, and facilities data, information technology, internal service-  
47 desk and other data related to internal covered state entity adminis-  
48 tration.

49 5. "Technical standard" shall mean:

50 (a) the common and repeated use of rules, conditions, guidelines or  
51 characteristics for products or related processes and production meth-  
52 ods, and related management systems practices; and

53 (b) (i) the definition of terms; (ii) classification of components;  
54 (iii) delineation of procedures; (iv) specifications of dimensions,  
55 materials, performance, designs or operations; (v) measurement of quali-  
56 ty and quantity in describing materials, processes, products, systems,

1 services or practices; (vi) test methods and sampling procedures; or  
2 (vii) descriptions of fit and measurements of size or strength.

3 § 99-c. Open data website. 1. An online open data website for the  
4 collection and public dissemination of publishable state data is hereby  
5 established in the office of information technology services. The open  
6 data website shall be maintained at data.ny.gov or such other successor  
7 website maintained by, or on behalf of, the state, as deemed appropriate  
8 by the office of information technology services. The open data website  
9 will provide access to publishable state data that is owned, controlled,  
10 collected or otherwise maintained by covered state entities.

11 2. (a) The office of information technology services, in coordination  
12 with the committee for open government, and the data working group shall  
13 coordinate implementation and expansion of the open data website to  
14 facilitate the sharing of information.

15 (b) Within sixty days after the effective date of this article, each  
16 covered state entity shall designate a data coordinator, who shall have  
17 authority to make decisions or otherwise bind a covered state entity,  
18 have knowledge of data and resources in use by the entity, and shall be  
19 responsible for that covered state entity's compliance with this arti-  
20 cle.

21 § 99-d. Data working group. Within forty-five days after the effective  
22 date of this article, the office of information technology services  
23 shall establish a data working group made up of representatives from the  
24 office of information technology services and the information security  
25 division of the office of information technology services, the office of  
26 general services, the division of budget, the committee on open govern-  
27 ment, a representative from the department of state with expertise in  
28 local governments and at least eight but no more than twelve data coor-  
29 dinators who shall represent an appropriate cross-section of covered  
30 state entities. Such data coordinators shall be chosen by the represen-  
31 tative of the office of information technology services. The data work-  
32 ing group shall assist the office of information technology services in  
33 carrying out its duties under this article.

34 § 99-e. Publication of data. 1. All covered state entities shall make  
35 their publishable state data available on the open data website as  
36 follows:

37 (a) Within one year of the effective date of this article and there-  
38 after, all publishable state data shall be accessible on the open data  
39 website. If a covered state entity cannot make all such publishable  
40 state data available on the open data website pursuant to this article,  
41 the covered state entity shall report to the office of information tech-  
42 nology services which publishable state data that it is unable to make  
43 available, the reasons why it cannot do so and the date by which the  
44 covered state entity expects that such publishable state data will be  
45 available on the open data website.

46 (b) Such publishable state data shall be made available pursuant to  
47 this article and shall be in a format that permits automated processing  
48 and shall make use of appropriate technology to notify the public of all  
49 updates.

50 (c) Such publishable state data shall be updated as often as is neces-  
51 sary to preserve the integrity and usefulness of the data sets to the  
52 extent that the covered state entity regularly maintains or updates the  
53 publishable state data and the public shall be notified of such updates.

54 (d) Such publishable state data shall be made available without any  
55 registration requirement, license requirement or restrictions on their  
56 use provided that the department may require a third party providing to

1 the public any publishable state data, or application utilizing such  
2 publishable state data, to explicitly identify the source and version of  
3 the publishable state data, and a description of any modifications made  
4 to such publishable state data. Registration requirements, license  
5 requirements or restrictions as used in this section shall not include  
6 measures required to ensure access to publishable state data, to protect  
7 the open data website housing publishable state data from unlawful abuse  
8 or attempts to damage or impair use of the website, or to analyze the  
9 types of data being used to improve service delivery.

10 (e) Such publishable state data shall be accessible to external search  
11 capabilities.

12 2. (a) Publishable state data made available pursuant to this article  
13 is provided for informational purposes. The state does not warranty the  
14 completeness, accuracy, content or fitness for any particular purpose or  
15 use of any publishable state data made available on the open data  
16 website, nor are any such warranties to be implied or inferred with  
17 respect to the publishable state data furnished therein.

18 (b) The state shall not be liable for any deficiencies in the  
19 completeness, accuracy, content or fitness for any particular purpose or  
20 use of any publishable state data, or application utilizing such publ-  
21 ishable state data, provided by any third party.

22 (c) This article shall not be construed to create a private right of  
23 action to enforce its provisions. Failure to comply with this article  
24 shall not result in liability to a covered state entity.

25 § 99-f. Participation by other state entities and political subdivi-  
26 sions. State agencies and authorities and political subdivisions of the  
27 state other than covered state entities may submit data to the open data  
28 website for publication in accordance with this article. The office of  
29 information technology services shall assist such agencies and authori-  
30 ties and such political subdivisions to use the open data website. Such  
31 assistance shall include, but not be limited to, technical assistance,  
32 and accommodations shall be made for variations among such agencies and  
33 authorities and such political subdivisions' capacity and equipment.  
34 Nothing in this section shall be construed to compel such agencies and  
35 authorities and such political subdivisions to submit data to the open  
36 data website.

37 § 99-g. Guidelines. Within one hundred eighty days of the effective  
38 date of this article, the office of information technology services, in  
39 consultation with the data working group, and the committee on open  
40 government, shall prepare and publish guidelines for the publishing of  
41 publishable state data in raw or unprocessed form through an open data  
42 website by covered state entities for the purpose of making public data  
43 available to the greatest number of users and for the greatest number of  
44 applications and shall, whenever practicable, use open standards for web  
45 publishing. Such guidelines shall identify the reasons why each techni-  
46 cal standard was selected and for which types of data it is applicable  
47 and may recommend or require that data be published in more than one  
48 technical standard. The guidelines shall include a plan to adopt or  
49 utilize a web application programming interface that permits application  
50 programs to request and receive publishable state data directly from the  
51 web portal. Such guidelines shall be updated as necessary. Such guide-  
52 lines shall also:

53 (a) provide models and guidance for covered state entities to follow  
54 when creating their data sets;

1 (b) provide guidance to covered state entities on setting a schedule  
2 for initial and ongoing publication of data on the open data website  
3 including but not limited to requiring:

4 (i) consultation with the directors and staff of the covered state  
5 entity's public affairs or public information, legal and freedom of  
6 information law offices;

7 (ii) prioritization of publication of data based on the extent to  
8 which the data can be used to increase the covered state entity's  
9 accountability and responsiveness, improve public knowledge of the enti-  
10 ty and its operations, further the mission of the entity, create econom-  
11 ic opportunity, or respond to a need or demand identified after public  
12 consultation;

13 (c) provide guidelines for identifying and reviewing publishable state  
14 data by covered state entities before publication;

15 (d) provide uniform standards for the format of data submitted for  
16 publication on the open data website;

17 (e) set forth the open data website terms of use;

18 (f) provide guidelines on participation by agencies and authorities  
19 other than covered state entities and participation by political subdi-  
20 visions;

21 (g) provide guidance on the publication of narrative data, such as  
22 reports; and

23 (h) any other guidelines necessary for the implementation of this  
24 article.

25 § 99-h. Reporting requirements. 1. Within eighteen months of the  
26 effective date of this article, the office of information technology  
27 services shall submit a compliance plan to the governor, the temporary  
28 president of the senate and the speaker of the assembly and shall make  
29 such plan available to the public on the open data website. Each  
30 covered state entity shall cooperate with the office of information  
31 technology services in its preparation of such plan. The plan shall  
32 include a summary description of publishable state data under the  
33 control of each covered state entity on or after the effective date of  
34 this article, and shall prioritize such publishable state data for  
35 inclusion on the open data website. If publishable state data cannot be  
36 made available on the open data website on or before December thirty-  
37 first, two thousand twenty-two, the plan shall state the reasons why  
38 such set or sets of data cannot be made available, and, to the extent  
39 practicable, the date by which the covered state entity that owns the  
40 data believes that it will be available on the open data website.

41 2. For purposes of prioritizing publishable state data, agencies shall  
42 consider whether information embodied in the publishable state data: (a)  
43 can be used to increase covered state entities' accountability and  
44 responsiveness; (b) improves public knowledge of the covered state enti-  
45 ty and its operations; (c) furthers the mission of the covered state  
46 entity; (d) creates economic opportunity; or (e) responds to a need or  
47 demand identified by public consultation.

48 3. No later than July fifteenth, two thousand twenty-two and every  
49 July fifteenth thereafter, the office of information technology services  
50 shall submit and post on the web portal an update of the compliance plan  
51 to the governor, the temporary president of the senate and the speaker  
52 of the assembly until all publishable state data has been made available  
53 through an open data website in compliance with this article. Such  
54 update shall include the specific measures undertaken to make publisha-  
55 ble state data available on the open data website since the immediately  
56 preceding update, specific measures that will be undertaken prior to the

1 next update, an update to the list of publishable state data and, if  
2 necessary, any changes to the prioritization of publishable state data.  
3 If publishable state data cannot be made available on the open data  
4 website on or before December thirty-first, two thousand twenty-four,  
5 the update shall state the reasons why it cannot and, to the extent  
6 practicable, the date by which the covered state entity believes that  
7 such publishable state data will be available on the open data website.

8 § 99-i. Severability. If any provision of this article or the applica-  
9 tion thereof to any person or circumstances is adjudged invalid by a  
10 court of competent jurisdiction, such judgment shall not affect or  
11 impair the validity of the other provisions of the article or the appli-  
12 cation thereof to other persons and circumstances.

13 § 2. Section 103 of the state technology law is amended by adding a  
14 new subdivision 22 to read as follows:

15 22. To create and maintain the open data website and carry out the  
16 duties pursuant to article six-B of the public officers law.

17 § 3. This act shall take effect on the ninetieth day after it shall  
18 have become a law.