

STATE OF NEW YORK

7993--B

R. R. 445

2005-2006 Regular Sessions

IN ASSEMBLY

May 3, 2005

Introduced by M. of A. LATIMER, GALEF, PAULIN, BRADLEY, DESTITO, GRAN-
NIS, ZEBROWSKI, CUSICK -- read once and referred to the Committee on
Governmental Operations -- recommitted to the Committee on Rules in
accordance with Assembly Rule 3, sec. 2 -- Rules Committee discharged,
bill amended, ordered reprinted as amended and recommitted to the
Committee on Rules -- amended on the special order of third reading,
ordered reprinted as amended, retaining its place on the special order
of third reading

AN ACT to amend the public officers law and the state technology law, in
relation to electronic access to public records

**The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:**

- 1 Section 1. Paragraph (b) of subdivision 1 and subdivision 3 of section
2 89 of the public officers law, paragraph (b) of subdivision 1 as added
3 by chapter 933 of the laws of 1977, subparagraph v of paragraph (b) of
4 subdivision 1 as amended by chapter 80 of the laws of 1983, and subdivi-
5 sion 3 as amended by chapter 22 of the laws of 2005, are amended to read
6 as follows:
7 (b) The committee shall:
8 i. furnish to any agency advisory guidelines, opinions or other appro-
9 priate information regarding this article;
10 ii. furnish to any person advisory opinions or other appropriate
11 information regarding this article;
12 iii. promulgate rules and regulations with respect to the implementa-
13 tion of subdivision one and paragraph (c) of subdivision three of
14 section eighty-seven of this article;
15 iv. request from any agency such assistance, services and information
16 as will enable the committee to effectively carry out its powers and
17 duties; [~~and~~]
18 v. **develop a form, which shall be made available on the internet,**
19 **that may be used by the public to request a record; and**

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

1 vi. report on its activities and findings regarding [~~articles six~~]
2 this article and article seven of this chapter, including recommenda-
3 tions for changes in the law, to the governor and the legislature annu-
4 ally, on or before December fifteenth.

5 3. (a) Each entity subject to the provisions of this article, within
6 five business days of the receipt of a written request for a record
7 reasonably described, shall make such record available to the person
8 requesting it, deny such request in writing or furnish a written
9 acknowledgement of the receipt of such request and a statement of the
10 approximate date, which shall be reasonable under the circumstances of
11 the request, when such request will be granted or denied, including,
12 where appropriate, a statement that access to the record will be deter-
13 mined in accordance with subdivision five of this section. If an agency
14 determines to grant a request in whole or in part, and if circumstances
15 prevent disclosure to the person requesting the record or records within
16 twenty business days from the date of the acknowledgement of the receipt
17 of the request, the agency shall state, in writing, both the reason for
18 the inability to grant the request within twenty business days and a
19 date certain within a reasonable period, depending on the circumstances,
20 when the request will be granted in whole or in part. Upon payment of,
21 or offer to pay, the fee prescribed therefor, the entity shall provide a
22 copy of such record and certify to the correctness of such copy if so
23 requested, or as the case may be, shall certify that it does not have
24 possession of such record or that such record cannot be found after
25 diligent search. Nothing in this article shall be construed to require
26 any entity to prepare any record not possessed or maintained by such
27 entity except the records specified in subdivision three of section
28 eighty-seven and subdivision three of section eighty-eight of this arti-
29 cle.

30 (b) All entities shall, provided such entity has reasonable means
31 available, accept requests for records submitted in the form of elec-
32 tronic mail and shall respond to such requests by electronic mail, using
33 forms, to the extent practicable, consistent with the form or forms
34 developed by the committee on open government pursuant to subdivision
35 one of this section and provided that the written requests do not seek a
36 response in some other form.

37 § 2. Subdivision 1 of section 305 of the state technology law, as
38 amended by chapter 314 of the laws of 2002 and such section as renum-
39 bered by chapter 437 of the laws of 2004, is amended to read as follows:

40 1. In accordance with rules and regulations promulgated by the elec-
41 tronic facilitator, government entities are authorized and empowered[
42 ~~but not required,~~] to produce, receive, accept, acquire, record, file,
43 transmit, forward, and store information by use of electronic means. If
44 any such government entity uses electronic records, it must also ensure
45 that anyone who uses the services of such government entity may obtain
46 access to records as permitted by statute, and receive copies of such
47 records in paper form in accordance with fees prescribed by statute. No
48 person shall be required to submit or file any record electronically to
49 any government entity except as otherwise provided by law. Government
50 entities that obtain, store, or utilize electronic records shall not
51 refuse to accept hard copy, non-electronic forms, reports, and other
52 paper documents for submission or filing except as otherwise provided by
53 law.

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

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A7993B

SPONSOR: Latimer (MS)

TITLE OF BILL: An act to amend the public officers law and the state technology law, in relation to electronic access to public records

PURPOSE OR GENERAL IDEA OF BILL: The purpose of this bill is to update the Freedom of Information Law (FOIL) by enabling records to be requested by electronic mail (e-mail).

SUMMARY OF SPECIFIC PROVISIONS: Section one of this bill would amend the Public Officers Law to require the Committee on Open Government to develop a form that would be made available on the internet to be used by the public when requesting a record. It would require all entities subject to FOIL, provided such entities have reasonable means available, to accept and to respond to requests for records by mail using the forms developed by the Committee on Open Government. Lastly, this section would enable an entity to respond in another format if so requested.

Section two of this bill would amend the State Technology Law to authorize government entities to accept and send information by e-mail.

Section three of this bill would set forth the effective date.

JUSTIFICATION: The bill would enhance the Freedom of Information Law (FOIL) to enable residents to request, and to enable government entities to respond to requests for records by electronic mail (e-mail). The Freedom of Information Law reaffirms the public's right to know how government operates. It provides rights of access to records reflective of governmental decisions and policies that impact all New Yorkers. FOIL was enacted on January 1, 1978, before the use of modern technology such as computers and the internet was available. There is a need to make clarifications to the law so that the public is able to obtain government information using technology that is an integral part of our daily routine. This bill would amend FOIL to enhance the public's ability and the government's obligation to make good use of available technology.

PRIOR LEGISLATIVE HISTORY: This is a new bill.

FISCAL IMPLICATIONS: Undetermined. State entities that have available resources would not incur a financial impact. If an entity does not have available resources would not incur a financial impact. If an entity does not have available resources to accept requests by e-mail, they are not required to do so.

EFFECTIVE DATE: Immediately.
