

SENATE JOINT RESOLUTION

No. 113

STATE OF NEW JERSEY

217th LEGISLATURE

INTRODUCED JUNE 19, 2017

Sponsored by:

Senator ROBERT M. GORDON

District 38 (Bergen and Passaic)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblyman NICHOLAS CHIARAVALLOTI

District 31 (Hudson)

Co-Sponsored by:

Assemblywoman Handlin

SYNOPSIS

Clarifies intent of law subjecting PANYNJ to open public records and freedom of information laws in New Jersey and New York.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/30/2017)

SJR113 GORDON

2

1 **A JOINT RESOLUTION** clarifying the intent of P.L.2015, c.64
2 (C.32:1-6.4 et al.).
3
4 **WHEREAS**, On June 5, 2014, Assemblywoman Valerie Vainieri Huttle
5 introduced legislation in the New Jersey General Assembly making
6 records of the Port Authority of New York and New Jersey (Port
7 Authority) available to the public pursuant the provisions of New
8 York’s Freedom of Information Law (NY FOIL) and New Jersey’s
9 open public records act (NJ OPRA) and on June 16, 2014, Senator
10 Robert M. Gordon introduced substantively identical legislation in
11 the New Jersey Senate; and
12 **WHEREAS**, The legislation provided that the records of the Port
13 Authority were to be open to the public in accordance with
14 NY FOIL and NJ OPRA and that a record of the Port Authority
15 subject to disclosure under one set of laws but not the other was
16 required to be made available by the Port Authority; and
17 **WHEREAS**, On June 18, 2014, the New York Legislature passed
18 legislation making records of the Port Authority available to the
19 public pursuant to the provisions of NY FOIL and NJ OPRA but
20 provided a different mechanism in cases of inconsistencies between
21 NY FOIL and NJ OPRA to determine whether a record would be
22 made available; and
23 **WHEREAS**, Under the New York legislation, when there is an
24 inconsistency between NY FOIL and NJ OPRA, the law of the state
25 that provided the greatest rights of access on the date that the
26 legislation became law would govern whether a record would be
27 required to be made available by the Port Authority; and
28 **WHEREAS**, On October 27, 2014, the Assembly State and Local
29 Government committee amended the New Jersey legislation to
30 make it have an identical effect as the New York legislation
31 concerning the applicable law when there is an inconsistency
32 between NY FOIL and NJ OPRA, and on November 13, 2014, the
33 New Jersey legislation was passed by the New Jersey Legislature;
34 and
35 **WHEREAS**, On December 27, 2014, the Governor of New York
36 approved the New York legislation with an understanding that the
37 New York Legislature would provide chapter amendments to the
38 legislation; and
39 **WHEREAS**, On that same date, the Governor of New Jersey
40 conditionally vetoed the New Jersey legislation and recommended
41 language to replace the provisions of the legislation, specifically
42 recommending that the legislation be changed to provide that the
43 Port Authority be deemed an “agency” and treated as such under
44 NY FOIL and be deemed a “public agency” and treated as such
45 under NJ OPRA; and
46 **WHEREAS**, In explaining his conditional veto, the Governor of New
47 Jersey wrote that the bill presented to him “would result in
48 unnecessary conflicts of law that would only frustrate disclosure

1 without enhancing transparency” and that “[t]here is a far simpler
2 approach”; and

3 **WHEREAS**, Under his recommendations, the Governor of New Jersey
4 posited that “[i]f a requestor is denied access to a public record, he
5 or she can sue the Port Authority in either State. If the plaintiff sues
6 in New York, New York law applies; if the plaintiff sues in New
7 Jersey, New Jersey law applies”; and

8 **WHEREAS**, On March 2, 2015, the New York Legislature passed
9 legislation that included the changes recommended in the
10 conditional veto message issued by the Governor of New Jersey
11 and, on March 13, 2015, the Governor of New York signed the
12 legislation into law, to become effective upon the enactment of
13 legislation having an identical effect by the State of New Jersey;
14 and

15 **WHEREAS**, On June 25, 2015, the New Jersey Legislature passed
16 legislation having an identical effect to the legislation enacted in
17 New York and, on June 26, 2015, the Governor of New Jersey
18 signed the legislation into law as P.L.2015, c.64; and

19 **WHEREAS**, Recently, however, plaintiffs have had difficulty
20 convincing the courts to apply NJ OPRA to the Port Authority
21 based on concerns that the legislatures of New Jersey and New
22 York have created a set of inconsistent laws for the Port Authority
23 to follow; and

24 **WHEREAS**, Assertions have been made, contrary to the legislative
25 history of the enactments, that the legislatures directed the Port
26 Authority to comply with both NJ OPRA and NY FOIL
27 simultaneously without taking into consideration the differences
28 between the two laws; and

29 **WHEREAS**, It is altogether fitting and proper for the Legislature to
30 clarify the intent of P.L.2015, c.64 (C.32:1-6.4 et al.), which
31 subjects the Port Authority to NJ OPRA and NY FOIL, in order to
32 further the proper implementation of the law; now, therefore,

33

34 **BE IT RESOLVED** *by the Senate and General Assembly of the*
35 *State of New Jersey:*

36

37 1. a. P.L.2015, c.64 (C.32:1-6.4 et al.) expressly provides that
38 the Port Authority of New York and New Jersey “shall be deemed a
39 ‘public agency’ and treated as such under New Jersey, P.L.1963,
40 c.73 (C.47:1A-1 et seq.), pertaining to the disclosure of government
41 records.”

42 b. Although P.L.2015, c.64 (C.32:1-6.4 et al.) also provides
43 that the Port Authority “shall be deemed an ‘agency’ and treated as
44 such under the laws of New York,” and although the laws of New
45 York are not identical to the laws of New Jersey pertaining to the
46 disclosure of government records, the legislatures thoroughly
47 considered the differences between NJ OPRA and NY FOIL and

SJR113 GORDON

1 intended to subject the Port Authority to the provisions of both
2 laws.

3 c. The Governor of New Jersey, in his conditional veto
4 message, provided one method by which the two laws can be
5 reconciled, to wit: “[i]f a requestor is denied access to a public
6 record, he or she can sue the Port Authority in either State. If the
7 plaintiff sues in New York, New York law applies; if the plaintiff
8 sues in New Jersey, New Jersey law applies.”

9 d. Other methods are available by which the Port Authority can
10 reconcile NJ OPRA and NY FOIL, including, for example, that the
11 Port Authority can simply include a provision that allows the
12 requestor to indicate whether the request is being made pursuant to
13 NJ OPRA or NY FOIL, shifting the burden from the Port Authority
14 to the requestor.

15

16 2. This joint resolution shall take effect immediately.

17

18

19 **STATEMENT**

20

21 This resolution clarifies the intention of P.L.2015, c.64, which
22 subjects the Port Authority of New York and New Jersey (Port
23 Authority) to New York’s Freedom of Information Law and New
24 Jersey’s open public records act (OPRA). Since the enactment of
25 P.L.2015, c.64, individuals requesting records from the Port
26 Authority have had difficulties having OPRA deemed applicable to
27 the Port Authority.