

ASSEMBLY, No. 3992

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MAY 4, 2020

Sponsored by:

Assemblyman CHRISTOPHER P. DEPHILLIPS

District 40 (Bergen, Essex, Morris and Passaic)

SYNOPSIS

Establishes Open Public Records Act Study Commission.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT establishing a study commission to evaluate the open
2 public records act.

3
4 **BE IT RESOLVED** *by the Senate and General Assembly of the*
5 *State of New Jersey:*

6
7 1. The Legislature finds and declares that:

8 a. The State of New Jersey believes in an open and transparent
9 government;

10 b. The open public records act, commonly referred to as
11 OPRA, was adopted in 2001 to provide citizens with the ability to
12 examine the records of their government;

13 c. Since 2001, administrative decisions and court rulings have
14 been made to interpret how OPRA applies in day-to-day situations;

15 d. OPRA, at times, is challenging for the public to understand
16 and for the records custodians to follow, such as when balancing the
17 release of a document against a citizen's right to privacy;

18 e. OPRA has had a positive impact, yet there are issues with
19 harassment of records custodians and frequent requests by
20 commercial entities;

21 f. The public demands efficient and cost effective access to
22 government records;

23 g. The actual, day-to-day effect of OPRA should be reviewed
24 to ensure that the intent of OPRA is being achieved and is as fair as
25 possible to all interested parties; and

26 h. The establishment of a study commission is appropriate to
27 examine how OPRA is being implemented and utilized.

28

29 2. There is established a commission, to be known as the Open
30 Public Records Act Study Commission, to consist of 11 members.
31 The Commissioner of the Department of Community Affairs and
32 the Executive Director of the Government Records Council, or their
33 designees, shall serve as ex-officio members. The Senate President
34 shall appoint three members, no more than two of whom shall be a
35 member of the same political party, one of whom shall be a member
36 of the news media, one of whom shall be a municipal clerk, and one
37 of whom shall be a member of the general public with an interest in
38 an open and transparent government. The Speaker of the General
39 Assembly shall appoint three members, no more than two of whom
40 shall be a member of the same political party, one of whom shall be
41 a Chief of Police, one of whom shall be a mayor, and one of whom
42 shall be a member of the general public with experience as a
43 privacy expert. Three members shall be appointed by the Governor,
44 no more than two of whom shall be a member of the same political
45 party, one of who shall be a municipal manager, and two of whom
46 shall be attorneys licensed in the State of New Jersey with
47 knowledge and experience with the open public records act, one of
48 whom shall have experience as an attorney on the local government

1 level and one of whom shall have experience as an attorney on the
2 State government level.

3 A vacancy in the membership of the commission shall be filled
4 in the same manner in which the original appointment was made.
5

6 3. The members of the commission shall be appointed and shall
7 hold their initial organizational meeting within 45 days after the
8 effective date of this act. The members shall elect one of the
9 members to serve as chair and one of the members to serve as vice-
10 chair. The chair may appoint a secretary, who need not be a
11 member of the commission. The members of the commission shall
12 serve without compensation, but shall be eligible for reimbursement
13 for necessary and reasonable expenses incurred in the performance
14 of their official duties within the limits of funds appropriated or
15 otherwise made available to the commission.
16

17 4. The commission shall meet at the call of the chair. The
18 commission shall hold at least three public hearings in different
19 parts of the State and elicit testimony from the public at such times
20 and places as the chair shall designate. A meeting of the
21 commission shall be called at the request of six of the commission's
22 members and six members of the commission shall constitute a
23 quorum at any meeting thereof.
24

25 5. It shall be the duty of the commission to, at a minimum:

26 a. review OPRA and examine how the statute compares with
27 actual operation and use;

28 b. evaluate how advancements in technology, administrative
29 decisions, and court rulings have impacted OPRA;

30 c. analyze how OPRA requests are balanced with the public's
31 right to privacy;

32 d. examine how OPRA has been used for commercial,
33 marketing, business, and research purposes;

34 e. research public records statutes and their operation and use,
35 both positive and negative, of other states;

36 f. consider such other matters relating to OPRA as the
37 members of the commission may deem appropriate; and

38 g. make recommendations for legislation or such other action
39 as it deems appropriate with regard to improving, expanding, and
40 facilitating OPRA.
41

42 6. The commission shall be entitled to call to its assistance and
43 avail itself of the services of the employees of any State, county, or
44 municipal department, board, bureau, commission or agency, as it
45 may require and as may be available for its purposes, and to employ
46 stenographic and clerical assistance and incur traveling and other
47 miscellaneous expenses as may be necessary in order to perform its

1 duties, within the limits of funds appropriated or otherwise made
2 available to the commission.

3

4 7. The commission shall report its findings and
5 recommendations to the Legislature, pursuant to section 2 of
6 P.L.1991, c.164 (C.52:14-19.1), and the Governor within one year
7 of its initial organizational meeting.

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9 8. This act shall take effect immediately and shall expire 30
10 days after the commission submits its findings and
11 recommendations to the Governor and the Legislature.

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STATEMENT

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16 This bill establishes an 11 member commission, to be known as
17 the Open Public Records Act Study Commission. The study
18 commission will examine how the open public records act, OPRA,
19 is implemented and utilized in actual day-to-day situations.

20 At a minimum, the commission will:

21 review OPRA and examine how the statute compares with actual
22 operation and use;

23 evaluate how advancements in technology, administrative
24 decisions, and court rulings have impacted OPRA;

25 analyze how OPRA requests are balanced with the public's right
26 to privacy;

27 examine how OPRA has been used for commercial, marketing,
28 business, and research purposes;

29 research public records statutes and their operation and use, both
30 positive and negative, of other states;

31 consider such other matters relating to OPRA as the members of
32 the commission may deem appropriate; and

33 make recommendations for legislation or such other action as it
34 deems appropriate with regard to improving, expanding, and
35 facilitating OPRA.

36 The commission will report its findings and recommendations to
37 the Legislature and the Governor within one year of its initial
38 organizational meeting. The commission will expire 30 days after
39 submission of its findings and recommendations to the Legislature
40 and the Governor.

41 This bill is a recommendation of the League of Municipalities
42 2018 Conference.