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 CHIARAVALLOTTI
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)
A JOINT RESOLUTION clarifying the intent of P.L.2015, c.64
(C.32:1-6.4 et al.).

WHEREAS, On June 5, 2014, Assemblywoman Valerie Vainieri Huttle
introduced legislation in the New Jersey General Assembly making
records of the Port Authority of New York and New Jersey (Port
Authority) available to the public pursuant the provisions of New
York’s Freedom of Information Law (NY FOIL) and New Jersey’s
open public records act (NJ OPRA) and on June 16, 2014, Senator
Robert M. Gordon introduced substantively identical legislation in
the New Jersey Senate; and

WHEREAS, The legislation provided that the records of the Port
Authority were to be open to the public in accordance with
NY FOIL and NJ OPRA and that a record of the Port Authority
subject to disclosure under one set of laws but not the other was
required to be made available by the Port Authority; and

WHEREAS, On June 18, 2014, the New York Legislature passed
legislation making records of the Port Authority available to the
public pursuant to the provisions of NY FOIL and NJ OPRA but
provided a different mechanism in cases of inconsistencies between
NY FOIL and NJ OPRA to determine whether a record would be
made available; and

WHEREAS, Under the New York legislation, when there is an
inconsistency between NY FOIL and NJ OPRA, the law of the state
that provided the greatest rights of access on the date that the
legislation became law would govern whether a record would be
required to be made available by the Port Authority; and

WHEREAS, On October 27, 2014, the Assembly State and Local
Government committee amended the New Jersey legislation to
make it have an identical effect as the New York legislation
concerning the applicable law when there is an inconsistency
between NY FOIL and NJ OPRA, and on November 13, 2014, the
New Jersey legislation was passed by the New Jersey Legislature;
and

WHEREAS, On December 27, 2014, the Governor of New York
approved the New York legislation with an understanding that the
New York Legislature would provide chapter amendments to the
legislation; and

WHEREAS, On that same date, the Governor of New Jersey
conditionally vetoed the New Jersey legislation and recommended
language to replace the provisions of the legislation, specifically
recommending that the legislation be changed to provide that the
Port Authority be deemed an “agency” and treated as such under
NY FOIL and be deemed a “public agency” and treated as such
under NJ OPRA; and

WHEREAS, In explaining his conditional veto, the Governor of New
Jersey wrote that the bill presented to him “would result in
unnecessary conflicts of law that would only frustrate disclosure
without enhancing transparency” and that “[t]here is a far simpler approach”; and

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

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

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

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

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

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

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

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

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

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

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

2. This joint resolution shall take effect immediately.

STATEMENT

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