Short Title. The Act may be cited as the “The Kentucky Open Data Standards and Portal Act.”

Declaration. Declaration of legislative findings and intent. The General Assembly hereby finds and declares that it is in the best interest of the Commonwealth of Kentucky that its agencies and departments make their data promptly available online using open standards. Making state data available online using open standards will make the operation of state government more transparent, effective and accountable to the public. It will streamline intra-governmental and inter-governmental communication and interoperability, permit the public to assist in identifying efficient solutions for government, promote innovative strategies for social progress, and create economic opportunities.

Definitions.

“Advanced Programming Interface” means a system access point or library function that has a well-defined syntax and is accessible from application programs or user code to provide well-defined functionality.

“Cloud computing” has the same meaning provided by Special Publication 800-145 issued by the National Institute of Standards and Technology of the United States Department of Commerce, and provides that it is a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources that can be rapidly provisioned and released with minimal management effort or service provider interaction.

“Data” means final versions of statistical or factual information that:

1. Are in alphanumeric or geospatial form reflected in a list, table, graph, chart, map or other non-narrative format that can be digitally transmitted or processed;
2. Are regularly created or maintained by or on behalf of the governmental entity;
3. Record a measurement, transaction, or determination or provide information on government services initiatives, and resource related to the mission of the covered governmental entity.

“Data” does not include information provided by other governmental entities, nor does it include images files, such as designs, drawings, maps, photos, or scanned copies of original documents, except that it does include statistical or factual information about such image files and shall include geographic information system data.

“Data Coordinator” is an individual identified by the Commonwealth Office of Technology and employed within a state entity that is assigned dual reporting requirements to the agency and the Commonwealth Office of Technology. The primary responsibility of the data coordinator is to assist the Commonwealth Office of Technology and the agency in the implementation of this Act. Such responsibilities may include:

1. Identifying potential data sets;
2. Providing details about the potential data set;
3. Determining internal data set publication priority;
4. Determining external data set publication priority;
5. Creating a proposed release schedule for the data set;
6. Determining whether the data set contains personally identifiable information and whether the data could be altered in a way to permit its sharing;
7. Assessing the quality of the data in terms of accuracy, completeness, timeliness, usefulness, and accessibility;
8. Ranking datasets for publication in terms of priority;
9. Insuring agency compliance with the technical standards manual;
10. Educating agency personnel on data governance and privacy issues;
11. Assisting in the preparation of the annual report, compliance plan and the strategic enterprise application plan;
12. Providing regular and timely reports to both the agency and the Commonwealth Office of Technology regarding the implementation of this Act.

Data does not include

1. data to which an agency may deny access pursuant to any provision of a federal, State, or local law, rule, or regulation, including, but not limited to, the Kentucky Open Records Act;
2. data that contains a significant amount of information to which an agency may deny access pursuant to any provision of a federal, State, or local law, rule, or regulation;
3. data that reflects the internal deliberative process of an agency or agencies, including but not limited to negotiating positions, future procurements, or pending or reasonably anticipated legal or administrative proceedings;
4. data stored on an agency-owned personal computing device, or data stored on a portion of a network that has been exclusively assigned to a single agency employee or a single agency owned or controlled computing device;
5. materials subject to copyright, patent, trademark, confidentiality agreements, or trade secret protection;
6. proprietary applications, computer code, software, operating systems, or similar materials;
7. employment records, internal employee-related directories or lists, facilities data, information technology, internal service-desk and other data related to internal agency administration; and
8. any other data the publication of which is prohibited by law.

“Data Portal” means a web site where governmental entities can post data sets and other data as identified by the Data Working Group.

“Data Set” means a named collection of related records maintained on a storage device, with the collection containing data organized or formatted in a specific or prescribed way, often in a tabular form.

“Open Data” means data that, consistent with any applicable laws, rules, regulations, ordinances, resolutions, policies, or other restrictions including requirements or rights associated with the data, a state entity

1. Has collected;
2. Is permitted, required or able to make available to the public; and
3. Includes contractual or other legal orders, restrictions, or requirements.

“Open Data” does not include data that if made public would:

1. Violate another law or regulation that prohibits the data from being made public;
2. Endanger the public health, safety, or welfare;
3. Hinder the operation of government including criminal and civil investigations;
4. Impose an undue financial, operational, or administrative burden on a state entity; or
5. Disclose proprietary or confidential information.

“Open operating standard” means a technical standard developed and maintained by a voluntary consensus standards body that is available to the public without royalty or fee.

"Public data" and “public data sets” mean all data that is collected by any unit of State or local government in pursuance of that entity's official responsibilities which is otherwise subject to disclosure pursuant to the Kentucky Open Records Act, and is not prohibited from disclosure pursuant to any other contravening legal instrument, including, but not limited to, a superseding provision of federal or state law or an order from a court of competent jurisdiction.

"Strategic enterprise application plan" means a comprehensive program developed by a State agency, articulating both principles and goals related to the application of its services and programs to the current and future needs of enterprise in Kentucky.

“State Entity” means a Cabinet, Department, a Board, a Commission, an Agency or a subunit in the Executive Branch of the Commonwealth of Kentucky.

"Technical standard" shall mean:

(a) the common and repeated use of rules, conditions, guidelines or characteristics for products or related processes and production methods, and related management systems practices; and

(b) (i) the definition of terms;

(ii) classification of components;

(iii) delineation of procedures;

(iv) specifications of dimensions, materials, performance, designs or operations;

(v) measurement of quality and quantity in describing materials, processes, products, systems, services or practices;

(vi) test methods and sampling procedures; or

(vii) descriptions of fit and measurements of size or strength.

“Voluntary consensus standards body” means a domestic or international organization that develops and maintains a technical standard that utilizes a transparent deliberative process, permits the participation of and maintains a technical standard that utilizes a transparent deliberative process, permits the participation of any party, and achieves general consensus, although not necessarily unanimity, of the participating parties, including a process for attempting to resolve any differences in viewpoint.

Open Operating Standard

(a) There is hereby established an open operating standard, to be known as "Kentucky Open Data", for the Commonwealth of Kentucky. Under this open operating standard, each state entity under the jurisdiction of the Governor shall make available public data sets of public information by bulk download and an advanced programming interface. Any local government and any branch of government may adopt the standard for itself.

(b) To implement this Act, the Commonwealth Office of Technology may, by rule, establish policies, standards, and guidance as required herein. The Kentucky Administrative Procedure Act is hereby expressly adopted and shall apply to all rules made pursuant to this Act.

Committee.

Establishment of Portal and Technical Standards

(a) Public data sets that are made available on the internet by agencies shall be accessible through a single web-based data portal that is linked to data.ky.gov or any successor website maintained by, or on behalf of, the Commonwealth of Kentucky within one year from the effective date of this Act. If an agency cannot make all such public data sets available on the single web-based data portal, the agency shall report to the Commonwealth Office of Technology the public data set or sets it is unable to make available, the reasons why it cannot do so, and the date by which the agency expects those data sets to be available on the single web-based data portal.

(b) Public data sets shall be made available in accordance with technical standards published by the Commonwealth Office of Technology. The technical standards shall be determined by the

Commonwealth Office of Technology, in consultation with the subject matter experts from all State agencies, representatives of units of local government, not-for-profit organizations specializing in technology and innovation, the academic community, area development districts and any other group interested in the use of technology and data.

(c) Public data sets shall be accessible to external search capabilities.

Presumption.

With respect to Commonwealth information and data, the presumption shall be in favor of openness, to the extent permitted by law and subject to valid privacy, confidentiality, security, or other restrictions and exemptions afforded under all applicable federal, state and local laws.

While the presumption is for all data to be made public, some data elements if released could cause privacy harms, put critical infrastructure at risk, or put public safety personnel and initiatives at risk. Commonwealth Cabinets shall use tools approved by the Commonwealth Office of Technology or subsequently promulgated by administrative regulation to assess the risk of a proposed data set balancing the potential for harm against the public’s interest in disclosure.

Web portal administration.

The Commonwealth Office of Technology may take reasonable measures to maintain bandwidth availability of the web portal.

The Commonwealth Office of Technology shall conspicuously publish the open data legal policy, as provided in sections \_\_\_\_\_ through \_\_\_\_\_\_, on the web portal.

The Commonwealth Office of Technology shall implement an on-line forum to solicit feedback from the public and to encourage public discussion on open data policies and public data set availability on the web portal.

Implementation Deadlines

Within 45 days of the effective date of this Act, the Commonwealth Office of Technology shall convene a data working group made of representatives from the

[list offices]

and the data coordinators from the state entities. Additional representatives may be invited to participate but are not legally required to participate like the Court of Justice and the Legislative Research Commission.

Such data coordinators shall be chosen by a representative of the Commonwealth Office of Technology. The data working group shall assist the Commonwealth Office of Technology in carrying out the duties under this article.

Within 90 days of the effective date of this Act, the Commonwealth Office of Technology shall prepare and publish:

1. a technical standards manual for the publishing of public data sets in raw or unprocessed form through a single web portal by State agencies for the purpose of making public data available to the greatest number of users and for the greatest number of applications and shall, whenever practicable, use open standards for web publishing and e-government.
2. The manual shall identify the reasons why each technical standard was selected and for which types of data it is applicable, and may recommend or require that data be published in more than one technical standard. The manual shall include a plan to adopt or utilize a web application programming interface that permits application programs to request and receive public data sets directly from the web portal. The manual and related policies may be updated as necessary.
3. The Commonwealth Office of Technology shall consult with units of local government, not-for-profit organizations with a specialization in technology and innovation, agencies of states, academic institutions, and voluntary consensus standards bodies, and, when such participation is feasible, in the public interest, and compatible with agency and departmental missions, authorities, and priorities, participate with such bodies in the development of technical and open standards.

Within 120 days of the effective date of this Act, each Commonwealth agency shall submit a compliance plan, together with a draft long-term strategic enterprise application plan consistent with this Act, to the Commonwealth Office of Technology and shall make such plan available to the public on the data.ky.gov web portal. Each Commonwealth agency shall collaborate with the Commonwealth Office of Technology in formulating its plan. The plan shall include:

1. a summary description of public data sets under the control of each Commonwealth agency on or after the effective date of this Act;
2. a summary explanation of how its plans, charters, budgets, capital expenditures, contracts, and other related documents and information for each information technology and telecommunications project it proposes to undertake can be utilized to support Kentucky’s open data portal and related savings and efficiencies; and
3. an evaluation as to whether the data could be securely and economically provided through a cloud computing platform.

Prioritization of Data. For purposes of prioritizing public data sets for inclusion on the data portal, State agencies shall consider whether information embodied in the public data set:

(1) can be used to increase agency accountability, efficiency and responsiveness;

(2) improves public knowledge of the agency and its operations;

(3) furthers the mission of the agency;

(4) creates economic opportunity;

(5) is received via the on-line forum for inclusion of particular public data sets;

(6) responds to a need or demand identified by public consultation or concern;

(7) is sufficiently complete, accurate and reliable to justify inclusion;

(8) could disperse an individual’s personally identifiable information; and

(9) is useful in evaluating the allocation of public resources through cost-benefit analysis.

Updating, altering and removal of data. Public data sets shall be provided in a format that permits public notification of all updates whenever possible. Public data sets shall be updated as often as is necessary to preserve the integrity and usefulness of the data sets and shall be made available as soon as practicable to the time it is collected. Altering or removal of published data sets shall be documented and include appropriate version tracking and archiving.

Licensing of data. Public data sets shall be made available without any registration requirement, license requirement, or restrictions on their use provided that the agency may require a third party providing to the public any public data set, or application utilizing such data set, to explicitly identify the source and version of the public data set and a description of any modifications made to such public data set. Registration requirements, license requirements, or restrictions as used in this Section shall not include measures designed or required to ensure access to public data sets, to protect the single website housing public data sets from unlawful abuse or attempts to damage or impair use of the website, or to analyze the types of data being used to improve service delivery.

Cloud computing alternatives. The Commonwealth of Technology shall evaluate, safe, secure cloud computing options, before making any new information technology or telecommunications investments, and if feasible, adopt appropriate cloud computing solutions.

No warranty. Data sets made available on the web portal are provided for informational purposes only. The Commonwealth does not warrant the completeness, accuracy, content, or fitness for any particular purpose or use of any public data set made available on the web portal, nor are any such warranties to be implied or inferred with respect to the public data sets furnished under the act.

No liability. The Commonwealth is not liable for any deficiencies in the completeness, accuracy, content, or fitness for any particular purpose or use of any public data set or any third party application utilizing such data set.

No private action. Nothing in this act shall be construed to create a private right of action to enforce its provisions.

Public domain. All public data sets shall be entirely in the public domain for purposes of federal copyright law.

Third party data. This Act applies to the records of third parties that create or acquire information, records, or data on behalf of the Commonwealth of Kentucky.

Non-Kentucky Data. The Commonwealth Office of Technology may include data sets of other governments, institutions and not-for-profits on the open data portal if (1) the data meets the publication standards of the COT , (2) is done for a non-commercial purpose and (3) the data is so intertwined with the Commonwealth of Kentucky that the Commonwealth Office of Technology finds that its inclusion would benefit the citizens of the Commonwealth.

Open Data Law Compliance Examination.

The Kentucky State Auditor shall conduct a series of examinations and verifications, as described in subdivision \_\_\_\_\_, and make recommendations to improve the disclosure and inclusion of all public data sets required to be on the single web portal pursuant to section \_\_\_\_\_\_\_ of this Act.

b. Within 60 days of the effective date, the Kentucky State Auditor shall present to the Governor a plan for conducting the examinations and verifications described in subdivision \_\_\_\_\_\_\_. The Governor shall review such plan to verify that it conforms with either a generally accepted auditing process or a process that the Kentucky State Auditor would itself use in such an examination. The Governor may make recommendations to the Kentucky State Auditor in order to improve the auditing process and assure compliance with the Kentucky Open Data Portal law.

c. Not later than two years from the effective date of this Act, and every two years thereafter, the Kentucky State Auditor shall conduct an examination and verification of the compliance with the requirements of sections \_\_\_\_\_\_ to \_\_\_\_\_\_\_ of this Act of no less than \_\_\_\_\_\_ Cabinets and submit the findings of such examination and verification to the Governor, the Legislature, the examined Cabinets and the Commonwealth Office of Technology.

d. Such findings shall include a list of all public data sets that such cabinets did not make available on the single web portal in accordance with section \_\_\_\_\_\_\_ of this Act or disclose in the agency compliance plan required by section \_\_\_\_\_\_\_ of this Act as of the date of the findings, as well as a description of any deviations in the examination and verification process from the plan approved pursuant to section \_\_\_\_\_.

e. In preparing such findings, the Kentucky State Auditor shall accept suggestions from the public as to possible public data sets within state agencies that have not yet been disclosed.

d. Not later than two years after the effective date of this Act, the Kentucky State Auditor shall submit a written report to the Governor and the General Assembly describing the Commonwealth’s compliance with the requirements of this Act, including a complete list of public data sets discovered by the office or agency designated by the Governor that were not previously made available on the single web portal or disclosed in the agency compliance plan and recommendations to improve the disclosure and inclusion of all public data sets required to be on the single web portal. In preparing this report, the office or agency designated by the Kentucky State Auditor shall also accept suggestions from the public as to possible public data sets within Commonwealth agencies that have not yet been disclosed.

e. The report and findings required by this local law shall be posted on the open data portal website no later than ten days after submission.

Annual Report. No later than \_\_\_\_\_\_\_\_ and every year thereafter, the Commonwealth Office of Technology shall submit and post on the web portal an update of the compliance plan to the Governor until all public data sets have been made available through a single web portal in compliance with this chapter. Such update shall include the specific measures undertaken to make public data sets available on the single web portal since the immediately preceding update, specific measures that will be undertaken prior to the next update, an update to the list of public data sets, any changes to the prioritization of public data sets and an update to the timeline for the inclusion of data sets on the single web portal, if necessary. If a public data set cannot be made available on the single web portal on or before \_\_\_\_\_\_\_\_\_, the update shall state the reasons why it cannot and, to the extent practicable, the date by which the agency believes that such public data set will be available on the single web portal.

Repealer.

Severability.

Effective Date.