

ANALYSIS OF AMENDED BILL

Author: Gatto Analyst: Janet Jennings Bill Number: AB 2853
March 18, 2016
Related Bills: See Legislative History Telephone: 845-3495 Amended Date: and April 13, 2016
Attorney: Bruce Langston Sponsor: _____

SUBJECT: State Agency Public Records Act

SUMMARY

This bill would, under the Government Code, modify provisions of the California Public Records Act (PRA).

RECOMMENDATION

No Recommendation.

Summary of Amendments

The March 18, 2016, amendments authorized a public agency that posts any of its public records on its Internet website to refer a person requesting such records to the website.

The April 13, 2016, amendments removed the March 18, 2016, amendments and inserted language to allow state agencies to post public records on their Internet websites, to refer a requester to their Internet website, and to provide copies as specified.

This is the department’s first analysis of the bill.

REASON FOR THE BILL

The reason for the bill is to provide more efficient and cost-effective access to public records by posting disclosable records online where a member of the public could access and download the documents without making a formal PRA request and without requiring the agency to process a request through the required PRA responses.

EFFECTIVE/OPERATIVE DATE

This bill would become effective on January 1, 2017, and operative with respect to PRA requests on or after that date.

FEDERAL/STATE LAW

Under federal law, the United States Freedom of Information Act (Information Act) ensures public access to U.S. government records. The Information Act carries a presumption of disclosure; the burden is on the government to substantiate why information may not be released. Upon written request, Federal agencies are required to disclose the requested records unless they can be lawfully withheld from disclosure under one of the specific

exemptions in the Information Act. Federal agencies are given twenty days to determine whether the agency is able to comply with the information request and notify the requestor of the determination.

Under state law, the PRA is designed to give the public access to inspect information in possession of public agencies, unless it is expressly exempted. The state agency bears the burden of justifying nondisclosure of requested information. The agency must justify withholding of any record by demonstrating that the record is exempt or that the public interest in confidentiality outweighs the public interest in disclosure. The state agency is given 10 days to determine whether the department possesses records responsive to the request that may be disclosed and to notify the requestor accordingly along with the estimated date and time when the records will be made available.

Under current law, the response to a written request for inspection or copies of public records that includes a denial, in whole or in part, of the request is required to be in writing. "Writing" is defined as any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.¹

THIS BILL

This bill would allow a public agency, including the Franchise Tax Board, to comply with the PRA disclosure requirement by posting a public record on its website. The bill would allow the public agency to first direct a requestor for a public record to the Internet website. If the requestor asks for a copy of the public record due to an inability to access or reproduce the public records from the website, the public agency would be required to, within 10 days,² prepare a copy of the public record and promptly notify the requester of the availability of the public record.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's programs and operations.

LEGISLATIVE HISTORY

AB 1707 (Linder, 2015/2016) would modify the California Public Records Act to provide the requester with the specific exemption that applies to the denied record request. AB 1707 is currently pending before the Assembly Committee on Local Government.

¹ Government Code Section 6252(g).

² And upon payment of fees covering direct costs of duplication or a statutory fee (if applicable) under current law.

SB 201 (Wieckowski, 2015/2016) would have added requirements to the Government Code pertaining to the California Public Records Act. SB 201 failed to pass out of the Senate by the constitutional deadline.

SB 1002 (Yee, 2011/2012) would have required the State Chief Information Officer to conduct a study to determine the feasibility of providing electronic records in an open format. SB 1002 was vetoed by Governor Brown on September 28, 2012, stating in part, that another legislative report on electronic public records isn't necessary.

OTHER STATES' INFORMATION

Since this bill would add requirements to provisions of the PRA, a comparison to other state taxes would not be relevant.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenue.

SUPPORT/OPPOSITION³

Support: League of California Cities, the Association of School Administrators, the Orange County Department of Education, and the Glendale Unified School District.

Opposition: None on file.

ARGUMENTS

Proponents: Some could argue that this bill would increase transparency and efficiency in government operations.

Opponents: Some could argue that this bill would transfer the burden of obtaining public information to the requester of the public information.

LEGISLATIVE STAFF CONTACT

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³ According to the April 8, 2016, Assembly Judiciary Committee's Bill Analysis.