

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

NATIONAL LAWYERS GUILD, SAN
FRANCISCO BAY AREA CHAPTER,

Plaintiff and Appellant,

v.

CITY OF HAYWARD, ET AL.,

Defendants and Respondents.

No. S252445

(Court of Appeal No. A149328)

(Super. Ct. No. RG15785743)

SUPREME COURT
FILED

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AFTER A DECISION OF COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION THREE

DECLARATION OF JUSTIN NISHIOKA

EXHIBIT B

— VOLUME II —

(PAGES 301-600)

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3160



California State Sheriffs' Association

Organization Founded by the Sheriffs in 1894

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Santa Cruz County

Joan L. Phillips
Executive Director

June 22, 2000

The Honorable Adam Schiff, Chair
Senate Judiciary Committee
2205 Capitol Building
Sacramento, CA 95814

Subject: AB 2799 (Shelley) - Remove opposition

Dear Chair Schiff:

On behalf of the California State Sheriffs Association (CSSA), I am pleased to inform you that we have removed our opposition to the measure. We are now neutral on the bill.

Thank you for your consideration of our position.

Cordially,

Nick Warner
Legislative Advocate

cc: The Honorable Kevin Shelley, Member of the Assembly ✓



06/23/00 14:16 FAX 3192112



CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS

June 21, 2000

The Honorable Kevin Shelley
California State Assembly
State Capitol, Room 3160
Sacramento, CA 95814

Dear Assembly Member Shelley:

ASSEMBLY BILL 2799 (SHELLEY) PUBLIC RECORDS: DISCLOSURE AS PROPOSED AMENDED NEUTRAL

Based on the amendments agreed to this week, the California Association of Clerks and Election Officials removes its opposition to your bill, AB 2799. Our members wish to thank you for agreeing to amend the bill to address their concerns.

The bill, as proposed amended, now addresses the costs incurred by public agencies in providing copies of electronic records under circumstances now described in the bill. We appreciate your willingness, and that of the bill's sponsor, to work with us to resolve the issues raised during the discussion of AB 2799.

Very truly yours,

Violet Varona-Lukens, Co-Chair
Clerks of the Board of Supervisors
Legislative Committee

VVL:JM:pj

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06/23/00 14:16 FAX 3192112
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June 23, 2000

Honorable Kevin Shelley
Assembly Member, State of California
State Capitol, Room 3160
Sacramento, California 95814

RE: ASSEMBLY BILL 2799 (SHELLEY), AS AMENDED JUNE 22, 2000

Dear Assembly Member Shelley:

I am pleased to inform you that, the June 22, 2000, amendments address Los Angeles County concerns. Therefore, the Los Angeles County Board of Supervisors is no longer opposed to your Assembly Bill 2799.

Very Truly yours,

Steve Zehner
Principal Deputy County Counsel
SZ:lf

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AMENDED IN SENATE JUNE 22, 2000
AMENDED IN ASSEMBLY MAY 23, 2000
AMENDED IN ASSEMBLY APRIL 27, 2000

CALIFORNIA LEGISLATURE—1999-2000 REGULAR SESSION

ASSEMBLY BILL

No. 2799

Introduced by Assembly Member Shelley
(Principal coauthor: Senator Bowen)
(Coauthors: Assembly Members Alquist and Romero)

February 28, 2000

An act to amend Sections 6253 and 6255 of, and to add Section ~~6253.2~~ 6253.9 to, the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 2799, as amended, Shelley. Public records: disclosure.

(1) The California Public Records Act provides that any person may receive a copy of any identifiable public record from any state or local agency upon payment of *specified fees covering direct costs of duplication or a statutory fee if applicable*. The act provides that it shall not be construed to permit an agency to obstruct the inspection or copying of public records and requires any notification of denial of any request for records pursuant to the act to set forth the names and titles or positions of each person responsible for the denial. The act also requires computer data to be provided in a form determined by the agency.



1 (1) The agency shall make the information available in
2 any electronic format in which it holds the information.

3 (2) Each agency shall provide a copy of an electronic
4 record in the format requested if the requested format is
5 one that has been used by the agency to create copies for
6 its own use or for provision to other agencies. ~~Direct costs~~
7 ~~of duplication shall include the costs associated with~~
8 ~~duplicating electronic records.~~

9 ~~(b) The cost of duplication shall be limited to the~~
10 ~~direct cost of producing a copy of a record in an electronic~~
11 ~~format.~~

12 (b) Notwithstanding paragraph (2) of subdivision (a),
13 the requester shall bear the cost of producing a copy of
14 the record, including the cost to construct a record, and
15 the cost of programming and computer services
16 necessary to produce a copy of the record when either of
17 the following applies:

18 (1) In order to comply with the provisions of
19 subdivision (a), the public agency would be required to
20 produce a copy of an electronic record and the record is
21 one that is produced only at otherwise regularly
22 scheduled intervals.

23 (2) The request would require data compilation,
24 extraction, or programming to produce the record.

25 (c) Nothing in this section shall be construed to
26 require the public agency to reconstruct a report record
27 in an electronic format if the agency no longer has the
28 report itself record available in an electronic format.

29 (e)

30 (d) Nothing in this section shall be construed to permit
31 an agency to make information available only in an
32 electronic format.

33 (d)

34 (e) Nothing in this section shall be construed to
35 require the public agency to release an electronic record
36 in the electronic form in which it is held by the agency if
37 its release would jeopardize or compromise the security
38 or integrity of the original record or of any proprietary
39 software in which it is maintained.

Limits cost of duplicating
electronic records
to the direct costs of
producing a copy.

Requires requester to
bear the costs of
producing a copy including
the cost to construct
record the cost of
programming and computer
services necessary to
produce it.

Limits the argument
those costs only
if the record is
only produced periodically
and to would
require ^{data} programming
extraction or compilation

Protects
States that a person
is not required to
produce a record
in electronic
form if it would
jeopardize the
security of the
record or of
proprietary software
LH: 305 ROP - 27

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ASSEMBLY THIRD READING
AB 2799 (Shelley)
As Amended May 23, 2000
Majority vote

GOVERNMENTAL ORGANIZATION 12-2 APPROPRIATIONS 17-2

Ayes: Wesson, Granlund, Battin, Briggs, Cardenas, Lempert, Longville, Machado, Maldonado, Strickland, Wiggins, Wright	Ayes: Migden, Campbell Alquist, Aroner, Ashburn, Cedillo, Corbett, Davis, Kuehl, Maldonado, Papan, Romero, Shelley, Thomson, Wesson, Wiggins, Zettel
Nays: Brewer, Floyd	Nays: Ackerman, Brewer

SUMMARY : Provides for the release of public records in an electronic format and requires a public agency that withholds a public record to justify its withholding in writing. Specifically, this bill :

- 1) Deletes the requirement that public records kept on computer be disclosed in a form determined by the public agency. Requires a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following guidelines:
 - a) The agency must make the information available in any electronic format in which it holds the information;
 - b) Each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies; and,
 - c) An agency may not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- 2) Requires an agency that denies a request for inspection or copies of public records to justify its withholding in writing when the

request for public records was in writing.



- 3) Specifies that this requirements of this bill shall not be construed: a) to permit an agency to make information available only in an electronic format; nor, b) to permit access to records held by the Department of Motor Vehicles that are otherwise restricted under the Public Records Act (PRA)
- 4) Specifies that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

EXISTING LAW :

- 1) Defines "public record" to include any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.
- 2) Requires public records to be open to inspection at all times during the office hours of a state or local agency and affords every person the right to inspect any public record, except as specifically provided.
- 3) Requires state and local agencies to make an exact copy of a public record available to any person upon payment of fees covering direct costs of duplication.
- 4) Requires that computer data be provided in a form determined by the agency.

FISCAL EFFECT : According to the Assembly Appropriations Committee analysis:

- 1) Assuming that agencies generally respond in writing when denying a public records request, there should be negligible fiscal impact.
- 2) Potential costs to various agencies that currently make and sell copies of public records documents for workload in redacting nondisclosable electronic records from disclosable electronic records.

COMMENTS : PRA permits a state or local agency to provide computer records in any format determined by the agency. This bill would require public agencies to provide computer records in any format that it currently uses. This bill would also prohibit an agency from delaying access to the inspection or copying of public records. This bill is an attempt to provide reasonable guidelines for public access to electronically held records and the author believes that this bill will substantially increase the availability of public records and reduce the cost and inconvenience associated with large volumes of paper records.



Some remain concerned with this bill's requirement that public records be released in any electronic format that the agency uses to hold public records. They point out that state and local agencies retain massive databases which may include disclosable as well as nondisclosable public records. Those concerned claim that separating disclosable electronic records from nondisclosable electronic records could be a costly and time-consuming process that is more vulnerable to error and may result in the unintentional release of nondisclosable records. Additionally, some note that this bill does not contain a provision authorizing agencies to charge fees covering the cost of preparing the electronic record for public release when such preparation is necessary. It is unclear how agencies currently account for public records that are required to be redacted but that are disclosed in a paper format.

The provisions of this bill regarding electronic records are identical to those contained in SB 1065 (Bowen) of 1999 that was vetoed by the Governor. The Governor indicated at the time that the state's information technology resources should be directed towards making sure that its computer systems were year 2000 compliant.

Analysis Prepared by : Richard Rios / G. O. / (916) 319-2531 FN:
0004727

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Assembly Republican Bill Analysis
Governmental Organization Committee

AB 2799 (Shelley)
Support

AB 2799 (SHELLEY)
PUBLIC RECORDS: DISCLOSURE.

Version: 5/23/00 Last Amended
Vote: Majority
Support

Vice-Chair: Tony Strickland
Tax or Fee Increase: No
Encourages public access to computerized records of state and local agencies.

Policy Question

Should state and local agencies be required to facilitate public access to records?

Summary

1. Mandates that public agencies make records in any electronic format in which they store the records.
2. Requires public agencies to justify withholding a requested record in writing by demonstrating that the public interest protected by non-disclosure clearly outweighs the interest in disclosure.
3. Prohibits agency delay in disclosing records.
4. Requires agencies denying a written request for records, in whole or in part, to respond to the request in writing.

Support

California Newspaper Publishers Association (Sponsor), California First Amendment Coalition.

Opposition

California Municipal Utilities Association, California State Sheriffs' Association, California Association of Clerks and Election Officials, Los Angeles County Board of Supervisors, San Bernardino County Sheriff.

Assembly Republican Governmental Organization

Votes (12-2) 5/8/00

Ayes: Granlund, Battin, Briggs, Maldonado, Strickland
Noes: Brewer
Abs. / NV: Margett

Assembly Republican Appropriations Votes (17-2)
5/17/00

Ayes: Campbell, Ashburn, Maldonado, Zettel
Noes: Ackerman, Brewer
Abs. / NV: Runner

Assembly Republican **Votes (0-0) 1/1/00**

Ayes: None
Noes: None
Abs. / NV: None

Assembly Republican **Votes (0-0) 1/1/00**

Ayes: None
Noes: None
Abs. / NV: None

Arguments In Support of the Bill

Permitting the broadest access to public records is consistent with the principles of our form of government and current state law. We should do what we can to assure such access. It is how the citizens know what the government is doing.

Arguments In Opposition to the Bill

This bill would increase the costs of state and local agencies by making more records available. This is just another state mandate on local governments.

Fiscal Effect

As approved by the Assembly Appropriations Committee (5/17/00):

MINOR LOCAL AND STATE COSTS -
Unknown, probably minor costs to state and local public agencies for release of records, potentially state-reimbursable.

Fiscal Comment

The costs are associated with public entities that are required to release public records in any electronic form in which it currently exists. Public entities may keep large amounts of information in a database, some of which may not be for public consumption. Public entities may then have to purge the database and eliminate nondiscloseable records, which could be a costly endeavor.

Comments

1. Under current law, the California Public Records Act requires that public records be made available for inspection and copying by the public, unless some specific and explicit exception would deny access. Copies are to be made available at a nominal charge. Computer records may be accessed through the system that the agency permits.
2. This bill would require agencies, both state and local, to make records available in any format that the agency uses itself or uses to make records available to any other agency. It would also require state and local agencies to determine that any new electronic data system or software would not impede or impair public access before acquiring or developing it.
3. Making records more accessible and requiring

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Assembly Republican Bill Analysis

AB 2799 (Shelley)

agencies to take into account the affect on accessibility will promote public knowledge about governmental action. That is a supportable goal. Because citizens have to know what government is doing and government now does so much, steps need to be taken to make information accessible in easily used ways.

- agencies to provide records electronically prevents them from redacting (removing) the sensitive parts of records that other laws may obligate them not to release. He cites victims of sex crimes, child abuse and domestic violence as examples.
5. The other opponents claim that the costs of redacting exceed the amounts that legally they may charge for copies.

4. The San Bernardino County Sheriff is concerned that requiring law enforcement

Policy Consultant: Mike Petersen 5/24/00
Fiscal Consultant: Paul J. Deiro 5/22/00

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CONCURRENCE IN SENATE AMENDMENTS
AB 2799 (Shelley)
As Amended July 6, 2000
Majority vote

ASSEMBLY:	70-4	(May 25, 2000)	SENATE:	34-0	(August 25, 2000)
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Original Committee Reference: G.O.

SUMMARY : Revises various provisions in the Public Records Act (PRA) in order to make available public records, not otherwise exempt from disclosure, in an electronic format, if the information or record is kept in electronic format by a public agency. Requires that a response to a request for public records that includes a denial, in whole or in part, shall be in writing, and provides that PRA may not be construed to permit an agency to delay or obstruct inspection or copying of public records.

The Senate amendments provide that the cost of duplicating an electronic public record must be limited to the direct cost of producing a copy of a record in electronic format, except that the requestor must bear the cost of production if the public agency would have to produce the record at time when the record is not regularly scheduled to be available, or if the request would require data compilation or programming to produce the record.

EXISTING LAW :

- 1) Defines "public record" to include any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.
- 2) Requires public records to be open to inspection at all times during the office hours of a state or local agency and affords every person the right to inspect any public record, except as specifically provided.
- 3) Requires state and local agencies to make an exact copy of a public record available to any person upon payment of fees

covering direct costs of duplication.

- 4) Requires that computer data be provided in a form determined by the agency.

AS PASSED THE ASSEMBLY , this bill deleted the requirement that public records kept on computer be disclosed in a form determined by the public agency. This bill required a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to specified guidelines. This bill additionally required an agency that denies a request for inspection or copies of public records to justify its withholding in writing when the request for public records was in writing.

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FISCAL EFFECT :

- 1) Assuming that agencies generally respond in writing when denying a public records request, there should be negligible fiscal impact.
- 2) Potential costs to various agencies that currently make and sell copies of public records documents for workload in redacting nondisclosable electronic records from disclosable electronic records.

COMMENTS : PRA permits a state or local agency to provide computer records in any format determined by the agency. This bill would require public agencies to provide computer records in any format that the agency currently uses. This bill would also prohibit an agency from delaying access to the inspection or copying of public records. This bill is an attempt to provide reasonable guidelines for public access to electronically held records and the author believes that this bill will substantially increase the availability of public records and reduce the cost and inconvenience associated with large volumes of paper records.

Analysis Prepared by : George Wiley / G. O. / (916) 319-2531

AB 2799
Page 3

FN: 0006488

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Assembly California Legislature

KEVIN SHELLEY

Majority Leader



AB 2799: Public Records – Electronic Records and Balancing Test

Problem: In California, all government agencies are subject to the California Public Records Act (CPRA). The CPRA is the instrument that provides the public in California with the right to access records held by the state and all of its subdivisions. It governs the public's right to access information from state and local agencies, including cities and counties, school districts, municipal corporations, and any other boards or commissions that are part of a covered political entity (Gov. Code Section 6252).

Records subject to public access under the CPRA "include any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency regardless of the physical form or characteristic". Records held electronically have become the focus of great debate. Under current law, when a person makes a request for data contained in computer format, the agency has the discretion to determine in which form the information should be provided. An agency can effectively frustrate a public record's request by providing the requested records in a form different from the public's request.

It is very important that an agency disclose public information in a timely fashion. If there is a legitimate dispute over whether or not a record is covered by an exemption, the agency is entitled to take up to 10 working days to either provide the information or provide the written grounds for its denial. The 10-day period is not intended to delay access to records; however, many state agencies believe the 10-day grace period can be used for any record. By delaying the process, the public often gives up and never acquires the record.

Solution: This bill improves open government by stating that no public agency shall obstruct or delay the inspection or copying of public records. It also requires a public agency to produce, upon request, a public record electronically in the format in which it is currently held (on diskette, usually Work and WordPerfect format).

Status: Senate Appropriations



**AB 2799 – Public Records Act
Senate Judiciary Committee
Thursday, June 19, 2000
Upon Adjournment - - Room 4203**

Mr. Chair and Members of the Committee:

- Today, I present to you AB 2799, a bill which significantly improves access to public records.
- This bill essentially does two things:
 1. It requires public agencies to provide computerized data in any electronic form in which that data is already kept.
 2. It makes one technical change to ensure that no agency deliberately delays the access of requested information.
- I recently amended the bill to address the concerns of several county and public safety agencies. As a result of these amendments, they have removed their opposition.
- This bill is almost **identical** to a measure that passed out of this committee last year.
- AB 2799 is a good pro-government, bipartisan bill that deserves your “aye” vote.



-
- With me to help answer any questions you may have are:
Tom Newton, California Newspaper Publishers Association
Terri Franc, First Amendment Coalition

(800) 666-1917

LEGISLATIVE INTENT SERVICE



**AB 2799 – Public Records Act
Assembly Floor
Thursday, May 25, 2000
10:00 a.m.**

Mr. Speaker and Members:

- Today, I present to you AB 2799, a bill which significantly improves access to public records.
- This bill essentially does two things:
 1. It requires public agencies to provide computerized data in any electronic form in which that data is already kept.
 2. It makes one technical change to ensure that no agency deliberately delays the access of requested information.
- This bill is almost **identical** to a measure that passed out of this house unanimously last year.
- It is a good pro-government bill that has the support of both sides of the aisle.
- I ask for your “aye” vote



**AB 2799 – Public Records Act
Assembly Appropriations
Wednesday, May 17, 2000
9:30 a.m. – Room 4202**

Madame Chair and Members:

- Today, I present to you AB 2799, a bill which significantly improves access to public records.

- This bill essentially does two things:
 1. It requires public agencies to provide computerized data in any electronic form in which that data is already kept.
 2. It makes one technical change to ensure that no agency deliberately delays the access of requested information.

- I understand the Committee has suggested an amendment that would significantly lower the cost of the bill. This amendment is reflected in the analysis, and I accept it as an author's amendment.

- As amended, this bill imposes a negligible fiscal impact, but does a great deal to facilitate open government.

- I ask for your "aye" vote.

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**AB 2799 – Public Records Act
Assembly Governmental Organization
Monday May 8, 2000
9:00 a.m. – Room 4202**

Mr. Chair and Members:

- Today, I present to you AB 2799, a bill which significantly improve access to public records.
- Since I last came before you, I have adopted amendments, which have removed most of the opposition from the bill.
- As amended, this bill now requires public agencies to provide computerized data in any electronic form in which that data is already kept.
- It also makes one technical change in current code to ensure that no agency deliberately delays the access of requested information, unless they are able provide sufficient justification.
- As I mentioned earlier, I have removed the third provision of the bill, which essentially makes it the same bill that passed unanimously out of this committee last year.

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• Access to public records lies at the foundation of open and responsible government. AB 2799 facilitates that access. I ask for your "aye" vote.

• With me today to help answer any questions you may have are:
Tom Newton, California Newspaper Publishers Association

(800) 666-1917

LEGISLATIVE INTENT SERVICE



**AB 2279 – Public Records Act
Assembly Governmental Organization
Monday April 24, 2000
9:00 a.m. – Room 4202**

Mr. Chair and Members:

- Today, I present to you AB 2279, a bill which significantly improves the California Public Records Act.
- The California Public Records Act is a vital tool that allows Californians to keep track of what their public agencies are doing.
- Although it sounds simple, it isn't and many public agencies still deny or complicate requests for public information.
- This bill will help rectify this problem three different ways.
- First, the bill minimizes the flow of paper needed to accommodate certain requests by requiring public agencies to provide computerized data in any electronic form in which that data is already kept.

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•Second, my bill ensures that no agency deliberately delays the access of requested information, unless they provide sufficient justification.

•Finally, AB 2799 levels the playing field between the citizens and the government by giving the citizens the same balancing test as the government to determine whether or not a document can be disclosed.

•Current law allows for the public interest balancing test, a “catchall” provision that allows the government to withhold access to any record if the public interest warrants it.

•This provision is a one-way street – if it is used by an agency, it is used only for the purpose of denying access to a record.

•For those records that are not specifically exempt for the CPRA, the public should have the same right as the government to use the balancing test to access the record when the public interest demands it.

•My bill will only apply to records that are exempted at the discretion of a public agency. It does not apply to records that are



exempt by order of the legislature or specifically forbidden from disclosure.

• Access to public records lies at the foundation of open and responsible government. AB 2799 facilitates that access. I ask for your "aye" vote.

• With me today to help answer any questions you may have are:
Tom Newton, California Newspaper Publishers Association
Terry Francke, California First Amendment Coalition



7/14/2000

SENATE JUDICIARY COMMITTEE
Adam B. Schiff, Chairman
1999-2000 Regular Session

AB 2799	A
Assembly Member Shelley	B
As Amended June 22, 2000	
Hearing Date: June 27, 2000	2
Government Code	7
GMO:cjt	9
	9

SUBJECT

Public Records: Disclosure

DESCRIPTION

This bill would revise various provisions in the Public Records Act (PRA) in order to make available public records, not otherwise exempt from disclosure, in an electronic format, if the information or record is kept in electronic format by a public agency. It would specify what costs the requester would bear for obtaining copies of records in an electronic format.

The bill would add, to the unusual circumstances that would permit an extension of time to respond to a request for public records, the need of the agency to compile data, write programming language, or construct a computer report to extract data. The bill would require that a response to a request for public records that includes a denial, in whole or in part, shall be in writing, and provide that the Public Records Act shall not be construed to permit an agency to delay or obstruct inspection or copying of public records.

BACKGROUND

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LEGISLATIVE INTENT SERVICE



This bill is a blend of two bills that were passed by this Committee last year, AB 1099 (Shelley), and SB 1065 (Bowen).

(more)

AB 2799 (Shelley)

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AB 1099 passed the Senate (and was chaptered) but contained provisions unrelated to electronic records. SB 1065 was vetoed by the Governor, who stated in his veto message that he believes the bill to be well-intentioned, but "the State's information technology resources should be directed towards making sure that its computer systems are year 2000 compliant. The author was unwilling to add language which would ensure the completion of this task before the implementation of the provisions of this bill." Most of SB 1065 was incorporated into AB 2799.

AB 2799 contains those provisions of both bills that were received without much opposition. It is sponsored by the California Newspaper Publishers Association, and is one of several bills moving through both houses that relate to public records or to the use of electronic records by public agencies.

CHANGES TO EXISTING LAW

The Public Records Act allows an agency to provide computer data in any form determined by the agency. The Act directs a public agency, upon request for inspection or for a copy of the records, to respond to a request within 10 days after receipt of the request. In unusual circumstances, which are specified in the Act, this timeline for responding may be extended in writing for 14 days. [Government Code Section 6253.]

This bill would:

- a) Require a public agency to make disclosable information available in any electronic format in which it holds the information, unless release of the



information would compromise the integrity of the record or any proprietary software in which it is maintained;

- b) Add, in the definition of "unusual circumstances" for which the time limit for responding to a request for a copy of records may be extended up to 14 days after the initial 10 days, the need for the agency to compile data, to write programming language or a computer program, or to construct a computer report to extract data;

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- c) Require a public agency to respond in writing to a written request for public records, including a denial of the request in whole or in part, and requiring that the names and titles of the persons responsible for the denial be stated therein;
- d) Provide that nothing in the Act shall be construed to permit the agency to delay or obstruct the inspection or copying of public records;
- e) Provide that a requester bear the costs of programming and computer services necessary to produce a record not otherwise readily produced, as specified;
- f) Delete the provision in current law that computer data that is a public record shall be provided in a form determined by the agency.

COMMENT

1. Stated need for legislation

With the advent of the electronic age, more and more people want to be able to access information in an electronic format. Apparently, there is not current authority under which a person seeking electronically available records could obtain such records in that format. This means that if an agency makes a CD or disk copies of the records, a member of the public could not obtain records in that format-the public would have to buy copies made out of the printouts from the records. The expense of copying these records in paper format,



especially when the records are voluminous, makes those public records practically inaccessible to the public, according to the author and the proponents.

The author also states that the current provision in the PRA that gives a public agency the discretion to determine in which form the information requested should be provided works so that the agency can effectively frustrate the request by providing a copy of the requested record in a form different from the request, which could sometimes render the information useless.

The sponsor of this bill, the California Newspaper Publishers Association (CNPA) also contends that the 10-day period that a public agency has to respond to a request for inspection or copying of public records is

AB 2799 (Shelley)

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not intended to delay access to records. - It is intended instead, when there is a legitimate dispute over whether the records requested are covered by an exemption, to provide time for the agency to provide the information or provide the written grounds for a denial. What many state agencies do, the sponsor says, is to use the 10 days as a "grace period" for providing the information, during which time many a requester (members of the public) often gives up and never acquires the record.

These two deficiencies in the Public Records Act are what this bill is intended to cure.

2. Information in electronic form to be provided in same form

This bill would require a public agency that has information constituting a public record in an electronic format to make that information available in an electronic format upon request. Additionally,

- a) the agency is required to provide information in any electronic format in which it holds the information;

and



- b) the agency is required to provide a copy of an electronic record in the format requested if it is the format that had been used by the agency to create copies for its own use or for other agencies.

3. Conditions on providing records in electronic format

The bill would make conditional the requirement that a public agency comply with a request for public records held in an electronic format. These conditions are:

- a. An agency would not be required to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

This provision was amended into SB 1065 (Bowen) when it was heard in this Committee last year, in response to concerns raised by the some state agencies.

- b. An agency would not be permitted to make information available only in an electronic format.

Even though this bill is intended to make records

AB 2799 (Shelley)

Page 5

available to the public in electronic format if kept by an agency in that form, an agency may not, under this bill, frustrate the public's access to information by then converting the non-electronically formatted records into electronic format. As prevalent as electronic data processing is now, there are still those who may not have access to computer equipment to read computer disks or CDs. Thus, if public information is requested in a form other than in an electronic format, a public agency must provide such record in the non-electronic format.

However, this bill would require the agency to provide information in electronic format only if requested by a member of the public. If the record is available in electronic format as well as in printed form, it is not clear whether the public agency has an obligation to



tell the requester that the information is available in electronic format.

SHOULD A PUBLIC AGENCY INFORM A REQUESTER THAT THE INFORMATION REQUESTED IS AVAILABLE IN ELECTRONIC FORM?

- c. An agency would not be required to release an electronic record in electronic form if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

This limitation was added to the bill in order to alleviate concerns that electronic records, though created with taxpayer money (see Comment 5), may have been produced using software designed specifically for the agency. This bill would give the agency the flexibility to refuse to release a requested record in electronic format, if such a release would mean that the software would also have to be released. Even without the software problem, though, an electronic record containing the data may be deciphered and the software program reconstructed (see below).

The agency also may refuse to provide the information in electronic format if the electronic record, when transmitted or provided to a requester, could be altered and then retransmitted, thus rendering the

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original record vulnerable.

These two concerns were registered by opponents of SB 1065 last year. Thus, AB 2799 includes a provision that gives the public agency the option not to provide the information if disclosing it would jeopardize the integrity or security of the system.

- a) The Department of Motor Vehicles would not be required to provide public access to its records where access is otherwise restricted by statute.



These records would be, among others, personal information on holders of driver's licenses, and other information protected by federal and state privacy statutes.

The Governor's veto message of SB 1065 stated that many of the state's computer systems do not yet have the capacity to implement the provisions of the bill, and that he is concerned that SB 1065 would not be able to protect "the confidentiality of citizens whose personal information is maintained by the state departments including the Employment Development Department, the Department of Motor Vehicles, the Department of Health Services, and the California Highway Patrol."

Only the records of the DMV, where access to the records is restricted by statute, are exempt from this bill.

SHOULD THE OTHER AGENCIES ALSO BE EXEMPTED?

4. Costs of reproduction of records: what requester pays for

This bill would specify the copying costs that a requester would pay:

- a) If the record duplicated is an electronic record in a format used by the agency to make its own copies or copies for other agencies, the cost of duplication would be the cost of producing a copy in an electronic format.
- b) If the public agency would be required to produce a

copy of an electronic record and the record is one that is produced by the public agency at otherwise regularly scheduled intervals, or if the request would require data compilation, extraction, or programming to produce the record, the cost of producing a copy of the record,



including the cost to construct a record, and the cost of programming and computer services necessary to produce the record.

5. Target records to be duplicated

This bill would target voluminous documents as those public records to which the public should have access in the electronic format, and those public records such as the city budget, environmental impact reports, or minutes from a Board of Supervisors' meeting as documents that should be available on disk or the Internet. Especially because these documents were created a taxpayer expense in the first place, it is argued, a person seeking copies should not be gouged by the public agency for the cost of a person standing in front of a copy machine to duplicate the record when the record could quickly be copied onto a disk or accessed on the Internet. Thus, the bill provides that the cost of duplicating a record in electronic format would be the direct cost of producing that record in electronic format, i.e., the cost of copying the CD or copying records stored in a computer into disks.

Where the records do not lend themselves to electronic format, this bill would not impose a duty on the public agency to convert the records into electronic format (just as the agency would not be permitted to make records available only in electronic format). For example, environmental impact reports, which are voluminous, normally contain maps and other fold-out attachments. Until these documents are actually produced by the public agency or their contractors in electronic format, there would be no obligation for the agency to provide the reports in disk or CD form.

However, if at some point in time these voluminous



records do become available in electronic form, it is possible that public agencies will just have to create websites for posting all disclosable records accessible to the public.

6. Public agency may not delay or obstruct access to public records

This bill would provide that "Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records?" [Government Code Section 6253(d).]

Thus, any delay experienced by an agency in responding to a request could be interpreted as a violation of the Public Records Act. Under existing law, the court is required to award reasonable attorney's fees and court costs to a person who prevails in litigation filed under the PRA. But this award would be available only if the requester can prove that the agency "obstructed" the availability of the requested records for inspection or copying. Because of the change this bill would make to the referenced provision, it may invite litigation at every delay in production of records requested.

Proponents of this change, however, point to the fact that when this section was last amended, the word "delay" was replaced with the word "obstruct." The return of the word "delay" to this section, they say, would remove any doubt that the prior substitution of "obstruct" for "delay" in subdivision (d) of Section 6253 was not intended to weaken the PRA's mandate that agencies act in good faith to promptly disclose public records requested under the Act.

An example used by proponent, counsel to The Orange County Register, is the requested records from the University of California, Irvine, for the Register's investigation and report on the abuses at the University's fertility clinic (for which the Register earned a Pulitzer Prize). The Register apparently utilized the PRA to obtain public records that were critical to the reporting. Repeated requests met with repeated months of delay, "even where the University readily conceded that the records are not exempt from



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disclosure." Proponent indicated, however, that the Register "is not so naive as to believe that this amendment will solve the serious problem of administrative delay in responding to CPRA requests?"

7. "Unusual circumstance" would extend time to respond

Existing law provides for an extension of the public agency's deadline for responding to a request from 10 days to no more than 14 days more, if certain "unusual circumstances exist, such as the need to search for and collect data from field facilities separate from the office processing the request or the need for consultation with another agency that has a substantial interest in the determination of the request.

This bill would add to these "unusual circumstances," the need to compile data, write programming language or a computer program, or to construct a computer report to extract data. This provision recognizes that sometimes the information or data requested is not in a central location nor easily accessible to the agency itself, and thus would take time to produce or copy.

8. Denial of request must be in writing

Existing law requires an agency to justify the withholding of its record by demonstrating that the record requested is exempt under the PRA, or that on the facts of the particular case, the public interest served by not disclosing the information outweighs the public interest served by disclosure of the record. The PRA provision does not require this justification or denial of the request to be in writing.

This bill would expressly state that a response to a written request for inspection or copying of public records that includes a determination that the request is denied, in whole or in part, must be in writing.

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9. Withdrawn opposition

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The following entities initially registered opposition to the bill for various reasons, most of them related to the proprietary software and security exemption from providing information in electronic format and to the earlier version which did not specify that electronic records or electronically formatted information must be disclosable in the first place (or not exempt from the PRA) to be available in electronic format:

The County of Los Angeles; the County of Los Angeles Sheriff's Department; California State Sheriff's Association; California State Association of Counties; California Association of Clerks and Election Officials.

The amendments last made to this bill shifted these entities' position to neutral.

The one remaining opponent of the bill, the County of Orange, contends that the county, like many others, already provide information to the public on public records and how to access them, 24 hours a day through the Internet. "Without reasonable regulations," the county argues, "County staff could be required to spend considerable time copying and editing records, determining if they are appropriate for public disclosure and responding with written justifications if the requests are denied."

Support: Orange County Register

Opposition: County of Orange

HISTORY

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Source: California Newspaper Publishers' Association (CNPA)

Related Pending Legislation: SB 2027 (Sher) would also amend the Public Records Act as it relates to a person's right to litigate in the event of a denial of the person's request. The bill is now in the Assembly Judiciary Committee.

Prior Legislation: AB 1099 (Shelley) and SB 1065 (Bowen),

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see background)

Prior Vote: Asm. G.O. (Ayes 12, Noes 2)
Asm. Appr. (Ayes 17, Noes 2)
Asm. Flr. (Ayes 70, Noes 4)

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ASSEMBLY THIRD READING
AB 2799 (Shelley)
As Amended May 23, 2000
Majority vote

GOVERNMENTAL ORGANIZATION 12-2 APPROPRIATIONS 17-2

Ayes: Wesson, Granlund, Battin, Briggs, Cardenas, Lempert, Longville, Machado, Maldonado, Strickland, Wiggins, Wright	Ayes: Migden, Campbell Alquist, Aroner, Ashburn, Cedillo, Corbett, Davis, Kuehl, Maldonado, Papan, Romero, Shelley, Thomson, Wesson, Wiggins, Zettel
Nays: Brewer, Floyd	Nays: Ackerman, Brewer

SUMMARY: Provides for the release of public records in an electronic format and requires a public agency that withholds a public record to justify its withholding in writing. Specifically,

this bill:

-) Deletes the requirement that public records kept on computer be disclosed in a form determined by the public agency. Requires a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following guidelines:
 - a) The agency must make the information available in any electronic format in which it holds the information;
 - b) Each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies; and,

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- c) An agency may not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- 2) Requires an agency that denies a request for inspection or copies of public records to justify its withholding in writing when the

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request for public records was in writing.

- 3) Specifies that this requirements of this bill shall not be construed: a) to permit an agency to make information available only in an electronic format; nor, b) to permit access to records held by the Department of Motor Vehicles that are otherwise restricted under the Public Records Act (PRA)
- 4) Specifies that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

EXISTING LAW :

- 1) Defines "public record" to include any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.
- 2) Requires public records to be open to inspection at all times during the office hours of a state or local agency and affords every person the right to inspect any public record, except as specifically provided.

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3) Requires state and local agencies to make an exact copy of a public record available to any person upon payment of fees covering direct costs of duplication.

4) Requires that computer data be provided in a form determined by the agency.

FISCAL EFFECT: According to the Assembly Appropriations Committee

analysis:

1) Assuming that agencies generally respond in writing when denying a public records request, there should be negligible fiscal impact.

2) Potential costs to various agencies that currently make and sell copies of public records documents for workload in redacting nondisclosable electronic records from disclosable electronic records.

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COMMENTS: PRA permits a state or local agency to provide computer records in any format determined by the agency. This bill would require public agencies to provide computer records in any format that it currently uses. This bill would also prohibit an agency from delaying access to the inspection or copying of public records.

This bill is an attempt to provide reasonable guidelines for public access to electronically held records and the author believes that this bill will substantially increase the availability of public records and reduce the cost and inconvenience associated with large volumes of paper records.

Some remain concerned with this bill's requirement that public records be released in any electronic format that the agency uses to

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hold public records. They point out that state and local agencies retain massive databases which may include disclosable as well as nondisclosable public records. Those concerned claim that separating disclosable electronic records from nondisclosable electronic records could be a costly and time-consuming process that

is more vulnerable to error and may result in the unintentional release of nondisclosable records. Additionally, some note that this bill does not contain a provision authorizing agencies to charge fees covering the cost of preparing the electronic record for

public release when such preparation is necessary. It is unclear how agencies currently account for public records that are required

to be redacted but that are disclosed in a paper format.

The provisions of this bill regarding electronic records are identical to those contained in SB 1065 (Bowen) of 1999 that was vetoed by the Governor. The Governor indicated at the time that the state's information technology resources should be directed towards making sure that its computer systems were year 2000 compliant.

Analysis Prepared by: Richard Rios / G. O. / (916) 319-2531 FN:
0004727

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Date of Hearing: May 17, 2000

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Carole Migden, Chairwoman

AB 2799 (Shelley) – As Amended: April 27, 2000

Policy Committee: Governmental Organization

Vote: 12-2

Urgency: No State Mandated Local Program: Yes

Reimbursable: No

SUMMARY

This bill, as proposed to be amended:

- 1) Requires that a public agency's justification for denying the release of a public record be made in writing if the request for that record was submitted in writing.
- 2) Requires public agencies to make public records available, when requested, in the electronic format in which they hold the information.
- 3) Specifies that the direct costs of duplication, for which agencies may charge requesters pursuant to current law, include the costs associated with duplicating electronic records.

FISCAL EFFECT

- 1) Assuming that agencies generally respond in writing when denying a public records request, there should be negligible fiscal impact.
- 2) Potential revenue loss to various agencies that currently make and sell copies of public records documents, probably offset by workload savings from providing electronic rather than paper copies of public records.

COMMENTS

- 1) Purpose. According to the sponsor, the California Newspaper Publishers Association, this bill is intended to ensure quicker access to public records. The sponsor also notes that the bill seeks to provide reasonable guidelines for public access to electronically held records.
- 2) Prior Legislation. The provisions of this bill regarding electronic records are identical to those contained in SB 1065 (Bowen) from last year. That bill was vetoed by the governor, who indicated at the time that the state's information technology resources should be directed towards making sure that its computer systems were year 2000 compliant.
- 3) Amendment. Staff recommends the following amendments, which generally would conform with current practice and are reflected in this analysis.

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On page 5, line 9, after "6255", insert "(a)".

On page 5, line 10, delete "in writing."

On page 5, after line 15, insert: "(b) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing."

Analysis Prepared by: Chuck Nicol / APPR. / (916)319-2081



3/60

MAY - 5

Date of Hearing: May 8, 2000

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Herb Wesson, Chair

AB 2799 (Shelley) - As amended: April 27, 2000

SUBJECT: Public records

SUMMARY: Provides for the release of public records in an electronic format and requires a public agency that withholds a public record to justify its withholding in writing.

- 1) Deletes the requirement that public records kept on computer be disclosed in a form determined by the public agency. Requires a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following guidelines:
 - a) The agency must make the information available in any electronic format in which it holds the information.
 - b) Each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.
 - c) An agency may not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- 2) Requires an agency that withholds a public record to justify its withholding in writing.
- 3) Specifies that the requirements of the bill shall not be construed to permit an agency to make information available only in an electronic format nor shall they be construed to permit access to records held by the Department of Motor Vehicles that are otherwise restricted under the PRA.
- 4) Specifies that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

EXISTING LAW

- 1) Defines "public record" to include any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.
- 2) Requires public records to be open to inspection at all times during the office hours of a state or local agency and affords every person the right to inspect any public record, except as specifically provided.

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- 3) Requires state and local agencies to make an exact copy of a public record available to any person upon payment of fees covering direct costs of duplication, or a statutory fee, if applicable.
- 4) Requires that computer data be provided in a form determined by the agency.

FISCAL EFFECT: Unknown.

COMMENTS:

1. Need for the bill. The PRA permits a state or local agency to provide computer records in any format determined by the agency. This bill would require an agency to provide computer records in any format that it currently uses. According to the sponsor, the California Newspaper Publishers Association, this bill is intended to ensure quicker, more useful access to public records. The sponsor also notes that the bill seeks to provide reasonable guidelines for public access to electronically held records.
2. Substantive amendments. This bill was heard by this committee on April 24, 2000 and failed passage. Since the April 24 hearing, the author has substantially amended the bill to remove a controversial provision which would have authorized courts and state agencies to release records exempted from the PRA if the court or agency determined that the "public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record." This provision is referred to as the "reverse balancing test" and was the primary issue of discussion during the bill's hearing.
3. Remaining opposition. Although some opponents have removed their opposition in response to the most recent amendments, some remain concerned with the bill's requirement that public records be released in any electronic format that the agency uses to hold public records. Opponents point out that state and local agencies retain massive databases which may include nondisclosable public records. They claim that redacting the nondisclosable information from the electronic records could be a costly and time-consuming process that is more vulnerable to error, which may result in the unintentional release of nondisclosable information. Opponents note that the bill does not contain a provision authorizing agencies to charge fees covering the cost of preparing the electronic record for public release. It is unclear how local agencies currently account for public records that are required to be redacted but that are disclosed in a paper format.
4. Similar legislation. AB 1099 (Shelley) of this legislative session would have required state and local agencies to provide copies of public records in any form requested, including in a computer format, as long as the form was already used by the agency in the conduct of its business. AB 1099 passed this committee by a 15-0 vote but was later amended to contain a subject matter different from that which this committee considered.



REGISTERED SUPPORT / OPPOSITION:

Support

California Newspaper Publishers Association
First Amendment Coalition

Opposition

California Association of Sanitation Agencies - removed opposition 5/5/00
California Municipal Utilities Association
California State Sheriffs Association
Office of the State Attorney General
San Bernardino County Sheriff's Department

Analysis Prepared by: Richard Rios / G. O. / (916) 319-2531

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LEGISLATIVE INTENT SERVICE



3160

Date of Hearing: April 24, 2000

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Herb Wesson, Chair

AB 2799 (Shelley) - As introduced: February 28, 2000

SUBJECT: Public records

SUMMARY: Provides for the release of public records in an electronic format and authorizes the release of records that are exempt from the Public Records Act (the PRA) in specified circumstances. Specifically, this bill:

- 1) Deletes the requirement that public records kept on computer be disclosed in a form determined by the public agency. Requires a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following guidelines:
 - a) The agency must make the information available in any electronic format in which it holds the information.
 - b) Each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.
 - c) An agency may not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- 2) Authorizes an agency, or the superior court in an action brought under the PRA, to disclose or order to be disclosed any record exempted from the PRA if, on the facts of the particular case, the public interest served in disclosing the record clearly outweighs the public interest served by not disclosing the record.
- 3) Requires an agency that withholds a public record to justify its withholding in writing.
- 4) Specifies that the requirements of the bill shall not be construed to permit an agency to make information available only in an electronic format nor shall they be construed to permit access to records held by the Department of Motor Vehicles that are otherwise restricted under the PRA.
- 5) Specifies that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

EXISTING LAW

- 1) Defines "public record" to include any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

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- 2) Requires public records to be open to inspection at all times during the office hours of a state or local agency and affords every person the right to inspect any public record, except as specifically provided.
- 3) Requires a public agency to justify withholding a public record by demonstrating that the record in question is exempt under express provisions of the PRA or that on the facts of a particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosing the record.
- 4) Requires a court, when it finds that a public official's decision not to disclose a public record is unjustified, to order the public official to make the record public.

FISCAL EFFECT: Unknown.

COMMENTS:

1. Need for the bill. The PRA permits a state or local agency to provide computer records in any format determined by the agency. This bill would require an agency to provide computer records in any format that it currently uses. According to the sponsor, the California Newspaper Publishers Association, this bill is intended to ensure quicker, more useful access to public records. The sponsor also notes that the bill seeks to provide reasonable guidelines for public access to electronically held records. The sponsor claims that this bill will balance the ability of private citizens to access public records with the discretion of public agencies to deny such records requests.
2. Reverse balancing test. The PRA generally establishes broad guidelines about the types of documents that may not be subject to public disclosure and affords state agencies discretion to apply a balancing test when determining whether or not to release a record. In applying the test, the agency must determine that the "public interest served by not making the record public clearly outweighs the public interest served by disclosing the record." This bill attempts to apply a reverse balancing test by giving courts and state agencies the authority to disclose any public record if the agency or superior court determines that, depending on the facts of a particular case, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record. The reverse balancing test disclosure would apply even when a court finds that the record is exempted from disclosure under the PRA.
3. Opposition. Opponents argue that the bill subjects confidential records to a "vague" balancing test. Opponents claim that the test undermines key provisions of the PRA which protect proprietary information such as applications for the issuance of securities or of financial institutions, including banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies. Opponents also contend that the bill would permit a court or other agency, despite an exemption in the PRA, to order disclosure of a record it found to pass the reverse balancing test. Opponents are concerned that this provision would permit the release of specifically exempted information such as preliminary drafts or notes, geological and utility systems data, or complaint or investigation of records of local law enforcement agencies.



4. Policy consideration. The committee may wish to consider whether the courts should have the discretion, even when they find that a record is generally exempt from disclosure under the PRA, to require disclosure of that record if it meets the reverse balancing test. The committee may also wish to consider whether the reverse balancing test gives courts and agencies too much discretionary authority to release records that are *specifically* prohibited from release under the PRA or any other provision of law.

REGISTERED SUPPORT / OPPOSITION:

Support

California Newspaper Publishers Association
First Amendment Coalition

Opposition

Association of California Insurance Companies
California Association of Sanitation Agencies
California Chamber of Commerce
California Manufacturers & Technology Association
California Municipal Utilities Association
California State Association of Counties
California State Sheriffs Association
Civil Justice Association of California
Office of the State Attorney General
Personal Insurance Federation of California
San Bernardino County Sheriff's Department
Wine Institute

Analysis Prepared by: Richard Rios / G. O. / (916) 319-2531

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LEGISLATIVE INTENT SERVICE



AB 2799
Questions and Answers
As of June 28, 2000

Q - What does this bill do?

A - This bill now has two parts:

1. It states that no public agency shall obstruct or delay the inspection or copying of public records.
2. It requires a public agency to make copies of public information available electronically (on a diskette, usually in Word or WordPerfect format, etc).

Q - Is there still opposition?

A - Only one is registered. Amendments were recently adopted that have removed almost all the opposition. Opponents were concerned that this requirement would prove very costly to public agencies. To help alleviate their concerns, I amended the bill to address the costs incurred by public agencies in providing copies of electronic records under circumstances now described in my bill.

Consequently, the Association of Chief Clerks and Elections Officials, the County of Los Angeles, and the State Association of Sheriffs have removed their opposition.

Orange County remains opposed; however, initially, they were opposed to the very issue, which the recent amendments rectified. In good faith, I adopted amendments to address their concerns. However, they refused to remove their opposition and stated that it is unnecessary to provide public records in electronic form. I regard their position as a barrier to improving access to public records and remain miffed by their breach in negotiations.

Q - You said that you amended the bill to remove the opposition. What do these amendments do exactly?

A - The amendments address several issues:

1. These amendments would specify what costs the requestor will be responsible for. If the record duplicated is an electronic record in a format used by the agency to make its own copies, the cost of



duplication would be the cost of producing a copy in an electronic format. For example, if the request means simply downloading a document on a disk, the cost of the duplication would only be the cost of the disk

However, if the public agency would be required to produce a copy of an electronic record outside of its regularly scheduled intervals (for instance, length quarterly reports) or the request would require extensive data compilation, extraction, or programming, the requestor would be required to pay for the costs of producing the record, including the cost to construct a record and any other computer services necessary to produce the record.

These costs will vary county to county and depending on the record requested.

2. The amendments clarify that agencies are not required to release a record in electronic form if its release jeopardizes the security or integrity of the original record or any software in which it is maintained.

Q - Why add the word "delay?"

A - When the law was changed several years ago, the word "delay" was removed and "obstruct" replaced it. This was not the intent of the legislature.

Public agencies have the perception that current law allows them up to 10- days to produce any record or document, once request by the public. Although the 10-day grace period does exist, it is meant for specific purposes. Public agencies are given the 10 days to acquire information if they believe the record requested is exempt from disclosure and they need time to confer with their legal counsel. The 10-day period was not intended to allow state agencies to stall any document for any reason.

This law will require a public agency to produce the document as soon as feasibly possible, unless the agency genuinely believes there is a legal issue.



Q - Will public agencies need to give provide records in any electronic format the requestor asks for?

A - No, AB 2799 will not require agencies to make costly data conversions from one format to another. The bill only states that agencies provide information to the public in a form in which that information is already available and used in everyday business.

Q - How does this version of the bill differ from the introduced version?

A - I removed the provision which would have created the "reverse balancing test." This test would have given citizens the opportunity to challenge for the release of a record that a state agency has currently made exempt under the California Records Act, if he or she can prove that the release of the document serves best the public interest. This challenge can be made with either the public agency or, if necessary, in a court of law.

Now, this bill is almost identical to the bill that passed out of this committee last year.



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RN0013442 PAGE 1
Substantive

AMENDMENTS TO ASSEMBLY BILL NO. 2799
AS AMENDED IN ASSEMBLY MAY 23, 2000

Amendment 1

In line 2 of the title, strike out "6253.2" and insert:

6253.9

Amendment 2

On page 4, between lines 8 and 9, insert:

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

Amendment 3

On page 4, line 20, strike out "6253.2" and insert:

6253.9

Amendment 4

On page 4, line 22, strike out "6253.2." and insert:

6253.9.

Amendment 5

On page 4, line 24, after "record" insert:

not exempt from disclosure pursuant to this chapter

Amendment 6

On page 4, line 33, strike out "Direct costs" strike out lines 34 and 35, in line 36, strike out "(b)" and insert:

The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

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RN0013442 PAGE 2
Substantive

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.

(c)

Amendment 7

On page 4, line 37, strike out "report" and insert:

record

Amendment 8

On page 4, lines 38 and 39, strike out "report itself" and insert:

record

Amendment 9

On page 5, line 1, strike out "(c)" and insert:

(d)

Amendment 10

On page 5, line 4, strike out "(d)" and insert:

(e) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(f)

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LEGISLATIVE INTENT SERVICE



Assembly
California Legislature

KEVIN SHELLEY

Majority Leader



Memo

TO: Legislative Counsel
FROM: Ryan Spencer
Office of Majority Leader Kevin Shelley
RE: Amendments to AB 2799
DATE: June 20, 2000

Please draft amendments to AB 2799 (Shelley) using the following information:

Amendment #1

In Line 2 of the title, strike out "6253.2" and insert:

6253.9

Amendment #2

On Page 4, between lines 8 and 9, insert:

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

Amendment #3

On Page 4, line 20, strike out "6253.2." and insert:

6253.9



Amendment #4

On Page 4, line 22, strike out "6253.2." and insert:

6253.9

Amendment #5

On Page 4, line 24, after "rccord" insert:

not exempt from disclosure pursuant to this chapter

Amendment #6

On Page 4, line 33, strike out "Direct costs", strike out lines 34 through 35 inclusive, in line 36, strike out "(b)" and insert:

The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the requestor shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when:

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals; or

(2) The request would require data compilation, extraction, or programming to produce the record.

(c)

Amendment #7

On Page 4, line 37, strike out "report" and insert:

record

Amendment #8

On Page 4, lines 38 and 39, strike out "report itself" and insert:

record



Amendment #4

On Page 4, line 22, strike out "6253.2." and insert:

6253.9

Amendment #5

On Page 4, line 24, after "record" insert:

not exempt from disclosure pursuant to this chapter

Amendment #6

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The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

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(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals; or

(2) The request would require data compilation, extraction, or programming to produce the record.

(c)

Amendment #7

On Page 4, line 37, strike out "report" and insert:

record

Amendment #8

On Page 4, lines 38 and 39, strike out "report itself" and insert:

record



Amendment #9

On Page 5, line 1, strike out "(c)" and insert:

(d)

Amendment #10

On Page 5, line 4, strike out "(d)" and insert:

(e) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

I would appreciate these amendments by 5:00 p.m. on Wednesday, June 21, 2000. If you have any questions, please do not hesitate to contact me at 319-2340. Thank you for your assistance.

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Substantive

*Kevin
Sueles*

AMENDMENTS TO ASSEMBLY BILL NO. 2799

Amendment 1
On page 5, line 9, strike out "(a)"

Amendment 2
On page 5, strike out lines 16 to 23, inclusive
- 0 -

L53



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Assembly
California Legislature

KEVIN SHELLEY

Majority Leader



Memo

TO: Legislative Counsel
FROM: Ryan Spencer
Office of the Majority Leader Kevin Shelley
DATE: April 25, 2000
RE: AB 2799 (Shelley) Amendments

Please draft amendments to AB 2799 (Shelley) using the following information:

Amendment #1

On page 5, please strike lines 16-23 inclusive

I have attached a copy of the amendments in draft form for your information. I would appreciate these amendments by 4:00 p.m. on Wednesday, April 26, 2000. If you have any questions, please do not hesitate to contact me at 319-2340.

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California Newspaper Publishers Association CNPA Services, Inc.

930 G Street, Sacramento, CA 95814-1811
Tel: (916) 288-6000 • Fax: (916) 288-6002

September 8, 2000

SEP 8 2000

Honorable Gray Davis
California State Governor
State Capitol
Sacramento, California 95814

RE: SPONSOR AB 2799 (Shelley)

Dear Governor Davis:

The California Newspaper Publishers Association urges your signature approval of **Assembly Bill 2799** by Assemblyman Kevin Shelley, which would update and modernize the California Public Records Act (CPRA) to, among other things, allow citizens to obtain copies of electronically held public records in an electronic format. CNPA is the sponsor of **AB 2799**.

AB 2799 would also reinsert the word "delay" in the law, as in, agencies shall not obstruct or *delay* access, which was inadvertently removed from the law several years ago. Finally, the bill would require agencies which have decided to reject a request for public records based upon an exemption, to communicate that decision to the requester in writing if the request was made in writing.

Computer data shall be provided in a form determined by the agency. (Ca. Govt. Code Section 6253)

The provision of law referenced above, enacted in 1968, puts California in a distinct minority. Only four states -- California, Kentucky, Maryland and Oklahoma -- leave the choice of format for providing copies of public records up to the custodian of the record. While several other states offer little guidance on the issue, today, 36 states have, in varying degrees, recognized the public's right to access public records in an electronic format.

Although the CPRA has always recognized that computer data is a public record, until recently, electronic public access was not a large issue because most public records still existed in paper form locked in metal filing cabinets. Those days are gone forever.

LEGISLATIVE INTENT SERVICE (800) 666-1917



Honorable Gray Davis
California State Governor
RE: SPONSOR AB 2799
September 5, 2000
Page 2

Nowadays the vast majority of public records at every level of government are created, maintained, used and communicated in an electronic format. It is obvious that all segments of society – business, education, government and its citizens – are taking full advantage of technological advances. Yet citizen access to copies of public records is governed by a single provision of law enacted over 30 years ago, when the world looked quite different.

Assembly Majority Leader Shelley's **AB 2799** would replace the outmoded and irrelevant law of the last millennium with a flexible set of rules that would allow Californians to access their records in a modern way without placing undue burden on state or local government agencies. Specifically, the bill would require an agency to make nonexempt electronically held public records available when requested by any person in any electronic format in which the agency holds the information. The bill would require an agency to make copies of the information available in any format in which it makes copies for its own use and for provision to other agencies. The bill would not require copies to be provided in any form not used by the agency.

After lengthy negotiations with several local government agencies and representatives, including the League of California Cities, the California State Association of Counties, the County Clerks Association, law enforcement groups and others, **AB 2799** was amended on June 22, to ensure the bill would not place new burdens on state or local agencies. Specifically, the bill was amended to require *the requester to bear the cost* of producing a copy of an electronically held record,

“including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

- (1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.
- (2) The request would require data compilation, extraction, or programming to produce the record.” (Please see **AB 2799**, p. 5, lines 12-24)

This provision guarantees the costs associated with any extra effort that might be required to make an electronic public record available shall be borne by the requester, not the state or local agency.

It is important to note the several other protections expressly built into **AB 2799**. Nothing in the bill would “require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.” Nothing in the bill “shall be construed to permit an agency to make information available only in an electronic format.” Nothing in the bill would “require the public



Honorable Gray Davis
California State Governor
RE: SPONSOR AB 2799
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Page 3

agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained." Finally, nothing in the bill "shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute."

It is our understanding that, with one exception, the amendments have removed all known opposition to the bill. Orange County, the single remaining opponent to **AB 2799**, has stated it will remain opposed to any version of legislation that would allow citizens to access their records in an electronic format.

AB 2799 was approved by the Senate on a vote of 34-0 and the Assembly on a vote of 72-2. It seems slightly surreal that the state that has accomplished more than any other to deliver high technology and the information age to the world, has not enacted simple rules to allow its citizens *modern* public access to their public records. Nearly 30 years ago, the New Mexico Supreme Court said: The "right to inspect public records should . . . carry with it the benefits arising from improved methods and techniques of recording and utilizing information contained in these records, so long as proper safeguards are exercised as to their use, inspection and safety." *Ortiz v. Jaramillo*, 483 P.2d 500 (N.M. 1971). This forward-thinking passage, CNPA respectfully submits, would be an apt description of California law in January, 2001, if you determine **AB 2799** is worthy of your signature approval. The nearly 500 newspaper members of the CNPA respectfully believe it is.

Sincerely,



Thomas W. Newton
CNPA General Counsel

cc: Honorable Kevin Shelley
Honorable Debra Bowen
Craig Harrington, CNPA President, Publisher, Intermountain News, Burrey
Harold W. Fuson, Jr., CNPA Governmental Affairs Chairman, V.P. and Chief Legal Officer,
Copley Press, Inc.
Jack Bates, CNPA Executive Director
James Ewert, CNPA Legal Counsel

LEGISLATIVE INTENT SERVICE (800) 666-1917



Assembly California Legislature

KEVIN SHELLEY

Majority Leader



AB 2799: Public Records – Electronic Records and Balancing Test

Problem: In California, all government agencies are subject to the California Public Records Act (CPRA). The CPRA is the instrument that provides the public in California with the right to access records held by the state and all of its subdivisions. It governs the public's right to access information from state and local agencies, including cities and counties, school districts, municipal corporations, and any other boards or commissions that are part of a covered political entity (Gov. Code Section 6252).

Records subject to public access under the CPRA "include any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency regardless of the physical form or characteristic". Records held electronically have become the focus of great debate. Under current law, when a person makes a request for data contained in computer format, the agency has the discretion to determine in which form the information should be provided. An agency can effectively frustrate a public record's request by providing the requested records in a form different from the public's request.

It is very important that an agency disclose public information in a timely fashion. If there is a legitimate dispute over whether or not a record is covered by an exemption, the agency is entitled to take up to 10 working days to either provide the information or provide the written grounds for its denial. The 10-day period is not intended to delay access to records; however, many state agencies believe the 10-day grace period can be used for any record. By delaying the process, the public often gives up and never acquires the record.

Solution: This bill improves open government by stating that no public agency shall obstruct or delay the inspection or copying of public records. It also requires a public agency to produce, upon request, a public record electronically in the format in which it is currently held (on diskette, usually Work and WordPerfect format).

Status: Senate Appropriations



STATE

ELECTRONIC ACCESS?

Oklahoma	Yes
Oregon	Yes
Pennsylvania	No
Rhode Island	No
South Carolina	Yes
South Dakota	No
Tennessee	No
Texas	Yes
Utah	Yes
Vermont	Yes
Virginia	Yes
Washington	No
West Virginia	Yes
Wisconsin	No
Wyoming	No

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LEGISLATIVE INTENT SERVICE



Assembly California Legislature

KEVIN SHELLEY

Majority Leader



AB 2799: Public Records – Electronic Records and Balancing Test

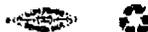
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Status: Senate Appropriations



Assembly California Legislature

KEVIN SHELLEY

Majority Leader



AB 2799: Public Records – Electronic Records and Balancing Test

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Status: Senate Appropriations



Assembly California Legislature

KEVIN SHELLEY

Majority Leader



AB 2799: Public Records – Electronic Records and Balancing Test

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Status: Senate Appropriations



Assembly California Legislature

KEVIN SHELLEY

Majority Leader



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Status: Senate Appropriations



Assembly California Legislature

KEVIN SHELLEY

Majority Leader



AB 2799: Public Records – Electronic Records and Balancing Test

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Status: Senate Appropriations



Assembly California Legislature

KEVIN SHELLEY

Majority Leader



AB 2799: Public Records – Electronic Records and Balancing Test

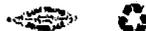
Problem: In California, all government agencies are subject to the California Public Records Act (CPRA). The CPRA is the instrument that provides the public in California with the right to access records held by the state and all of its subdivisions. It governs the public's right to access information from state and local agencies, including cities and counties, school districts, municipal corporations, and any other boards or commissions that are part of a covered political entity (Gov. Code Section 6252).

Records subject to public access under the CPRA "include any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency regardless of the physical form or characteristic". Records held electronically have become the focus of great debate. Under current law, when a person makes a request for data contained in computer format, the agency has the discretion to determine in which form the information should be provided. An agency can effectively frustrate a public record's request by providing the requested records in a form different from the public's request.

It is very important that an agency disclose public information in a timely fashion. If there is a legitimate dispute over whether or not a record is covered by an exemption, the agency is entitled to take up to 10 working days to either provide the information or provide the written grounds for its denial. The 10-day period is not intended to delay access to records; however, many state agencies believe the 10-day grace period can be used for any record. By delaying the process, the public often gives up and never acquires the record.

Solution: This bill improves open government by stating that no public agency shall obstruct or delay the inspection or copying of public records. It also requires a public agency to produce, upon request, a public record electronically in the format in which it is currently held (on diskette, usually Work and WordPerfect format).

Status: Senate Appropriations



Assembly California Legislature

KEVIN SHELLEY

Majority Leader



AB 2799: Public Records – Electronic Records and Balancing Test

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Status: Senate Appropriations



Electronic Access to Public Records A 50 State Survey

The public records laws of 34 states, to some degree, require governmental agencies to provide to the public copies of electronically-held public records in an electronic format (i.e., on disk, tape or other electronic media). Below is a roundup.

<u>STATE</u>	<u>ELECTRONIC ACCESS?</u>
Alabama	Yes
Alaska	Yes
Arizona	No
Arkansas	No
California	No
Colorado	No
Connecticut	Yes
Delaware	No
District of Columbia	No
Florida	Yes
Georgia	No
Hawaii	Yes
Idaho	Yes
Illinois	Yes
Indiana	Yes
Iowa	Yes
Kansas	Yes
Kentucky	Yes
Louisiana	Yes
Maine	Yes
Maryland	Yes
Massachusetts	Yes
Michigan	No
Minnesota	Yes
Mississippi	Yes
Missouri	Yes
Montana	Yes
Nebraska	Yes
Nevada	Yes
New Hampshire	Yes
New Jersey	No
New Mexico	Yes
New York	Yes
North Carolina	Yes
North Dakota	Yes
Ohio	Yes

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STATE

ELECTRONIC ACCESS?

Oklahoma	Yes
Oregon	Yes
Pennsylvania	No
Rhode Island	No
South Carolina	Yes
South Dakota	No
Tennessee	No
Texas	Yes
Utah	Yes
Vermont	Yes
Virginia	No
Washington	Yes
West Virginia	No
Wisconsin	No
Wyoming	No

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AB 2799

- * 34 states allow electronic access to public records - enacted a right in the public to obtain copies of public record in electronic format
- * 16 states don't - doesn't mean that certain state don't provide info. on-line.

* Compiled in 1998 - electronic access compliant.



Spencer, Ryan

From: Clemente Jimenez [CJimenez@dtsc.ca.gov]
Sent: Thursday, August 31, 2000 12:17 PM
To: Ryan.Spencer@asm.ca.gov
Subject: Re: RE: AB 2799

Thanks, Ryan. FYI, the Texas Open Records Act has provisions relating specifically to requests for records held in an electronic medium.

"Spencer, Ryan" <Ryan.Spencer@asm.ca.gov> 08/31/00 12:12PM >>>
Here is a follow-up regarding other states. 34 states have established rules pertaining to electronic access to public records. 16, including CA, do not have such rules, as outlined in AB 2799 (Shelley).

Hope this helps.
Ryan

-----Original Message-----

From: Clemente Jimenez [<mailto:CJimenez@dtsc.ca.gov>]
Sent: Tuesday, August 29, 2000 2:04 PM
To: Ryan.spencer@asm.ca.gov
Subject: AB 2799

I am putting together an analysis of this bill, and need some information on similar legislation you may have come across. Do you know if any other states have like legislation?

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Assembly California Legislature

KEVIN SHELLEY

Majority Leader

August 31, 2000



The Honorable Gray Davis
Governor's Office - State Capitol
Sacramento, CA 95814

Dear Governor Davis:

This is to respectfully request your signature of **AB 2799 (Shelley)**. This measure establishes guidelines for state and local agencies, under the California Public Records Act (CPRA), to provide copies of accessible public records in an electronic format.

Even in this modern age of electronics, state law provides virtually no direction on how public agencies should handle access to public records in an electronic format. This means that if an agency makes a compact disk or disk copy of the records, a member of the public may be denied access to those records in that format simply because they have no guidelines to do so. Therefore, instead of obtaining the information on a simple computer diskette, the individual would have to purchase hard copies made from printouts of the electronic data. Not only is this practice cumbersome, the expense of copying these records, especially a large document, often serves as a deterrent to the public from receiving the information they are entitled. AB 2799 removes this barrier and establishes guidelines that provide reasonable rules for access to public records in an electronic format.

AB 2799 does not require an agency to reconstruct a record in a different electronic format than the one it uses in the regular course of business, nor does it require the disclosure of records currently restricted by statute. AB 2799 simply aligns California with 34 other states that currently have established rules pertaining to electronic access to public records.

This is a strong bill that has received overwhelming bipartisan support. Please join me in supporting a fair and open government and help me keep the public's trust in our government alive. I urge your support and signature of this very important measure.

Sincerely,

A handwritten signature in black ink that reads "Kevin Shelley".

Kevin Shelley
Majority Leader

cc: Ann Richardson, Governor's Legislative Unit



ASSEMBLY GOVERNMENTAL ORGANIZATION COMMITTEE

HERB J. WESSON, JR., Chairman

Bill Analysis Worksheet

Bill No.: AB 2799
Author: Assemblyman Shelley

Hearing Date: Not set.
Staff : Richard Rios

All committee worksheets must be returned to the committee no later than the Monday of the week preceding the scheduled hearing date. The Chair may refuse to hear a bill, even though it has been set, if the author fails to promptly return a completed worksheet.

- 1) **Need for the bill.** Please present all the relevant facts (be specific) that demonstrate the need for this bill. What is the problem or deficiency in current law which the bill seeks to remedy?

- 2) **Origin and background of the bill.**
 - a) Who is the source of the bill? What person, organization, or entity requested introduction? Please provide phone numbers.
 - b) Has a similar bill been introduced before? If so, please identify the session, bill number and disposition of bill.
 - c) Please attach copies of any background material for this bill, or state where such material is available for reference by committee staff.
 - d) Please list likely support and opposition. Please attach copies of letters of support or opposition received.

- 3) **Amendments prior to hearing.** If you plan substantive amendments prior to the hearing, please explain briefly the substance of the amendments. **Amendments must be submitted to the committee secretary (in Legislative Counsel form) at least five legislative days prior to the hearing.**

- 4) **Witnesses.** Please list the witnesses you plan to have testify.

- 5) **Staff person to contact.** Please state the name and phone number of the staff contact for the bill.

RETURN THIS FORM TO:

ASSEMBLY GOVERNMENTAL ORGANIZATION COMMITTEE
1020 N STREET, ROOM 159
319-2531, FAX 319-3979

(800) 666-1917

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Assembly California Legislature

KEVIN SHELLEY

Majority Leader



SENATE COMMITTEE ON JUDICIARY

Adam Schiff, Chairman

BACKGROUND INFORMATION

Measure: AB 2799

Author: Assembly Member Shelley

1. Origin of the Bill:

a) Who is the source of the bill?

California Newspaper Publisher Association

b) Has a similar bill been introduced?

AB 1099 (Shelley) – 1999 – amended for another purpose
SB 1065 (Bowen) – 1999 – vetoed

c) Interim Committee Report?

No

2. Problem or deficiency this bill seeks to remedy:

In California, all government agencies are subject to the California Public Records Act (CPRA). The CPRA is the instrument that provides the public in California with the right to access records held by the state and all of its subdivisions. It governs the public's right to access information from state and local agencies, including cities and counties, school districts, municipal



corporations, and any other boards or commissions that are part of a covered political entity (Gov. Code Section 6252).

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3. See attached
4. See attached
5. The author has been working with the opposition closely to address their concerns. Amendments may be introduced to address the issue of the cost and feasibility of redacting public information. If necessary, the amendments will be submitted to committee no later June 19, 2000
6. Tom Newton, California Newspaper Publishers Association
Terry Francke, 1st Amendment Coalition

Staff Contact: Ryan Spencer, 319-2340



AB 2799
Background Information

- AB 2799 is divided up into three specific sections. It makes a technical change by adding the word delay, it makes clear electronic copies must be made available, and it reverses the courts balancing test when a denial of a records request is sought by a public agency.
- AB 2799 states that no public agency shall obstruct or delay the inspection or copying of public records. The change to current law is the insertion of the word "delay."
- Why do we need to add the word "delay"?

Several years ago, the law was changed to delete the word "delay" and insert the word "obstruct." Some agency officials argued that the Legislature intended to allow for delay by removing the word from the code. This bill will clarify that allowing delay is not the Legislature's intent.

Example: Orange County Register wanted to access a public record from the state, but the state agency that held the record kept putting the reporter off. After an extended period of time, the newspaper's attorney challenged the agency but they cited state law, claiming that they are not "obstructing" his access. They are just not ready to give it to him right away. By delaying the receipt of this information, many applicants just give up. This is unacceptable. "delaying" the information can very well "obstruct" access. This law would change that.

- AB 2799 requires a public agency to make copies of public information available electronically (on a diskette, usually in Word or WordPerfect format). The electronic copy shall be the form that the agency uses, not the choice of the requestor.
- AB 2799 requires an agency wishing to withhold information to prove that the public interest served by releasing the record clearly outweighs the public interest served by not disclosing the information. (Current law is the reverse of this balancing test).

} Deleted

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- Contact: Tom Newton
California Newspaper Publishers Association
(916) 288-6015
(916) 288-6002 (fax)

(800) 666-1917

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Brent, Lanelle

From: Richard McKee [richard.mckee3@gte.net]
Sent: Sunday, September 10, 2000 4:35 PM
To: Kevin.Shelley@assembly.ca.gov
Subject: Copy of letter to Governor in support of AB 2799

September 10, 2000
Honorable Gray Davis
California State Governor
State Capitol
Sacramento, California 95814

Re: AB 2799 – Please Sign

Dear Governor Davis:

As a private citizen and an activist for open local government, I urge your signature to make **Assembly Bill 2799** law. This legislation by Assemblyman Kevin Shelley would serve to bring the California Public Records Act (CPRA) into the 21st Century by allowing members of the public to obtain copies of electronically held public records in an electronic format, without placing an additional burden on public agencies.

AB 2799's changes would both modernize the CPRA and expand the availability of public information to the benefit of the people of the State.

Therefore, I ask you to endorse with your signature the changes in the CPRA that AB 2799 will bring.

Sincerely and respectfully,

<signature>

Richard P. McKee

cc: Honorable Kevin Shelley, State Assemblyman
Honorable Debra Bowen, State Senator
Honorable Bill Lockyer, State Attorney General
Terry Francke, General Counsel, California First Amendment Coalition
Tom Newton, General Counsel, California Newspaper Publishers Association

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JAMES E. GROSSBERG
CELESTE PHILLIPS*
SETH D. BERLIN
JAY WARD BROWN
*RESIDENT AND ADMITTED IN CALIFORNIA ONLY

April 7, 2000

Honorable Kevin Shelley
California State Assembly
State Capitol, Room 3160
Sacramento, CA 95814

Re: AB 2799

Dear Assembly Member Shelley:

This firm serves as First Amendment counsel to The Orange County Register. I write to express The Register's enthusiastic support for AB 2799. Although AB 2799 contains a number of worthy provisions, this letter specifically addresses one portion of the legislation that may not receive the attention that it deserves.

Specifically, AB 2799 would insert into Gov't Code subsection 6253(d) the words "delay or." The effect of this amendment would be to restore a term to subsection (d) that was previously deleted when the term "obstruct" was inserted in place of the word "delay." Although the proposed amendment may appear only technical and inconsequential, it is not.

The Register, like other metropolitan and community newspapers in California, routinely relies on the California Public Records Act (CPRA) to obtain access to public records that are essential to enable it to inform its readers regarding the operations of government agencies and the conduct of government officials. Too often, public agencies to which CPRA requests are addressed search for technicalities in the statute to delay the release of records that may raise questions regarding the propriety or efficacy of agency decisions and may embarrass agency officials. These agencies know full well that, as one court has stated, "news delayed is often news denied," and that by delaying the release of potentially controversial records, they may deny a news organization information that is vital to time-sensitive reporting.

For example, when The Register investigated and reported on the abuses at the fertility clinic at the University of California-Irvine - reporting that earned it journalism's most distinguished award, the Pulitzer Prize, and prompted reform legislation in California and

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Honorable Kevin Shelley
April 10, 2000
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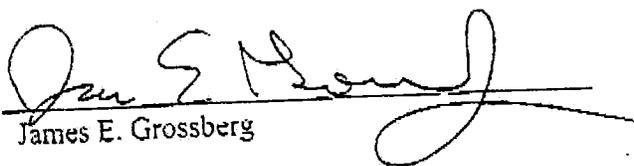
elsewhere – The Register utilized the CPRA to obtain public records that were critical to The Register's reporting. Yet, time and time again, the University of California ignored the CPRA's mandate that public records be open to inspection "at all times" and that, even if the agency has a basis on which to question whether records are exempt from disclosure under applicable law, the agency determine within 10 days whether the records are in fact exempt. Rather, The Register's CPRA requests were typically met with months of delay, even where the University readily conceded that the records were not exempt from disclosure.

The provision of AB 2799 described above would return to the CPRA language that specifically instructs that nothing in the Act shall be utilized as an excuse to delay the inspection of public records as required by law. Although The Register is not so naïve as to believe that this amendment will solve the serious problem of administrative delay in responding to CPRA requests, it will at least remove any doubt that the prior substitution of "obstruct" for "delay" in subsection 6253(d) was not intended to weaken the CPRA's mandate that agencies act in good faith to promptly disclose public records requested under the Act.

Thank you for your consideration of this letter and for your introduction of AB 2799.

Yours sincerely, - .

LEVINE SULLIVAN & KOCH, L.L.P.

By 
James E. Grossberg

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C A L I F O R N I A

June 29, 2000

FIRST AMENDMENT COALITION

TO PROMOTE AND DEFEND
THE PEOPLE'S RIGHT TO KNOW

Assembly Member Kevin Shelley
Room 3160
State Capitol
10th & L Streets
Sacramento, CA 95814

RE: AB 2799 - SUPPORT

Dear Assembly Member Shelley,

The California First Amendment Coalition continues to support AB 2799, as proposed for amendment today in the Senate Judiciary Committee.

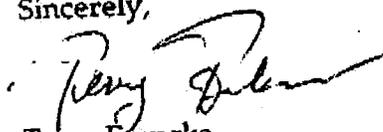
The California Public Records Act's rules accommodating access to public information stored in electronic form are now very primitive and essentially give the government the option to deny a requester access to data on tape or disk even when there is no technological or cost reason to do so.

This arbitrariness would be ended by AB 2799, which would require an agency to provide electronic copies of computer-stored information in whatever form the agency itself uses to store the data.

The proposed amendments, negotiated with a variety of governmental interest organizations, encourage agencies to comply by accommodating the occasional extraordinary cost concerns involved in a request that requires expedited attention or special programming to permit special data extraction.

Thank you for your energetic authorship of this measure, and for the excellent staff work of Ryan Spencer.

Sincerely,



Terry Francke
General Counsel

(800) 666-1917

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2701 Cottage Way, Suite 12
Sacramento, CA 95825-1226
(916) 974-8888
FAX: (916) 974-8880
E-mail: cfac@cfac.org
<http://www.cfac.org>



California Newspaper Publishers Association CNPA Services, Inc.

930 G Street, Sacramento, CA 95814-1811
Tel: (916) 288-6000 • Fax: (916) 288-6002

June 27, 2000

JUN 28 2000

Honorable Cathie Wright
California State Senate
State Capitol Room 5052
Sacramento, California 95814

RE: SPONSOR AB 2799, AS AMENDED

Dear Senator *Cathie Wright*

The California Newspaper Publishers Association urges your support of **Assembly Bill 2799** by Assemblyman Kevin Shelley, which, as amended June 22, 2000, would make several important changes to the California Public Records Act. **AB 2799** is scheduled to be heard by the Senate Judiciary Committee on Thursday, June 29.

The most recent amendments would allow state and local agencies to recover certain costs associated with making available a computer-format copy of a record. Specifically, the amendments would allow agencies, in response to a request for a computer-format copy of a public record, to recover costs associated with compiling data, extracting data, or performing programming in order to make a copy of a record. With one exception, the latest amendments have removed all known opposition to the bill. It is our understanding that the single remaining opponent to **AB 2799** (Orange County), has decided to oppose any version of legislation that would allow citizens to access their records in an electronic format.

AB 2799 would do all of the following:

- **Electronic access** – The bill would require state and local agencies to provide copies of accessible computerized public records in an electronic format. Current law provides virtually no direction on this issue either for the public or agencies governed by the Act. The law merely provides that "Computer data shall be provided in a form determined by the agency "(Govt. Code Sec. 6253 (b))." **AB 2799** would provide reasonable rules for public access to electronically held records, including a provision that these records shall be made available in any form in which the agency holds the information.

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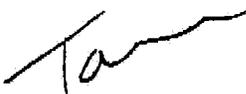


Honorable Cathic Wright
California State Senate
RE: SPONSOR AB 2799, AS AMENDED
June 27, 2000
Page 2

- **"Delay"** -- **AB 2799** would reinsert the word "delay" into Sec. 6253 (d), removed unwisely in 1996 legislation, to provide that, notwithstanding the timelines described in the Act, an agency shall not delay access to the inspection or copying of public records.
- **Response in writing** -- **AB 2799** would require agencies to justify "in writing" their decision to withhold access to records if the request was submitted to the agency in writing.

At this late date, it seems slightly surreal that the state that has accomplished more than any other to deliver the information age to the world, has not enacted simple rules to allow its citizens *modern* public access to its public records. On behalf of the nearly 500 members of the CNPA, please vote AYE on **AB 2799** when it comes before you.

Sincerely,


Thomas W. Newton
CNPA General Counsel

cc: Honorable Kevin Shelley
Honorable Debra Bowen
George Riggs, CNPA President, Publisher and CEO, Contra Costa Times
Hal Fuson, V.P. and Chief Legal Officer, Copley Press, Inc.
Jack Bates, CNPA Executive Director
James Ewert, CNPA Legal Counsel
Gloria Megino Ochoa, Consultant to the Senate Judiciary Committee

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SUMMARY ANALYSIS OF AMENDED BILL

JUL 31

Franchise Tax Board

Author: Shelley

Analyst: Roger Lackey

Bill Number: AB 2799

Related Bills: See Prior Analysis

Telephone: 845-3627

Amended Date: 07-06-2000

Attorney: Patrick Kusiak Sponsor:

SUBJECT: Public Record Disclosure/Make Available In Electronic Format If Available & When Requested

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO Support.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED June 22, 2000, STILL APPLIES.

OTHER - See comments below.

SUMMARY OF BILL

This bill would require any state or local agency that has public information in an electronic format to make that information available to the public in the electronic format in which the state agency holds the information. The requester would pay the direct cost of duplicating the public record in an electronic format.

This bill would further require a public record to be disclosed if, on the facts of the particular case, the public interest is served by disclosing the record.

SUMMARY OF AMENDMENT

The July 6, 2000, amendment added language that would provide that if a request is for information in other than in an electronic format and that requested information is also available in an electronic format, a state agency may inform the requester of the information's availability in electronic format.

In addition, the amendment would broaden the language specifying that nothing in this bill would be construed to permit public access to records held by the Department of Motor Vehicles to which access is restricted by law. The language would now apply to all state agency records.

Except for the discussion above, the analysis of AB 2799, as amended June 22, 2000, still applies.

BOARD POSITION

Support. At its July 5, 2000, meeting, the Franchise Tax Board voted 2-0 to support this bill, with member B. Timothy Gage abstaining.

Board Position:

S
 SA
 N

NA
 O
 OUA

NP
 NAR
 PENDING

Legislative Director

Date

[Signature] 7/25/00

0:WORLDWIDE
LH:385

A-73

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JUL 28 2000



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

Date Amended:	07/06/00	Bill No:	AB 2799
Tax:	Public Records Act	Author:	Shelley
Board Position:		Related Bills:	SB 2027 (Sher)

BILL SUMMARY:

This bill provides for the release of public records in an electronic format and requires a public agency that withholds a public record to justify its withholding in writing.

ANALYSIS:

Current Law:

Under current law the Public Records Act, or PRA (commencing with Section 6250 of the Government Code), provides for public access to any record maintained by a state and local agency, unless there is a statutory exemption that allows or requires the agency to withhold the record.

A public record is defined as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." The PRA provides that public records be open to inspection at all times during the office hours of the state or local agency and that every person has a right to inspect any public record, except as specifically provided.

Under current law, upon request, an exact copy of the record shall be provided unless impracticable to do so, and computer data shall be provided in a form determined by the agency.

Proposed Law:

This bill would amend Sections 6253 and 6255 of, and add Section 6253.9 to, the Government Code. Specifically, AB 2799 would:

- Delete the requirement that public records kept on computer be disclosed in a form determined by the public agency, and instead require a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

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guidelines: 1) the agency must make the information available in any electronic format in which it holds the information, 2) each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies, 3) an agency shall not be required to reconstruct a report in an electronic format if the report is no longer in an electronic format, 4) if the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format, and 5) the duplication costs shall be limited to the direct cost of producing a copy of the record in an electronic format, absent specified exemptions.

- Require an agency that withholds a public record in response to a written request to justify its withholding in writing.
- Allow additional time for an agency to provide records under unusual circumstances, including the need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.
- Specify that the requirements of the bill shall not be construed to permit an agency to make information available only in an electronic format nor to permit public access to records held by any agency that are otherwise restricted under the PRA.
- Specify that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

This bill would become operative on January 1, 2001.

Background:

In July 1998, the California Joint Legislative Task Force on Government Oversight issued a report entitled "The Failure of the California Public Records Act," and stated that much of the information forming the basis for state and local government decisions is not easily accessible to the public.

COMMENTS:

1. **Sponsor and purpose of the bill.** This bill is sponsored by the California Newspaper Publishers Association in an effort to ensure more useful access to public records.
2. **Amendments to this bill since our analysis of the May 23, 2000 version are minor.**
3. **It would be extremely difficult for the Board to "write programming language or a computer program, or to construct a computer report to extract data" with just an additional 14 days.** Board staff would likely need more time and resources to construct such items in an acceptable and usable form. Other portions of this bill codify existing Board practices, for example the Board already provides denials of public records requests in writing.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.



- 4. **Related legislation:** This bill is similar to SB 2027 (Sher), which would establish a new appeals procedure for an agency's denial of a written request or an agency's failure to respond to a written request for a public record.

COST ESTIMATE:

It is not anticipated that the provisions of this bill would result in additional administrative costs. Provisions of the Public Records Act allow the Board to recover the direct costs of providing the records in an electronic format.

REVENUE ESTIMATE:

This bill would not impact state revenues.

LEGISLATIVE INTENT SERVICE (800) 666-1917



Analysis prepared by: Laurie D. Watson

TWB
7-19

324-1890

LF
7-21-00

7/14/00

07/10/00

Jus
by TWB

Contact:

Margaret S. Shedd

322-2376

7/14/00

g:\legislat\senbill\2799-3lw

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

file



COUNTY OF LOS ANGELES

Sacramento Legislative Office

1100 K STREET, SUITE 400 - SACRAMENTO, CALIFORNIA 95814
(916) 441-7888 • FAX (916) 445-1424

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Third District

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MICHAEL D. ANTONOVICH
Fifth District

DANIEL J. WALL
Chief Legislative Representative

June 23, 2000

Honorable Kevin Shelley
Assembly Member, State of California
State Capitol, Room 3160
Sacramento, California 95814

RE: ASSEMBLY BILL 2799 (SHELLEY), AS AMENDED JUNE 22, 2000

Dear Assembly Member Shelley:

I am pleased to inform you that, the June 22, 2000, amendments address Los Angeles County concerns. Therefore, the Los Angeles County Board of Supervisors is no longer opposed to your Assembly Bill 2799.

Very Truly yours,

Steve Zehner
Principal Deputy County Counsel
SZ:lf

LEGISLATIVE INTENT SERVICE (800) 666-1917



3160



California State Sheriffs' Association

Organization Founded by the Sheriffs in 1894

- Officers**
- President*
Charles C. Plummer
Sheriff
Alameda County
- 1st Vice President*
Les Weidman
Sheriff
Stanislaus County
- 2nd Vice President*
Larry Smith
Sheriff
Riverside County
- Secretary*
Jim Thomas
Sheriff
Santa Barbara County
- Treasurer*
Warren Ruff
Sheriff
Contra Costa County
- Sergeant-at-Arms*
Bruce Mix
Sheriff
Modoc County
- Immediate Past President*
Charles Byrd
Sheriff
Siskiyou County
- Deputy*
Ed Bonner
Sheriff
Placer County
- Robert Doyle
Sheriff
Marin County
- Don Horsley
Sheriff
San Mateo County
- Ron Jarrell
Past President
Sheriff
Lassen County
- Bill Kolender
Sheriff
San Diego County
- Gary Parrod
Sheriff
San Bernardino County
- Jim Pope
Past President
Sheriff
Shasta County
- Tom Sawyer
Sheriff
Merced County
- Jerry Shadinger
Sheriff
Colusa County
- Gary Simpson
Sheriff
Napa County
- Carl Sparks
Sheriff
Kern County
- M...
Sheriff
Santa Cruz County
- Joan L. Phillippe
Executive Director

June 22, 2000

The Honorable Adam Schiff, Chair
Senate Judiciary Committee
 2205 Capitol Building
 Sacramento, CA 95814

Subject: AB 2799 (Shelley) - Remove opposition

Dear Chair Schiff:

On behalf of the California State Sheriffs Association (CSSA), I am pleased to inform you that we have removed our opposition to the measure. We are now neutral on the bill.

Thank you for your consideration of our position.

Cordially,

Nick Warner
Legislative Advocate

cc: **The Honorable Kevin Shelley, Member of the Assembly** ✓

(800) 666-1917

LEGISLATIVE INTENT SERVICE



Officers 1998-2000
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President
Mendocino County
Mailing Address:
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Cloverdale, CA 95482
(707) 463-4376
(707) 463-4257 (fax)
e-mail mclkrac@pacific.net

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Vice-President
Alameda County
ANN REED
Treasurer
Shasta County
CONNIE McCORMACK
Secretary
Los Angeles County

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Los Angeles County
CINDY TURNER
Sacramento County

COUNTY CLERK:
KATHLEEN MORAN
Colusa County

LEGISLATIVE CLERKS:
LARRY JACKSON
Los Angeles County

ELECTIONS:
TONY BERNHARD
Yolo County
ERNEST R. HAWKINS
Sacramento County



CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS

June 21, 2000

The Honorable Kevin Shelley
California State Assembly
State Capitol, Room 3160
Sacramento, CA 95814

Dear Assembly Member Shelley:

ASSEMBLY BILL 2799 (SHELLEY) PUBLIC RECORDS: DISCLOSURE AS PROPOSED AMENDED NEUTRAL

Based on the amendments agreed to this week, the California Association of Clerks and Election Officials removes its opposition to your bill, AB 2799. Our members wish to thank you for agreeing to amend the bill to address their concerns.

The bill, as proposed amended, now addresses the costs incurred by public agencies in providing copies of electronic records under circumstances now described in the bill. We appreciate your willingness, and that of the bill's sponsor, to work with us to resolve the issues raised during the discussion of AB 2799.

Very truly yours,

Violet Varona-Lukens, Co-Chair
Clerks of the Board of Supervisors
Legislative Committee

VVL:JM:pj



3160



COUNTY OF LOS ANGELES

Sacramento Legislative Office

1100 K STREET, SUITE 400 • SACRAMENTO, CALIFORNIA 95814
(916) 441-7888 • FAX (916) 445-1424

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Second District
ZEV YAROSLAVSKY
Third District
DON KNABE
Fourth District
MICHAEL D. ANTONOVICH
Fifth District

JUN 26 2000

DANIEL J. WALL
Chief Legislative Representative

June 23, 2000

Honorable Kevin Shelley
Assembly Member, State of California
State Capitol, Room 3160
Sacramento, California 95814

RE: ASSEMBLY BILL 2799 (SHELLEY), AS AMENDED JUNE 22, 2000

Dear Assembly Member Shelley:

I am pleased to inform you that, the June 22, 2000, amendments address Los Angeles County concerns. Therefore, the Los Angeles County Board of Supervisors is no longer opposed to your Assembly Bill 2799.

Very Truly yours,

Steve Zehner
Principal Deputy County Counsel
SZ:lf

(800) 666-1917

LEGISLATIVE INTENT SERVICE



JUN 26 2000



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	05/23/00	Bill No:	AB 2799
Tax:	Public Records Act	Author:	Shelley
Board Position:		Related Bills:	SB 2027 (Sher)

BILL SUMMARY:

This bill provides for the release of public records in an electronic format and requires a public agency that withholds a public record to justify its withholding in writing.

ANALYSIS:

Current Law:

Under current law the Public Records Act, or PRA (commencing with Section 6250 of the Government Code), provides for public access to any record maintained by a state and local agency, unless there is a statutory exemption that allows or requires the agency to withhold the record.

A public record is defined as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." The PRA provides that public records be open to inspection at all times during the office hours of the state or local agency and that every person has a right to inspect any public record, except as specifically provided.

Under current law, upon request, an exact copy of the record shall be provided unless impracticable to do so, and computer data shall be provided in a form determined by the agency.

Proposed Law:

This bill would amend Sections 6253 and 6255 of, and add Section 6253.2 to, the Government Code. Specifically, AB 2799 would:

- Delete the requirement that public records kept on computer be disclosed in a form determined by the public agency, and instead require a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

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guidelines: 1) the agency must make the information available in any electronic format in which it holds the information, 2) each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies, and 3) an agency shall not be required to reconstruct a report in an electronic format if the report is no longer in an electronic format.

- Require an agency that withholds a public record in response to a written request to justify its withholding in writing.
- Specify that the requirements of the bill shall not be construed to permit an agency to make information available only in an electronic format nor to permit public access to records held by the Department of Motor Vehicles that are otherwise restricted under the PRA.
- Specify that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

This bill would become operative on January 1, 2001.

Background:

In July 1998, the California Joint Legislative Task Force on Government Oversight issued a report entitled "The Failure of the California Public Records Act," and stated that much of the information forming the basis for state and local government decisions is not easily accessible to the public.

COMMENTS:

1. **Sponsor and purpose of the bill.** This bill is sponsored by the California Newspaper Publishers Association in an effort to ensure more useful access to public records.
2. **Amendments to this bill since our analysis of the April 27, 2000 version are minor.** These amendments do not affect our analysis.
3. **Portions of this bill codify existing Board practices.** The Board already provides denials of public records requests in writing.
4. **Related legislation:** This bill is similar to SB 2027 (Sher), which would establish a new appeals procedure for an agency's denial of a written request or an agency's failure to respond to a written request for a public record.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

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Assembly Bill 2799 (Shelley)

COST ESTIMATE:

It is not anticipated that the provisions of this bill would result in additional administrative costs. Provisions of the Public Records Act allow the Board to recover the direct costs of providing the records in an electronic format.

REVENUE ESTIMATE:

This bill would not impact state revenues.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



Analysis prepared by: Laurie D. Watson

LF
6-14-00

JP
6/12/00
324-1890

TWB
6-12
06/05/00

J&S

Contact:

Margaret S. Shields
6/13/00
6/5/00

322-2376

g:\legislat\senbill\2799-2lw

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

California State Association of Counties



May 3, 2000

1100 K Street
Suite 101
Sacramento
California
95814

Telephone
916.327.7500
Facsimile
916.441.5507

The Honorable Kevin Shelley
Member of the Assembly
Room 3160, State Capitol Building
Sacramento, CA 95814

RE: **AB 2799 (Shelley) – REMOVAL OF OPPOSITION (As amended April 27, 2000)**
Set for hearing May 8, Assembly Governmental Organization Committee

Dear Assembly Member Shelley:

The California State Association of Counties (CSAC) has removed its opposition to AB 2799, your measure relating to public records, following amendments on April 27, 2000.

The removal of the "reverse balancing" provision under Government Code section 6255(b) addresses the majority of county concerns on this measure. We look forward to working with you and your staff to continue discussions on other provisions in AB 2799.

Thank you for your continued willingness to work with us. Please feel free to contact me at 916/327-7500, ext. 513, or Elizabeth Howard at 916-327-7500, ext. 537 at any time.

Sincerely,

Rubin R. Lopez
Legislative Representative

cc: The Honorable Herb Wesson, Chair, Assembly Governmental Organization Committee
Members and Consultants, Assembly Governmental Organization Committee

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CHARLES V. (CHUCK) SMITH
CHAIRMAN OF THE BOARD OF SUPERVISORS
SUPERVISOR, FIRST DISTRICT

JUL 21 2000

July 19, 2000

The Honorable Kevin Shelley
California State Assembly
P.O. Box 942849
Sacramento, California 94249-00001

Dear Assembly Member Shelley:

On behalf of the Board of Supervisors, I am writing in opposition to your bill, AB 2799, which would require a public agency that keeps public records in an electronic format to make requested public records information available in an electronic format.

Although we have attempted to work with your office on this bill to make it more acceptable, we continue to take issue with most of its provisions. The key reasons our County opposes your bill are as follows: =

- Compliance with the provision to provide any public record in electronic format could require development of a new computer program to provide non-confidential information in a report without also providing electronically the confidential information. Without that software, county employees would need to go through each record to ensure that confidential information is not included in non-confidential information. Either method would be prohibitively expensive.
- The provisions provide no definition of "delay". Even if delay is defined, each public record request is unique; a single time period for all requests cannot be legislated.
- When a citizen seeks access to public records in person, the provision to "justify in writing" the reasons for withholding is illogical and creates extra and unnecessary staff duties, particularly for citizens who apply in person.
- The provisions for the fee assessment only cover the direct costs.
- The bill creates an incredibly bureaucratic regimen for the denial of a record.

ORANGE COUNTY HALL OF ADMINISTRATION
10 CIVIC CENTER PLAZA, P.O. BOX 687, SANTA ANA, CALIFORNIA 92702-0687
PHONE (714) 834-3110 FAX (714) 834-5754
E-MAIL: csmith@dis11.co.orange.ca.us
WEB SITE: <http://www.oc.ca.gov/supes/first>

LH: 397 A - 85

(800) 666-1917

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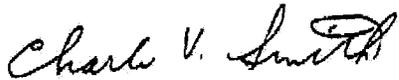
The Honorable Kevin Shelley
July 19, 2000
Page 2

- The bill would expose the County to increased litigation costs.

Further, we believe that AB 2799 contains the same provisions as those contained in AB 179 (Bowen) and AB 1065 (Bowen), bills that were vetoed by two different governors for reasons of expense, administrative burdens, and the potential breach of citizen confidentiality.

Thank you for your consideration of our concerns.

Sincerely,


Charles V. Smith, Chairman
Board of Supervisors

cc: The Honorable Gray Davis, Governor, State of California
Members, Orange County State Legislative Delegation
Members, Orange County Board of Supervisors
Dennis Carpenter, Carpenter Snodgrass and Associates
Steve Szalay, California State Association of Counties

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LEGISLATIVE INTENT SERVICE



**CARPENTER SNODGRASS
& ASSOCIATES**

June 20, 2000

JUN 20 2000

TO: The Honorable Adam Schiff, Chairperson
Members, Senate Judiciary Committee

FROM: Carpenter Snodgrass & Associates **OPPOSE**

RE: **AB 2799 (Shelley)** Hearing Date: June 29, 2000

On behalf of the Orange County Board of Supervisors, we urge your opposition to AB 2799 (Shelley) which would require any agency to provide electronic public records upon request.

The County of Orange, like many counties is using the Internet to broadcast information about public records and how they can be accessed by the community. This gives citizens 24 hour-a-day access to Assessor, Treasurer-Tax Collector, Purchasing and Board of Supervisors records, to name a few.

Without reasonable regulations, County staff could be required to spend considerable time copying and editing records, determining if they are appropriate for public disclosure and responding with written justifications if requests are denied.

For these reasons we urge your NO vote on AB 2799.

cc: Assemblyman Shelley

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Jeffrey A. DeLand

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Karen L. Ziskind
Jack G. Zorman

OFFICE OF LEGISLATIVE COUNSEL

State Capitol, Suite 3021
Sacramento, California 95814-4996
TELEPHONE (916) 445-3057
FACSIMILE (916) 322-0769
INTERNET www.legislativecounsel.ca.gov
EMAIL LegislativeCounsel@lc.ca.gov



BION M. GREGORY

September 6, 2000

Honorable Gray Davis
Governor of California
Sacramento, CA

REPORT ON ENROLLED BILL

A.B. 2799

SHELLEY. PUBLIC RECORDS.

SUMMARY:

See Legislative Counsel's Digest on the bill as adopted.

FORM:

Approved.

CONSTITUTIONALITY: Approved.

TITLE:

Approved.

CONFLICTS:

This bill and Senate Bill No. 2027, which is also before the Governor, would both amend Section 6255 of the Government Code by adding a new subdivision (b) in an identical manner. However, this bill also amends subdivision (a) of Section 6255 of the Government Code by making a technical, nonsubstantive change to this subdivision, which is not made by S.B. 2027.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



Thus, if this bill and S.B. 2027 are chaptered, the substantive changes to Section 6255 will be the same, regardless of the order of chaptering (see Sec. 9605, Gov. C.).

Bion M. Gregory
Legislative Counsel



By
Jacqueline R. Kinney
Deputy Legislative Counsel

JRK:rcm

Two copies to Honorable Kevin Shelley and
Honorable Byron D. Sher,
pursuant to Joint Rule 34.

(800) 666-1917

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Pacer Melnicoe
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FACSIMILE (916) 322-0769
INTERNET www.legislativecounsel.ca.gov
EMAIL LegislativeCounsel@lk.ca.gov



BION M. GREGORY

September 6, 2000

Honorable Gray Davis
Governor of California
Sacramento, CA

REPORT ON ENROLLED BILL

A.B. 2799

SHELLEY. PUBLIC RECORDS.

SUMMARY:

See Legislative Counsel's Digest on the bill as adopted.

FORM:

Approved.

CONSTITUTIONALITY: Approved.

TITLE:

Approved.

CONFLICTS:

This bill and Senate Bill No. 2027, which is also before the Governor, would both amend Section 6255 of the Government Code by adding a new subdivision (b) in an identical manner. However, this bill also amends subdivision (a) of Section 6255 of the Government Code by making a technical, nonsubstantive change to this subdivision, which is not made by S.B. 2027.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



Thus, if this bill and S.B. 2027 are chaptered, the substantive changes to Section 6255 will be the same, regardless of the order of chaptering (see Sec. 9605, Gov. C.).

Bion M. Gregory
Legislative Counsel



By
Jacqueline R. Kinney
Deputy Legislative Counsel

JRK:rcm

Two copies to Honorable Kevin Shelley and
Honorable Byron D. Sher,
pursuant to Joint Rule 34.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



LEGISLATIVE COUNSEL

No. 13442
TYPE AMEND

REQUEST OF ASSEMBLY MEMBER KEVIN SHELLEY
per RYAN SPENCER

Amend AB 2799 as per the attached. According to the Requestor, Government Code 6253.2 has been added by another bill, so he asks to substitute Sec. 6253.9 in its place.

ATTACHMENTS:

3-Page memo and draft from Ryan Spencer of Assembly Member Shelley's office dated 6/20/00.
Copy of AB 2799 a/s 5/23/00 (97v).

Any questions, contact RYAN SPENCER at 319-2012 or 614-8988

PUBLIC RECORDS

06/20/00

This will acknowledge your request received on the date indicated. Please examine the above statement to determine if it correctly sets forth your request.

Any questions with respect to this request may be directed to

MS. J. KINNEY at 445-0467

to whom it has been assigned.

BION M. GREGORY
Legislative Counsel

(800) 666-1917

LEGISLATIVE INTENT SERVICE



LEGISLATIVE COUNSEL

No. 12972
TYPE AMEND

REQUEST OF ASSEMBLY MEMBER KEVIN SHELLEY
per RYAN SPENCER

Draft amendments to AB 2799, per attached.

ATTACHMENTS:

One-page memo from Ryan Spencer of Assembly Member Shelley's Office, dated June 15, 2000.
Three-page draft of proposed amendments.

Any questions, contact RYAN SPENCER at 319-2340

PUBLIC RECORDS

06/15/00

This will acknowledge your request received on the date indicated. Please examine the above statement to determine if it correctly sets forth your request.

Any questions with respect to this request may be directed to

MS. J. KINNEY at 445-0467

to whom it has been assigned.

BION M. GREGORY
Legislative Counsel

(800) 666-1917

LEGISLATIVE INTENT SERVICE



LEGISLATIVE COUNSEL

No. 09197
TYPE AMEND

REQUEST OF ASSEMBLY MEMBER KEVIN SHELLEY
per RYAN SPENCER

Amend AB 2799, as per the attached material, striking out sub (b) of Sec 6255 of the Government Code

ATTACHMENTS:

- One-page memo from requester to Legislative Counsel
- Four-pages of proposed amendments
- One copy of AB 2799

Any questions, contact RYAN SPENCER at 319-2340

PUBLIC RECORDS

04/25/00

This will acknowledge your request received on the date indicated. Please examine the above statement to determine if it correctly sets forth your request.

Any questions with respect to this request may be directed to

MR. P. ANTILLA at 445-0232

to whom it has been assigned.

BION M. GREGORY
Legislative Counsel

(800) 666-1917

LEGISLATIVE INTENT SERVICE



Assembly
California Legislature

KEVIN SHELLEY

Majority Leader



Memo

TO: Legislative Counsel

FROM: Ryan Spencer
Office of the Majority Leader Kevin Shelley

DATE: April 25, 2000

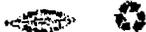
RE: AB 2799 (Shelley) Amendments

Please draft amendments to AB 2799 (Shelley) using the following information:

Amendment #1

On page 5, please strike lines 16-23 inclusive

I have attached a copy of the amendments in draft form for your information. I would appreciate these amendments by 4:00 p.m. on Wednesday, April 26, 2000. If you have any questions, please do not hesitate to contact me at 319-2340.



BILL NUMBER: AB 2799 AS AMENDED
BILL TEXT

INTRODUCED BY Assembly Member Shelley
(Principal coauthor: Senator Bowen)

FEBRUARY 28, 2000

An act to amend Sections 6253 and 6255 of, and to add Section 6253.2 to, the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 2799, as introduced, Shelley. Public records: disclosure.

(1) The California Public Records Act provides that any person may receive a copy of any identifiable public record from any state or local agency upon payment of specified fees. The act provides that it shall not be construed to permit an agency to obstruct the inspection or copying of public records and requires any notification of denial of any request for records pursuant to the act to set forth the names and titles or positions of each person responsible for the denial. The act also requires computer data to be provided in a form determined by the agency.

This bill would provide that nothing in the act shall be construed to permit an agency to delay or obstruct the inspection or copying of public records and would require that the notification of denial of any request for records justifying its withholding to be in writing. This bill would delete the requirement that computer data be provided in a form determined by the agency and would require any agency that has information that constitutes an identifiable public record that is in an electronic format to make that information available in an electronic format when requested by any person. The bill would require the agency to make the information available in any electronic format in which it holds the information. Because these requirements would apply to local agencies as well as state agencies, this bill would impose a state-mandated local program.

~~(2) The act requires the agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the act or that, on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.~~

~~This bill would authorize the agency or the superior court to disclose a record made exempt under the express provisions of the act~~

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~~if the agency or the superior court determines that, on the facts of the particular case, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record. By imposing new duties on local public officials, the bill would create a state-mandated local program.~~

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6253 of the Government Code is amended to read:

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so. Computer data shall be provided in a form determined by the agency.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more



than 14 days. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

SEC. 2. Section 6253.2 is added to the Government Code, to read:

6253.2. (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. Direct costs of duplication shall include the costs associated with duplicating electronic records.

(b) Nothing in this section shall be construed to require the public agency to reconstruct a report in an electronic format if the agency no longer has the report itself available in an electronic format.

(c) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(d) Nothing in this section shall be construed to permit public access to records held by the Department of Motor Vehicles to which access is otherwise restricted by statute.

SEC. 3. Section 6255 of the Government Code is amended to read:

6255. (a) The agency shall justify withholding any record in writing by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

~~(b) Notwithstanding any provision of this chapter, an agency, or the superior court in any action brought pursuant to Section 6259, may disclose or order to be disclosed any record made exempt by express provisions of this chapter if, on the facts of the particular case, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.~~



SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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LEGISLATIVE INTENT SERVICE



Spencer, Ryan

From:
Int:
To:
Cc:
Subject:

Terry Francke [tfrancke@cfac.org]
Friday, July 14, 2000 11:15 AM
bjohnson@paweekly.com
wzlotlow@cfac.org; tom@cnpa.com
Shelley Bill Amendment Request



PA1.001

Bill,

I'm copying this draft to Wendy and to Tom Newton, neither of whom I've discussed it with so far. Please circulate it for discussion as you see fit. We have a little breathing room to consider this before the legislature ends its recess in early August.

Ginger Rutland, an editorial writer at the Sacramento Bee, has prodded me on this, arguing that the Quackenbush document leaks and how they were handled may provide the best peg ever, in terms of timing and political momentum, for getting "balancing test" balance into the CPRA.

The point, in case it doesn't just leap out, is that if the reverse balancing test had been in place, Cindy Ossias and Senator Martha Escutia would have had full cover. Once Ossias became aware of the perjured testimony to the committee, she could have just contacted the committee quietly and said in effect, "Reports prepared by me and others belie the testimony that no big fines were recommended against the big four insurers. Why don't you subpoena/sue for them?"

Martha Escutia or whoever else on the investigating committees could then have tried these measures and gotten a judge involved in deciding whether, as Escutia decided strictly as a political judgment, the public interest in disclosure was paramount.

Without that mechanism, the sole individual legally authorized to permit anyone -- including the legislature -- to get those damning reports was Quackenbush himself. Anyone else was, strictly speaking, a lawbreaker.

I have no idea if Shelley would go for this or even if Davis would sign it, but I agree with Ginger that this is an opportunity that should not be let slip lightly.

Reactions?

Terry

July 13, 2000

Assemblyman Kevin Shelley
Room 3160



State Capitol
10th & L Streets
Sacramento, CA 95814
RE: AB 2799 - Amendment Request

Kevin,

I'm asking that you give serious thought to reinserting the reverse balancing test into the bill.

I fully understand why it was pulled, and I fully appreciate the importance of the other provisions in the bill and the fact that the computer access rules are very long overdue.

But I'm also impressed that events since that time in the Quackenbush investigation have provided dramatic evidence that:

- o the public interest in discretionary secrecy, at least, sometimes needs to be independently evaluated by a court to consider the contrary public interests posed by particular controversies;
- o the very lack of such a due process mechanism can put conscientious public servants into an ethical bind and a career- and possibly even liberty-threatening jeopardy when they consider the need to leak documents to reveal official perjury; and
- o that same lack of an orderly judicial mechanism to consider disclosure in the public interest can leave a legislator, seeking to expose the perjury by introducing leaked documents into an investigative proceeding, exposed to accusations of acting irresponsibly and illegally.

I'm enclosing a story I wrote recently in our member bulletin, connecting the dots. Much the same story will appear shortly in the Los Angeles Daily Journal.

It was no coincidence that the insurance industry lobbies were so dead set against the reverse balancing test. And restoring that element could vindicate the actions taken by Cynthia Ossias and Senator Escutia - or at least make it easier for their future counterparts to expose the truth without facing pointed fingers.

I'm bringing this up now because the iron is still warm. By next session it won't be.

Sincerely,

Terry Francke

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Spencer, Ryan

From: Ray.Herndon@latimes.com
Sent: Friday, July 14, 2000 10:00 AM
To: tom@cnpa.com
Subject: New National Electronic Access Report



DavisBushfinalpublicdr
aft.doc

----- Forwarded by Ray Herndon/LATimes/TMC on 07/14/2000
10:05 AM -----

Bill Chamberlin <BCHAMBER@JOU.UFL.EDU> on 07/14/2000 07:39:58 AM

To: "Ray Herndon" <Ray.Herndon@LATIMES.COM>
cc:

Subject: RE: Privacy & Access to Federal Courts' Electronic Case Files

Ray, good luck! It is indeed frustrating to get these officials into the 21st century.

Attached is a copyrighted preliminary book chapter. Please do pass it around. It is not perfect yet. But it will give you some comparisons and background data. I will have better stuff coming in late August, I hope.

Bill

-----Original Message-----

From: Ray Herndon
To: FOI-L@LISTSERV.SYR.EDU
Sent: 7/13/2000 1:35 PM
Subject: Re: Privacy & Access to Federal Courts' Electronic Case Files

As you may know, Bill, the California legislature will likely pass, for the fourth straight year, an amendment to the California Public Records Act requiring government agencies to make computerized records available in electronic format. Ex-Gov. Pete Wilson vetoed the legislation twice, and Gray Davis did the same thing last year. If there's anything in your findings that we could use to shame Gray Davis into signing the legislation this fall (he has from mid-Sept. thru early Oct.), I sure would appreciate you tipping us off to that info early. It's incredible that the state which leads the nation in computerization is trailing most other states in guaranteeing its citizens rights to computerized public information. I've copied this email to Tom Newton of the California Newspaper Publishers Association, because Tom is in the best position to make use of such information.

>The Citizen Access Project hopes to release a comparative study and

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ratings
>of computer access laws in the fall. Maybe that can help some of you
to
>apply pressure in your states. I am open to suggestions for how to
maximize
the impact of the information.

>Bill Chamberlin
>Director, Marion Brechner Citizen Access Project
>Joseph L. Brechner Eminent Scholar of Mass Communications

(See attached file: DavisBushfinalpublicdraft.doc)

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AB 2799 (Shelley)
Reverse Balancing Test
(recent interest - July 2000)

(Post-Conversations with G.O. Committee and Newton from CNPA)

Assembly G.O. Committee will definitely ask to hear the bill again. The same opposition (the Counties, Cities, Public Safety, Chamber of Commerce, Manufacturers, the Wine Institute, Attorney General, and, of course, Insurance Industry) will resurface.

Why the Opposition?

They are opposed because they fear that this provision will permit the release of confidential victim and witness information in a criminal case, such as location and identity or the possibility of releasing information in a pending investigation, thus making witnesses and victims reluctant to come forward and share information.

They argue that there is also a judicial remedy to this problem. For example, if there is dispute over the balancing test, the requestor has the right to sue.

They argue that the public's trust in the civil justice system and government in general will erode as citizens "lose certainty that the information they provide to a state or local agency on the assurance of confidentiality will remain confidential."

The Public Safety opposition stems from the expectation that public agencies must defend victims who have "a right under the current law not to have information disclosed about themselves from request by the *media*, particularly the print media who seek to obtain large volumes of information at times."

The Chamber and Manufacturers oppose this reverse balancing test because they believe that "agencies, companies, and individuals interested in protecting propriety data would be subject to litigation to protect confidentiality rights now specifically protected by law."

Why not reconsider the Reverse Balancing Test?

Problems:

- This may not bode well if only because Kevin stated that he would not amend the "reverse balancing test" language back into the bill when it was in the Senate. Assemblywoman Brewer asked him specifically if he would be amending the language back in.
- The Governor has made no signal on whether or not he would sign such a measure.



- The Sponsor's of AB 2799 are reluctant to push forward on this issue at the present time.

Reason's for reluctance

1. In order to help alleviate most opposition, it may be necessary to focus the attention of the bill on the insurance industry. This raises problems when you change regulations on one particular industry such as this one.
 2. The editorial was actually spurred by Tom Newton and Terri Franc (who actually put together an outline that the editor used to write the editorial)
 3. Focusing on one industry is a risky venture. It could appear that the supporters of this measure are jumping on the political bandwagon against the insurance industry? Do not want to be regarded as the "Jackie Speier" of the Assembly.
- If the decision is made to move this issue forward, it should happen in another bill (one of Shelley's vehicles) or as a new bill next year.
 - If the decision is to move forward and to focus on the insurance industry, the Government Code Section 6254(d)(1) – (4), which deals with the information submitted by insurance companies to the Department of Insurance for regulatory purposes.





ASSEMBLY MAJORITY LEADER

Kevin Shelley

For Immediate Release
October 3, 2000

For more information, please contact:
Terri M. Carbaugh at 916-319-2278

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More Sun to Shine on State's Public Records Act

Sacramento—The sun will shine a little brighter over California's oftentimes secretive and elusive public records. Assembly Bill 2799 authored by Majority Leader Kevin Shelley was signed into law prior to the September 30 midnight deadline.

"California's public records are not cloak-and-dagger type documents, they are the property of California's citizens," said Majority Leader Kevin Shelley.

Under current law, an agency can refuse to provide a public record in electronic format. An agency can effectively stall a Public Record Act request by providing the information in a different format than originally requested. Assembly Bill 2799 will force government employees to make computer records available on the same basis in which paper records are made available.

Assembly Bill 2799 also states that no public agency shall obstruct or delay a Public Records Act request.

"Government secrecy doesn't outweigh the public interest. This measure will protect members of the public from government officials who use technology as an excuse to impede a free flow of information," said Shelley.

#





SS WC. 9/13/20

Almost everyone supports open records legislation — Gov. Davis should, too

THE California Public Records Act looks good on paper. But that illusion gets busted when a state agency or local government won't hand over documents. Your only recourse? Hiring a lawyer and seeing a judge.

A bill before Gov. Gray Davis, SSB 2027, would provide a needed alternative to that expensive and time-consuming route. It would allow people to ask the state attorney general for quick review of whether a denial breaks the law.

You could still go to court if the attorney general sides with the agency. Once you are there, the bill would allow a judge to fine the government \$100 a day — up to \$10,000 — when evidence shows that officials are deliberately violating the law. At last, California's statute on open records would have teeth.

The Legislature enthusiastically has signed off, 32-2 in the Senate and 75-1 in the Assembly.

Last session, both houses unanimously approved a similar bill.

Editorial

The opinion of the Mercury News

Davis torpedoed the proposal despite that bipartisan support. He fretted that the oversight process would create a conflict of interest for the attorney general. As the state's legal counsel, the attorney general might have to represent in court agencies that ignored advice to turn over documents.

However, this bill allows the state to hire outside lawyers on those rare occasions that agencies flout the process. Attorney General Bill Lockyer supports the bill. This time, the governor should as well.

Legislators also have sent Davis another straightforward proposal to make California government more user-friendly. AB 2799 would give people who need public documents the option of getting them on a floppy disk, whenever the state or local agency keeps the materials on a computer.

The bill would reduce the time government workers spent photocopying or printing out requests.

Davis squashed this idea last year. He feared Y2K glitches might cause state computers to release confidential information at the same time. That excuse is gone.

OPINION

Government secrets Sunshine bills protect the public's right to know

● *In apparent violation of zoning rules, a city planning agency approves the construction of the 10th liquor store within three blocks of Aunt Minnie's home. She wants to see the store's use permit application, the city document that would tell her how the new liquor store justified its special treatment. The city says she can't have it.*

● *A journalist hears that an inmate has been beaten by prison guards. He wants to visit the inmate to see for himself, but the warden, who vehemently denies any beating has taken place, is barred under current law from arranging an immediate interview. Like everyone else, the journalist has to wait for up to 30 days to visit, by which time any bruises would have faded. Even then, the journalist would be unable to bring in the tools of his trade, a camera or a tape recorder.*

● *A PTA president wants a copy of the local school district budget in an electronic format so she cannot only see the figures, but do some more sophisticated comparisons with neighboring school districts. The budget is readily available in Excel, but the district says she can only have it on paper - and that the 300-page document will cost a quarter a page to copy.*

Three bills approved by the Legislature and awaiting action by Gov. Gray Davis will help citizens in the three scenarios described above.

Under SB 2027 by Sen. Byron Sher, someone such as Aunt Minnie who is denied access to a public document could obtain a legal opinion from the attorney general as to whether the

denial was permissible under the California Public Records Act. Armed with an attorney general's opinion in her favor, Aunt Minnie would have greater leverage to demand the record to which she's entitled, or a strong case if she elects to sue to obtain it.

AB 2101 by Assemblywoman Carol Migden is a modest attempt to improve media access to inmates. Under policies initiated by Gov. Pete Wilson and continued under Davis, reporters can no longer interview willing inmates at a time convenient to the inmate and the reporter, even if the warden approves. The Migden bill allows wardens at their discretion to grant reporter interview requests and to let journalists bring into prisons the tools of their trade, cameras and tape recorders. It is not ideal, but it improves public access to prisons, among the state's most controversial and troubled institutions.

Finally, AB 2799 by Assemblyman Kevin Shelley would require public agencies to make computer records available on the same basis in which paper records are now available, and at the real cost of reproducing that record. Today, in most instances, that real cost would be the trivial price of a diskette or, in the case of an e-mail transfer, free.

In a democracy, the people are the government. We own the government records; we own the institutions, whether they be public schools or prisons. Unless there is a good reason - an individual's right to privacy, for example - and that reason is clearly stated, the public ought to have access. To safeguard the public's right to know, Davis should sign AB 2799, AB 2101 and SB 2027.



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Public information: Why are legislators helping hide the truth?

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PRINTER-FRIENDLY VERSION OF STORY

E-MAIL THIS STORY TO A FRIEND

(Published June 26, 2000)

At the same time legislators express justifiable outrage over the troubling activities of Insurance Commissioner Chuck Quackenbush, they've taken action to make future misconduct by public agencies and insurance companies hard to uncover. At the behest of lobbyists for insurance companies, the Assembly Governmental Organization Committee has gutted a bill that would have opened to public scrutiny the very department records at the center of the burgeoning scandal.

Under current law, government agencies are free to withhold documents from public scrutiny if the agency determines the public interest in keeping the information secret outweighs the public interest in disclosure. That exemption to the state law designed to safeguard public access to government documents amounts to a catchall loophole that can be easily abused.

Two years ago Quackenbush used that "public benefit" loophole to deny legislators copies of investigations his office had conducted into alleged misconduct by insurance companies following the Northridge earthquake. Alerted by disgusted insurance department staffers to serious improprieties at the agency, a legislative oversight committee tried to get the documents, but was repeatedly rebuffed by Quackenbush, who used his discretionary powers to deny legislators the right to see the reports.

AB 2799, authored by San Francisco Assemblyman

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Kevin Shelley and sponsored by the California Newspaper Publishers Association -- of which The Bee is a member -- would have put into law a "reverse" public benefit test. Under that rule, a member of the public could petition a judge to order release of a government record withheld based on a finding that the public interest in disclosure outweighed the public interest in secrecy. That key provision of the Shelley bill was removed when insurance company lobbyists objected to it.

Had the rule been in place following the Northridge earthquake, quake victims could have used it to ask for access to department investigative reports that contained evidence of massive cheating of quake victims by insurance companies. Those documents were finally released by Sen. Martha Escutia. Not surprisingly, the department and insurance companies attacked the senator's actions in releasing the confidential information as "outrageous" and "illegal."

The real outrage involves government secrecy that denies the public access to documents so crucial to the public interest. The outrage here is that a regulated industry -- insurance companies -- and an elected regulator -- Quackenbush -- can use state law to hide documents alleging widespread fraud and misconduct. The outrage here is that even in the face of all that, legislators have failed to safeguard the public's and their own access to government documents that are key to exposing corruption.

Problems? Suggestions? Let us hear from you.

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Carbaugh, Terri

From: Armstrong, Travis [TArmstrong@sjmercury.com]
Sent: Friday, June 02, 2000 3:16 PM
Subject: 'terri.carbaugh@asm.ca.gov'
editorial

SACRAMENTO IS AFRAID TO LET YOU HAVE PUBLIC RECORDS
ON A FLOPPY DISK

Published: Sunday, May 14, 2000 Edition: Morning Final Section: Editorial
Page: 6C
Memo: Editorial
The opinion of the Mercury News
Public Records

HERE'S a straightforward idea to make California government more user-friendly: Give people who need public records the option of getting them on a floppy disk, if the state or local agency keeps the material on a computer.

No huge piles of papers, photo-copying costs and wasted trees.

Common sense, right?

Not in Sacramento, where lawmakers have let two bills to provide this electronic option crash and burn since 1998.

Former Gov. Pete Wilson fretted about possible cost increases when he vetoed the legislation two years ago. That was a weak excuse. Requests for electronic documents could save agencies money by eliminating the time employees spend sorting, copying or printing out papers.

Gov. Gray Davis also quashed the idea last year, to the dismay of advocates of open government, who had high hopes after his election. Davis managed to scrounge up his own justification: Y2K uncertainties meant that state computers might be unable to comply without compromising confidential material.

That objection now seems to be moot, at least for a thousand years.

Kevin Shelley, D-San Francisco, has introduced a new bill to give people the option of receiving computer records in electronic or paper form. A state agency or local government that refused would have to justify its stance in writing.

The bill was bogged down until Shelley removed a controversial provision unrelated to providing the electronic option. With that distraction gone, the Assembly Government Operations Committee finally approved it last week. Now Davis and the Legislature should sign off on this overdue improvement to the state Public Records Act.

Play only will give government officials more time to play hide-and-seek when people request public records.

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- Consider this example from the city of Richmond, provided by the California First Amendment Coalition:

The city kept expense account records of council members on computer. An easily done search of those electronic files would have been able to turn up personal charges, such as the cost of a weight-loss program. Fearing that officials decided only to give out paper printouts -- hundreds of pages long -- to thwart discoveries of misconduct.

As it is, the Public Records Act contains a whopping 650 exceptions, usually for so-called privacy and security matters, that permit officials to refuse requests. That's too many.

Don't also let state agencies and local governments continue to bury public records in blizzards of paper.

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Computerized records bill falls one vote short in committee

Monday, April 24, 2000
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URL: <http://www.sfgate.com/cgi-bin/article.cgi?file=/news/archive/2000/04/24/state1955EDT0209.DTL>

(04-24) 16:55 PDT SACRAMENTO (AP) -- A bill to make it easier for reporters and the public to obtain computerized government records was rejected by an Assembly committee.

The bill, similar to measures vetoed by two governors, received a 7-3 vote Monday, one vote short of the majority needed in the 15-member Governmental Organization Committee.

However, the author, Assemblyman Kevin Shelley, D-San Francisco, asked for a second vote at a future committee meeting.

The state Public Records Act requires state and local government agencies to provide the public with copies of its records. The law lists 650 exceptions, including privacy and security matters.

The bill would require agencies that keep their records on computer to provide them in an electronic format when requested by a member of the public or a reporter.

Backers, including the California Newspaper Publishers Association and the First Amendment Coalition, say agencies now can give out information in a huge stack of paper.

Similar bills passed by the Legislature were vetoed in 1997 by former Gov. Pete Wilson and last year by Gov. Gray Davis. Wilson said agencies get hundreds of records requests every month and specifying the format would have increased costs.

In his veto message, Davis said the bill was "well intentioned" but many state computer systems could not comply with it without compromising confidential material.

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AB 2799-2000

~~One Pager~~

~~Q+A~~



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AB 2799 (Shelley): Public Records

Origin: California Newspaper Publishers Association

Problem: In California, all government agencies are subject to the California Public Records Act (CPRA). The CPRA governs the public's right to access information from state and local agencies, including cities and counties, school districts, municipal corporations, and any other boards or commissions that are part of a covered political entity (Gov. Code Section 6252).

Records held electronically have become the focus of great debate. Under current law, when a person makes a request for data contained in computer format, the agency has the discretion to determine in which form the information should be provided. An agency can effectively frustrate a public record's request by providing the requested records in a form different from the public's request.

It is very important that an agency disclose public information in a timely fashion. If there is a legitimate dispute over whether or not a record is covered by an exemption, the agency is entitled to take up to 10 working days to either provide the information or provide the written grounds for its denial. The 10-day period is not intended to delay access to records; however, many state agencies believe the 10-day grace period can be used for any record. By delaying the process, the public often gives up & never acquires the record.

Solution: AB 2799 would improve open government process by:

- Stating that no public agency shall obstruct or delay the inspection or copying of public records.
- Requires that when an agency denies a request made in writing, it must respond to the requestor in writing explaining why the request was denied.
- Requiring a public agency to produce, upon request, a public record electronically (on a diskette, usually in Word or WordPerfect format) in the format in which it is currently held (on diskette, usually Word and WordPerfect format).

Support: California Newspaper Publishers Association, California First Amendment Coalition, Orange County Registrar, Sacramento Bee (Editorial support), California State Franchise Tax Board

Opposition: County of Orange



AB 2799 – Public Records Act
Assembly Floor
Thursday, May 25, 2000
10:00 a.m.

Mr. Speaker and Members:

- Today, I present to you AB 2799, a bill which significantly improves access to public records.

- This bill essentially does two things:

1. It requires public agencies to provide computerized data in any electronic form in which that data is already kept.
2. It makes one technical change to ensure that no agency deliberately delays the access of requested information.

- This bill is almost **identical** to a measure that passed out of this house unanimously last year.

- It is a good pro-government bill that has the support of both sides of the aisle.

- I ask for your “aye” vote



AB 2799
Questions and Answers

Q - What does this bill do?

A - This bill now has two parts:

1. It states that no public agency shall obstruct or delay the inspection or copying of public records.
2. It requires a public agency to make copies of public information available electronically (on a diskette, usually in Word or WordPerfect format, etc).

Q - Why is there still opposition?

A - The opponents argue that requiring them to provide a document in a computerized form forces them to revise (or redact) certain documents so that confidential information is not included with public information. They claim this process will be costly and time consuming.

However, if a document is a public document, the public has a right to view it. If a citizen went into an agency and asked for a particular public document in hard copy form, the agency would be required to forfeit the document. The agency must have some system to provide this information without disclosing confidential information. They should apply that same method to the disclosure of information in a computerized format

Also, making the public pay for the time committed to revising the document is wrong. The production of the document in hard copy and in a computer format is already paid in taxes by the citizen. Why should he or she be required to pay for it again?

Regardless, I have scheduled a meeting with the opposition next week to listen to their concerns.



Q - Why add the word "delay?"

A - When the law was changed several years ago, the word "delay" was removed and "obstruct" replaced it. This was not the intent of the legislature.

Public agencies have the perception that current law allows them up to 10- days to produce **any** record or document, once request by the public. Although the 10-day grace period does exist, it is meant for specific purposes. Public agencies are given the 10 days to acquire information if they believe the record requested is exempt from disclosure and they need time to confer with their legal counsel. The 10-day period was not intended to allow state agencies to stall any document for any reason.

This law will require a public agency to produce the document as soon as feasibly possible, unless the agency genuinely believes there is a legal issue.

Q - Will public agencies need to give provide records in any electronic format the requestor asks for?

A - No, AB 2799 will not require agencies to make costly data conversions from one format to another. The bill only states that agencies provide information to the public in a form in which that information is already available and used in everyday business.

Q - How does this version of the bill differ from the introduced version?

A - I removed the provision which would have created the "reverse balancing test." This test would have given citizens the opportunity to challenge for the release of a record that a state agency has currently made exempt under the California Records Act, if he or she can prove that the release of the document serves best the public interest. This challenge can be made with either the public agency or, if necessary, in a court of law.

Now, this bill is almost identical to the bill that passed out of this house unanimously last year.



AB 2279 – Public Records Act
Assembly Governmental Organization
Monday April 24, 2000
9:00 a.m. – Room 4202

Mr. Chair and Members:

- Today, I present to you AB ²²⁷⁹~~2279~~, a bill which significantly improves the California Public Records Act.

- The California Public Records Act is a vital tool that allows Californians to keep track of what their public agencies are doing.

- Although it sounds simple, it isn't and many public agencies still deny or complicate requests for public information.

- This bill will help rectify this problem three different ways.

- First, the bill minimizes the flow of paper needed to accommodate certain requests by requiring public agencies to provide computerized data in any electronic form in which that data is already kept.



•Second, my bill ensures that no agency deliberately delays the access of requested information, unless they provide sufficient justification.

•Finally, AB 2799 levels the playing field between the citizens and the government by giving the citizens the same balancing test as the government to determine whether or not a document can be disclosed.

•Current law allows for the public interest balancing test, a “catchall” provision that allows the government to withhold access to any record if the public interest warrants it.

•This provision is a one-way street – if it is used by an agency, it is used only for the purpose of denying access to a record.

•For those records that are not specifically exempt for the CPRA, the public should have the same right as the government to use the balancing test to access the record when the public interest demands it.

•My bill will only apply to records that are exempted at the discretion of a public agency. It does not apply to records that are



exempt by order of the legislature or specifically forbidden from disclosure.

- Access to public records lies at the foundation of open and responsible government. AB 2799 facilitates that access. I ask for your “aye” vote.

- With me today to help answer any questions you may have are:

Tom Newton, California Newspaper Publishers Association

Terry Francke, California First Amendment Coalition



**AB 2799 (Shelley) - Public Records
Proposed Amendment**

Amendment 1

On Page 5 line 23 after "record." insert:

This subdivision shall not apply to any record that is prohibited from being disclosed by a specific provision of law.

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**Assembly Rule Committee -- Rule Waiver for Assembly
Rule 49
Monday, February 28, 2000
10:45 a.m.
Public Records Act**

Mr. Chair and Members:

**I respectfully request a waiver of Assembly Rule 49 to
allow the introduction of legislation related to public
records.**

**This legislation is, in part, a re-introduction of an open
records bill that I authored last year, and it changes the
law as it relates to the responsiveness of public agencies
to records requests.**

**Last year, both Senator Bowen and I introduced very
similar measures.**

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This year, we discussed the possibility of re-introducing the same measure on a parallel track or just under Senator Bowen's authorship.

After significant consideration on both our parts, we decided to introduce one comprehensive bill together, as an Assembly Bill. However, we did not come to this conclusion until very recently.

Thank you for your consideration of this request.



AUTHOR'S COPY

LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, Shelley.

General Subject: Public records; disclosure.

(1) The California Public Records Act provides that any person may receive a copy of any identifiable public record from any state or local agency upon payment of specified fees. The act provides that it shall not be construed to permit an agency to obstruct the inspection or copying of public records and requires any notification of denial of any request for records pursuant to the act to set forth the names and titles or positions of each person responsible for the denial. The act also requires computer data to be provided in a form determined by the agency.

This bill would provide that nothing in the act shall be construed to permit an agency to delay or obstruct the inspection or copying of public records and would require that the notification of denial of any



request for records justifying its withholding to be in writing. This bill would delete the requirement that computer data be provided in a form determined by the agency and would require any agency that has information that constitutes an identifiable public record that is in an electronic format to make that information available in an electronic format when requested by any person. The bill would require the agency to make the information available in any electronic format in which it holds the information. Because these requirements would apply to local agencies as well as state agencies, this bill would impose a state-mandated local program.

(2) The act requires the agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the act or that, on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

This bill would authorize the agency or the superior court to disclose a record made exempt under the express provisions of the act if the agency or the superior court determines that, on the facts of the particular case, the public interest served by disclosing the record clearly outweighs the public interest served by



not disclosing the record. By imposing new duties on local public officials, the bill would create a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



AUTHOR'S COPY

An act to amend Sections 6253 and 6255 of, and to add Section 6253.2 to, the Government Code, relating to public records.

3/3/00

↓
be consistent w/ the term "public record"

(source: Eric Feller - Regional Water Quality Control Board)



THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6253 of the Government Code is amended to read:

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so. Computer data shall be provided in a form determined by the agency.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the



possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.



(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. Any The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

SEC. 2. Section 6253.2 is added to the Government Code, to read:

6253.2. (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create



copies for its own use or for provision to other agencies. Direct costs of duplication shall include the costs associated with duplicating electronic records.

(b) Nothing in this section shall be construed to require the public agency to reconstruct a report in an electronic format if the agency no longer has the report itself available in an electronic format.

(c) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(d) Nothing in this section shall be construed to permit public access to records held by the Department of Motor Vehicles to which access is otherwise restricted by statute.

SEC. 3. Section 6255 of the Government Code is amended to read:

6255. (a) The agency shall justify withholding any record in writing by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not making disclosing the record ~~publie~~ clearly outweighs the public interest served by disclosure of the record.

(b) Notwithstanding any provision of this chapter, an agency, or the superior court in any action



brought pursuant to Section 6259, may disclose or order to be disclosed any record made exempt by express provisions of this chapter if, on the facts of the particular case, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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AMENDMENTS TO ASSEMBLY BILL NO. 2799

Amendment 1

On page 5, line 9, strike out "(a)"

Amendment 2

On page 5, strike out lines 16 to 23, inclusive

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CONFLICT NOTIFICATION

April 5, 2000



BIGON M. GREGORY

S.B. 2027

The above measure, introduced by Senator Sher, which is now set for hearing in the

Senate Appropriations Committee

appears to be in conflict with

A.B. 2799 - Shelley

The enactment of these measures in their present form may give rise to a serious legal problem which possibly can be avoided by appropriate amendments.

We urge you to consult our Corrections Section at Corrections.Section@lc.ca.gov or 916-445-0430 at your earliest convenience.

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CONFLICT NOTIFICATION

March 29, 2000



BION M. GREGORY

A.B. 2799

The above measure, introduced by Assembly Member Shelley, which is now set for hearing in the

Assembly Governmental Organization Committee

appears to be in conflict with

S.B. 2027 - Sher

The enactment of these measures in their present form may give rise to a serious legal problem which possibly can be avoided by appropriate amendments.

We urge you to consult our Corrections Section at Corrections.Unit@lc.ca.gov or 916-445-0430 at your earliest convenience.

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An act to amend Sections 6253 and 6255 of the
Government Code, relating to public records.

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LEGISLATIVE INTENT SERVICE



THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6253 of the Government Code is amended to read:

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so. Computer data shall be provided in a form determined by the agency.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the



possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

- (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.



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(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. Any The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

SEC. 2. Section 6255 of the Government Code is amended to read:

6255. (a) The agency shall justify withholding any record in writing by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not making disclosing the record public clearly outweighs the public interest served by disclosure of the record.

(b) Notwithstanding any provision of this chapter, an agency, or the superior court in any action brought pursuant to Section 6259, may disclose or order to be disclosed any record made exempt by express provisions of this chapter if, on the facts of the particular case,



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the public interest served by disclosing the record
clearly outweighs the public interest served by not
disclosing the record.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, Shelley.

General Subject: Public records: disclosure.

(1) Existing law provides that nothing in the California Public Records Act shall be construed to permit an agency to obstruct the inspection or copying of public records and requires any notification of denial of any request for records pursuant to the act to set forth the names and titles or positions of each person responsible for the denial. The act also requires the agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the act or that, on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

This bill would further provide that nothing in the act shall be construed to permit an agency to delay



the inspection or copying of public records and would require that the notification of denial of any request for records justifying its withholding to be in writing. The bill would also authorize the agency or the superior court to disclose a record made exempt under the express provisions of the act if the agency or the superior court determines that, on the facts of the particular case, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record. By imposing new duties on local public officials, the bill would create a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal



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committee: yes. State-mandated local program: yes.

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SB 1065

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CHAPTER _____

An act to amend Section 6253 of, and to add Section 6253.2 to, the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

SB 1065. Bowen. Public records: electronic format.

Existing law, the California Public Records Act, provides, among other things, that any person may receive a copy of any identifiable public record from any state or local agency upon payment of fees covering the direct costs of duplication or any applicable statutory fee. Existing law also requires computer data to be provided in a form determined by the agency.

This bill would require any agency that has information that constitutes an identifiable public record that is in an electronic format to make that information available in an electronic format, when requested by any person. The bill would require the agency to make the information available in any electronic format in which it holds the information. Because these requirements would apply to local agencies as well as state agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 6253 of the Government Code is amended to read:

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable



portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person, upon payment of fees covering direct costs of duplication, or a statutory fee, if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. As used in this section, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(d) Nothing in this chapter shall be construed to permit an agency to obstruct the inspection or copying of



SB 1065

public records. Any notification of denial of any request for records shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

SEC. 2. Section 6253.2 is added to the Government Code, to read:

6253.2. (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. Direct costs of duplication shall include the costs associated with duplicating electronic records.

(b) Nothing in this section shall be construed to require the public agency to reconstruct a report in an electronic format if the agency no longer has the report itself available in an electronic format.

(c) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(d) Nothing in this section shall be construed to permit public access to records held by the Department of Motor Vehicles to which access is otherwise restricted by statute.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service



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SB 1065

mandated by this act, within the meaning of Section 17556
of the Government Code.

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LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, Shelley.

General Subject: Public records: disclosure, computerized data.

(1) The California Public Records Act requires every state or local agency to make public records open to inspection at all times during regular office hours and provides that every person has a right to inspect any public record, except as specified. The act also requires each state or local agency to make promptly an exact copy of a public record available to any person upon payment of specified fees and requires that computer data be provided in a form determined by the agency.

This bill instead would require a state or local agency to provide computerized data in any form or format that is requested from among any of the forms or formats used by the agency for the conduct of its business or for the making of copies for its own use or the use of

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any other agency. The bill would require that the notification of the denial of any record be in writing and state the explanation for the denial. By imposing new duties on local public officials, the bill would create a state-mandated local program.

(2) Existing law provides that nothing in the California Public Records Act shall be construed to permit an agency to obstruct the inspection or copying of public records and requires any notification of denial of any request for records pursuant to the act to set forth the names and titles or positions of each person responsible for the denial.

This bill would further provide that nothing in the act shall be construed to permit an agency to delay the inspection or copying of public records.

(3) Existing law provides that computer software developed by a state or local agency is not itself a public record under the act and authorizes an agency to sell, lease, or license the software for commercial or noncommercial use. For purposes of this provision, the term "computer software" includes computer mapping systems, computer programs, and computer graphics systems.

This bill would provide that for purposes of this provision, "computer software" also includes

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proprietary information to the extent this information cannot be extracted from the computer program developed by or on behalf of the state or local agency.

The bill would also provide that no state or local agency shall purchase, lease, create, or otherwise acquire any electronic data-processing system for the storage, manipulation, or retrieval of public records unless the system will not, in light of the agency's data-processing requirements, significantly impair the agency's ability to permit the public inspection and examination of public records or provide electronic copies of the records.

(4) Existing law requires the agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the act or that, on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

This bill would authorize the agency or the superior court to disclose a record made exempt under the express provisions of the act if the agency or the superior court determines that, on the facts of the particular case, the public interest served by disclosing the record clearly outweighs the public interest served by

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not disclosing the record.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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An act to amend Sections 6253, 6254.9, and 6255
of, and to add Section 6253.1 to, the Government
Code, relating to public records.

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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature that the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) be an effective tool for the public to access and state and local agencies to share disclosable information, and to that end, both the requester of information and the state or local agency shall assist each other in describing in as precise terms as possible the information, format, and media being sought or that is available.

SEC. 2. Section 6253 of the Government Code is amended to read:

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record



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or records, shall make the records promptly available to any person, upon payment of fees covering direct costs of duplication, or a statutory fee, if applicable. Upon request, an exact copy shall be provided unless impracticable to do so. Computer A copy of computerized data shall be provided in a form determined by the agency any form or format that is requested from among any of the forms or formats used by the agency for the conduct of its business or for the making of copies for its own use and or the use of any other agency. An agency shall not be required to make available copies of records in any form or format other than those already used by the agency for the requested records. Regardless of the form or format requested, a copy of any reasonable segregable portion of a record shall be available to any person requesting the copy after deletion of the portions that are exempted by law.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by

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written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. Any The notification of denial of any request for records required by Section 6255 shall

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30449

set forth the names and titles or positions of each person responsible for the denial. The notification required under this subdivision shall be in writing and shall state the explanation for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

SEC. 3. Section 6253.1 is added to the Government Code, to read:

6253.1. After January 1, 2001, no state or local agency shall purchase, lease, create, or otherwise acquire any electronic data-processing system for the storage, manipulation, or retrieval of public records unless the system will not, in light of the agency's data-processing requirements, significantly impair the agency's ability to permit the public inspection and examination of public records or provide electronic copies of the records. Nothing in this section shall be construed to (a) require the retention by the agency of any obsolete electronic data-processing system, computer hardware, or software, (b) form the basis of a protest to the award of a public contract, or (c) affect or require amendment of a contract or lease that is in force on

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December 31, 2000.

SEC. 4. Section 6254.9 of the Government Code is amended to read:

6254.9. (a) Computer software developed by a state or local agency is not itself a public record under this chapter. The agency may sell, lease, or license the software for commercial or noncommercial use.

(b) As used in this section, "computer software" includes computer mapping systems, computer programs, and computer graphics systems, and proprietary information to the extent this information cannot be extracted from the computer program developed by or on behalf of the state or local agency.

(c) This section shall not be construed to create an implied warranty on the part of the State of California or any local agency for errors, omissions, or other defects in any computer software as provided pursuant to this section.

(d) Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer. Public records stored in a computer shall be disclosed as required by this chapter.

(e) Nothing in this section is intended to limit any copyright protections.

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SEC. 5. Section 6255 of the Government Code is amended to read:

6255. (a) The agency shall justify withholding any record in writing by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not making disclosing the record publi;c clearly outweighs the public interest served by disclosure of the record.

(b) Notwithstanding any provision of this chapter, an agency, or the superior court in any action brought pursuant to Section 6259, may disclose or order to be disclosed any record made exempt by express provisions of this chapter if, on the facts of the particular case, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million

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dollars (\$1,000,000), reimbursement shall be made from the
State Mandates Claims Fund.

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LEGISLATIVE COUNSEL

No. 05572
TYPE BILL

REQUEST OF ASSEMBLY MEMBER KEVIN SHELLEY
per LORRAINE ALBRECHT

Post-Deadline bill.

Revise RN 99 25834, as per attached, regarding public records by incorporating language of AB 1099 as amended in Senate 7/12/99 (97v).

ATTACHMENTS:

8-page author's copy of RN 99 25834;
6-page xerox copy of AB 1099 a/s 7/12/99 (97v).

Any questions, contact LORRAINE ALBRECHT at 319-2278

PUBLIC RECORDS

02/16/00

This will acknowledge your request received on the date indicated. Please examine the above statement to determine if it correctly sets forth your request.

Any questions with respect to this request may be directed to

MS. J. KINNEY at 445-0467

to whom it has been assigned.

BION M. GREGORY
Legislative Counsel

(800) 666-1917

LEGISLATIVE INTENT SERVICE



Assembly Republican Bill Analysis
Governmental Organization Committee

AB 2799 (Shelley)
Support

AB 2799 (SHELLEY)

PUBLIC RECORDS: DISCLOSURE.

Version: 4/27/00 Last Amended

Vote: Majority

Support

Vice-Chair: Brett Granlund

Tax or Fee Increase: No

Encourages public access to computerized records of state and local agencies.

THIS BILL HAS BEEN AMENDED TO REMOVE THE PROVISIONS WHICH WOULD HAVE ENCOURAGED DISCLOSURE OF PRIVATE AND CONFIDENTIAL INFORMATION IN THE POSSESSION OF STATE AND LOCAL AGENCIES.

Policy Question

Should state and local agencies be required to facilitate public access to records?

Summary

1. Mandates that public agencies make records in any electronic format in which they store the records.
2. Requires public agencies to justify withholding a requested record in writing by demonstrating that the public interest protected by non-disclosure clearly outweighs the interest in disclosure.
3. Prohibits agency delay in disclosing records.

Support

California Newspaper Publishers Association (sponsor).

Opposition

The business trade groups which had formerly opposed this bill have removed their opposition due to the amendments which maintain the status quo regarding disclosure and exemptions from disclosure.

Assembly Republican Governmental Organization
Votes (6-3) 4/24/00 FAIL PASSAGE

Ayes: None

Noes: Granlund, Brewer, Margett

Abs. / NV: Battin, Briggs, Maldonado

Assembly Republican

Votes (0-0) 1/1/00

Ayes: None

Noes: None

Abs. / NV: None

Assembly Republican

Votes (0-0) 1/1/00

Ayes: None

Noes: None

Abs. / NV: None

Assembly Republican

Votes (0-0) 1/1/00

Ayes: None

Noes: None

Abs. / NV: None

Arguments In Support of the Bill

Permitting the broadest access to public records is consistent with the principles of our form of government and current state law. We should do what we can to assure such access. It is how the citizens know what the government is doing.

Arguments In Opposition to the Bill

This bill would increase the costs of state and local agencies by making more records available. This is just another state mandate on local governments.

Fiscal Effect

Unknown.

Comments

1. Under current law, the California Public Records Act requires that public records be made available for inspection and copying by the public, unless some specific and explicit exception would deny access. Copies are to be made available at a nominal charge. Computer records may be accessed through the system that the agency permits.
2. This bill would require agencies, both state and local, to make records available in any format that the agency uses itself or uses to make records available to any other agency. It would also require state and local agencies to determine that any new electronic data system or software would not impede or impair public access before acquiring or developing it.
3. Making records more accessible and requiring agencies to take into account the affect on accessibility will promote public knowledge about governmental action. That is a supportable goal. Because citizens have to know what government is doing and government now does so much, steps need to be taken to make information accessible in easily used ways.

Policy Consultant: Mike Petersen 5/4/00

Fiscal Consultant:

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LEGISLATIVE INTENT SERVICE



Date of Hearing: May 17, 2000

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Carole Migden, Chairwoman

AB 2799 (Shelley) - As Amended: April 27, 2000

Policy Committee: Governmental Organization

Vote: 12-2

Urgency: No State Mandated Local Program: Yes

Reimbursable: No

SUMMARY

This bill, as proposed to be amended:

- 1) Requires that a public agency's justification for denying the release of a public record be made in writing if the request for that record was submitted in writing.
- 2) Requires public agencies to make public records available, when requested, in the electronic format in which they hold the information.
- 3) Specifies that the direct costs of duplication, for which agencies may charge requesters pursuant to current law, include the costs associated with duplicating electronic records.

FISCAL EFFECT

- 1) Assuming that agencies generally respond in writing when denying a public records request, there should be negligible fiscal impact.
- 2) Potential revenue loss to various agencies that currently make and sell copies of public records documents, probably offset by workload savings from providing electronic rather than paper copies of public records.

COMMENTS

- 1) Purpose. According to the sponsor, the California Newspaper Publishers Association, this bill is intended to ensure quicker access to public records. The sponsor also notes that the bill seeks to provide reasonable guidelines for public access to electronically held records.
- 2) Prior Legislation. The provisions of this bill regarding electronic records are identical to those contained in SB 1065 (Bowen) from last year. That bill was vetoed by the governor, who indicated at the time that the state's information technology resources should be directed towards making sure that its computer systems were year 2000 compliant.
- 3) Amendment. Staff recommends the following amendments, which generally would conform with current practice and are reflected in this analysis.

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On page 5, line 9, after "6255", insert "(a)".

On page 5, line 10, delete "in writing."

On page 5, after line 15, insert: "(b) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing."

Analysis Prepared by: Chuck Nicol / APPR. / (916)319-2081



3160

MAY - 5 2000

AB 2799
Page 1

Date of Hearing: May 8, 2000

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION
Herb Wesson, Chair
AB 2799 (Shelley) - As amended: April 27, 2000

SUBJECT: Public records

SUMMARY: Provides for the release of public records in an electronic format and requires a public agency that withholds a public record to justify its withholding in writing.

- 1) Deletes the requirement that public records kept on computer be disclosed in a form determined by the public agency. Requires a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following guidelines:
 - a) The agency must make the information available in any electronic format in which it holds the information.
 - b) Each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.
 - c) An agency may not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- 2) Requires an agency that withholds a public record to justify its withholding in writing.
- 3) Specifies that the requirements of the bill shall not be construed to permit an agency to make information available only in an electronic format nor shall they be construed to permit access to records held by the Department of Motor Vehicles that are otherwise restricted under the PRA.
- 4) Specifies that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

EXISTING LAW

- 1) Defines "public record" to include any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.
- 2) Requires public records to be open to inspection at all times during the office hours of a state or local agency and affords every person the right to inspect any public record, except as specifically provided.

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- 3) Requires state and local agencies to make an exact copy of a public record available to any person upon payment of fees covering direct costs of duplication, or a statutory fee, if applicable.
- 4) Requires that computer data be provided in a form determined by the agency.

FISCAL EFFECT: Unknown.

COMMENTS:

1. Need for the bill. The PRA permits a state or local agency to provide computer records in any format determined by the agency. This bill would require an agency to provide computer records in any format that it currently uses. According to the sponsor, the California Newspaper Publishers Association, this bill is intended to ensure quicker, more useful access to public records. The sponsor also notes that the bill seeks to provide reasonable guidelines for public access to electronically held records.
2. Substantive amendments. This bill was heard by this committee on April 24, 2000 and failed passage. Since the April 24 hearing, the author has substantially amended the bill to remove a controversial provision which would have authorized courts and state agencies to release records exempted from the PRA if the court or agency determined that the "public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record." This provision is referred to as the "reverse balancing test" and was the primary issue of discussion during the bill's hearing.
3. Remaining opposition. Although some opponents have removed their opposition in response to the most recent amendments, some remain concerned with the bill's requirement that public records be released in any electronic format that the agency uses to hold public records. Opponents point out that state and local agencies retain massive databases which may include nondisclosable public records. They claim that redacting the nondisclosable information from the electronic records could be a costly and time-consuming process that is more vulnerable to error, which may result in the unintentional release of nondisclosable information. Opponents note that the bill does not contain a provision authorizing agencies to charge fees covering the cost of preparing the electronic record for public release. It is unclear how local agencies currently account for public records that are required to be redacted but that are disclosed in a paper format.
4. Similar legislation. AB 1099 (Shelley) of this legislative session would have required state and local agencies to provide copies of public records in any form requested, including in a computer format, as long as the form was already used by the agency in the conduct of its business. AB 1099 passed this committee by a 15-0 vote but was later amended to contain a subject matter different from that which this committee considered.



REGISTERED SUPPORT / OPPOSITION:

Support

California Newspaper Publishers Association
First Amendment Coalition

Opposition

California Association of Sanitation Agencies - removed opposition 5/5/00
California Municipal Utilities Association
California State Sheriffs Association
Office of the State Attorney General
San Bernardino County Sheriff's Department

Analysis Prepared by: Richard Rios / G. O. / (916) 319-2531



3160

Date of Hearing: April 24, 2000

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION
Herb Wesson, Chair
AB 2799 (Shelley) – As introduced: February 28, 2000

SUBJECT: Public records

SUMMARY: Provides for the release of public records in an electronic format and authorizes the release of records that are exempt from the Public Records Act (the PRA) in specified circumstances. Specifically, this bill:

- 1) Deletes the requirement that public records kept on computer be disclosed in a form determined by the public agency. Requires a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following guidelines:
 - a) The agency must make the information available in any electronic format in which it holds the information.
 - b) Each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.
 - c) An agency may not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- 2) Authorizes an agency, or the superior court in an action brought under the PRA, to disclose or order to be disclosed any record exempted from the PRA if, on the facts of the particular case, the public interest served in disclosing the record clearly outweighs the public interest served by not disclosing the record.
- 3) Requires an agency that withholds a public record to justify its withholding in writing.
- 4) Specifies that the requirements of the bill shall not be construed to permit an agency to make information available only in an electronic format nor shall they be construed to permit access to records held by the Department of Motor Vehicles that are otherwise restricted under the PRA.
- 5) Specifies that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

EXISTING LAW

- 1) Defines "public record" to include any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.



- 2) Requires public records to be open to inspection at all times during the office hours of a state or local agency and affords every person the right to inspect any public record, except as specifically provided.
- 3) Requires a public agency to justify withholding a public record by demonstrating that the record in question is exempt under express provisions of the PRA *or* that on the facts of a particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosing the record.
- 4) Requires a court, when it finds that a public official's decision not to disclose a public record is unjustified, to order the public official to make the record public.

FISCAL EFFECT: Unknown.

COMMENTS:

1. Need for the bill. The PRA permits a state or local agency to provide computer records in any format determined by the agency. This bill would require an agency to provide computer records in any format that it currently uses. According to the sponsor, the California Newspaper Publishers Association, this bill is intended to ensure quicker, more useful access to public records. The sponsor also notes that the bill seeks to provide reasonable guidelines for public access to electronically held records. The sponsor claims that this bill will balance the ability of private citizens to access public records with the discretion of public agencies to deny such records requests.

2. Reverse balancing test. The PRA generally establishes broad guidelines about the types of documents that may not be subject to public disclosure and affords state agencies discretion to apply a balancing test when determining whether or not to release a record. In applying the test, the agency must determine that the "public interest served by not making the record public clearly outweighs the public interest served by disclosing the record." This bill attempts to apply a reverse balancing test by giving courts and state agencies the authority to disclose any public record if the agency or superior court determines that, depending on the facts of a particular case, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record. The reverse balancing test disclosure would apply even when a court finds that the record is exempted from disclosure under the PRA.

3. Opposition. Opponents argue that the bill subjects confidential records to a "vague" balancing test. Opponents claim that the test undermines key provisions of the PRA which protect proprietary information such as applications for the issuance of securities or of financial institutions, including banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies. Opponents also contend that the bill would permit a court or other agency, despite an exemption in the PRA, to order disclosure of a record it found to pass the reverse balancing test. Opponents are concerned that this provision would permit the release of specifically exempted information such as preliminary drafts or notes, geological and utility systems data, or complaint or investigation of records of local law enforcement agencies.



4. Policy consideration. The committee may wish to consider whether the courts should have the discretion, even when they find that a record is generally exempt from disclosure under the PRA, to require disclosure of that record if it meets the reverse balancing test. The committee may also wish to consider whether the reverse balancing test gives courts and agencies too much discretionary authority to release records that are *specifically* prohibited from release under the PRA or any other provision of law.

REGISTERED SUPPORT / OPPOSITION:

Support

California Newspaper Publishers Association
First Amendment Coalition

Opposition

Association of California Insurance Companies
California Association of Sanitation Agencies
California Chamber of Commerce
California Manufacturers & Technology Association
California Municipal Utilities Association
California State Association of Counties
California State Sheriffs Association
Civil Justice Association of California
Office of the State Attorney General
Personal Insurance Federation of California
San Bernardino County Sheriff's Department
Wine Institute

Analysis Prepared by: Richard Rios / G. O. / (916) 319-2531



3160

APR - 7 2000

AB 2799

Page 1

Date of Hearing: April 10, 2000

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Herb Wesson, Chair

~~Assembly Bill~~ introduced: February 28, 2000

SUBJECT: Public records

SUMMARY: Provides for the release of public records in an electronic format and authorizes the release of records that are exempt from the Public Records Act (the PRA) in specified circumstances. Specifically, this bill:

- 1) Deletes the requirement that public records kept on computer be disclosed in a form determined by the public agency. Requires a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following guidelines:
 - a) The agency must make the information available in any electronic format in which it holds the information.
 - b) Each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.
 - c) An agency may not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- 2) Authorizes an agency, or the superior court in an action brought under the PRA, to disclose or order to be disclosed any record exempted from the PRA if, on the facts of the particular case, the public interest served in disclosing the record clearly outweighs the public interest served by not disclosing the record.
- 3) Requires an agency that withholds a public record to justify its withholding in writing.
- 4) Specifies that the requirements of the bill shall not be construed to permit an agency to make information available only in an electronic format nor shall they be construed to permit access to records held by the Department of Motor Vehicles that are otherwise restricted under the PRA.
- 5) Specifies that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

EXISTING LAW

- 1) Defines "public record" to include any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

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- 2) Requires public records to be open to inspection at all times during the office hours of a state or local agency and affords every person the right to inspect any public record, except as specifically provided.
- 3) Requires a public agency to justify withholding a public record by demonstrating that the record in question is exempt under express provisions of the PRA *or* that on the facts of a particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosing the record.
- 4) Requires a court, when it finds that a public official's decision not to disclose a public record is unjustified, to order the public official to make the record public.

FISCAL EFFECT: Unknown.

COMMENTS:

1. Need for the bill. The PRA permits a state or local agency to provide computer records in any format determined by the agency. This bill would require an agency to provide computer records in any format that it currently uses. According to the sponsor, the California Newspaper Publishers Association, this bill is intended to ensure quicker, more useful access to public records. The sponsor also notes that the bill seeks to provide reasonable guidelines for public access to electronically held records. The sponsor claims that this bill will balance the ability of private citizens to access public records with the discretion of public agencies to deny such records requests.

2. Reverse balancing test. The PRA generally establishes broad guidelines about the types of documents that may not be subject to public disclosure and affords state agencies discretion to apply a balancing test when determining whether or not to release a record. In applying the test, the agency must determine that the "public interest served by not making the record public clearly outweighs the public interest served by disclosing the record." This bill attempts to apply a reverse balancing test by giving courts and state agencies the authority to disclose any public record if the agency or superior court determines that, depending on the facts of a particular case, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record. The reverse balancing test disclosure would apply even when a court finds that the record is exempted from disclosure under the PRA.

3. Opposition. Opponents argue that the bill subjects confidential records to a "vague" balancing test. Opponents claim that the test undermines key provisions of the PRA which protects proprietary information such as applications for the issuance of securities or of financial institutions, including banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.



4. County concerns. The California State Association of Counties (CSAC) is also concerned that the bill would permit a court or other agency, despite any other exemption in the PRA, to order disclosure of a record it found to pass the reverse balancing test. CSAC is concerned that this provision would permit the release of specifically exempted information such as preliminary drafts or notes, geological and utility systems data, or complaint or investigation of records of local law enforcement agencies.

5. Policy consideration. The committee may wish to consider whether the courts should have the discretion, even when they find that a record is generally exempt from disclosure under the PRA, to require disclosure of that record if meets the reverse balancing test. The committee may also wish to consider whether the reverse balancing test gives courts and agencies too much discretionary authority to release records that are *specifically* prohibited from release under the PRA or any other provision of law.

REGISTERED SUPPORT / OPPOSITION:

Support

California Newspaper Publishers Association
First Amendment Coalition

Opposition

Association of California Insurance Companies
Personal Insurance Federation of California

Analysis Prepared by: Richard Rios / G. O. / (916) 319-2531



AB 2799
Questions and Answers
As of August 23, 2000

Q - What does this bill do?

A - This bill now has two parts:

1. It states that no public agency shall obstruct or delay the inspection or copying of public records.
2. It requires a public agency to make copies of public information available electronically (on a diskette, usually in Word or WordPerfect format, etc).

Q - Is there still opposition?

A - Only one is registered. Amendments were adopted that removed almost all the opposition. Opponents were concerned that this requirement would prove very costly to public agencies. To help alleviate their concerns, I amended the bill to address the costs incurred by public agencies in providing copies of electronic records under circumstances now described in my bill.

Consequently, the Association of Chief Clerks and Elections Officials, the County of Los Angeles, and the State Association of Sheriffs have removed their opposition.

Orange County remains opposed; however, initially, they were opposed to the very issue, which the recent amendments rectified. In good faith, I adopted amendments to address their concerns. However, they refused to remove their opposition and stated that it is unnecessary to provide public records in electronic form. I regard their position as a barrier to improving access to public records and remain miffed by their breach in negotiations.

Q - What do the Senate Amendments do exactly?

A - The amendments address several issues:

1. These amendments would specify what costs the requestor will be responsible for. If the record duplicated is an electronic record in a format used by the agency to make its own copies, the cost of duplication would be the cost of producing a copy in an electronic



format. For example, if the request means simply downloading a document on a disk, the cost of the duplication would only be the cost of the disk

However, if the public agency would be required to produce a copy of an electronic record outside of its regularly scheduled intervals (for instance, length quarterly reports) or the request would require extensive data compilation, extraction, or programming, the requestor would be required to pay for the costs of producing the record, including the cost to construct a record and any other computer services necessary to produce the record.

These costs will vary county to county and depending on the record requested.

2. The amendments clarify that agencies are not required to release a record in electronic form if its release jeopardizes the security or integrity of the original record or any software in which it is maintained.

Q - Why add the word "delay?"

A - When the law was changed several years ago, the word "delay" was removed and "obstruct" replaced it. This was not the intent of the legislature.

Public agencies have the perception that current law allows them up to 10- days to produce any record or document, once request by the public. Although the 10-day grace period does exist, it is meant for specific purposes. Public agencies are given the 10 days to acquire information if they believe the record requested is exempt from disclosure and they need time to confer with their legal counsel. The 10-day period was not intended to allow state agencies to stall any document for any reason.

This law will require a public agency to produce the document as soon as feasibly possible, unless the agency genuinely believes there is a legal issue.



Q - Will public agencies need to give provide records in any electronic format the requestor asks for?

A - No, AB 2799 will not require agencies to make costly data conversions from one format to another. The bill only states that agencies provide information to the public in a form in which that information is already available and used in everyday business.

Q – How does this version of the bill differ from the introduced version?

A – I removed the provision which would have created the “reverse balancing test.” This test would have given citizens the opportunity to challenge for the release of a record that a state agency has currently made exempt under the California Records Act, if he or she can prove that the release of the document serves best the public interest. This challenge can be made with either the public agency or, if necessary, in a court of law.

Now, this bill is almost identical to the bill that passed out of this committee last year.

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Substantive

AMENDMENTS TO ASSEMBLY BILL NO. 2799

Amendment 1

On page 5, line 9, strike out "(a)"

Amendment 2

On page 5, strike out lines 16 to 23, inclusive

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4/13/95 AB 2799 (Shelley)
Meeting Attendees

NAME	Representing	Ph / FAX
Ryan Spencer	Assem. Kevin Shelley	319-2380 / 319-2240
John Campbell	AIA	4724584 / 441-4925
Mike Dillon	Calif. Home Sentences Agency	448-2196
Dwight Steenbakken	League of Cities	658-8211
Ruthann Ziegler	Kronick, Moskowitz / CASA	321-4500 321-4555
Jeffrey Leacox	Livingston & Matthews	442-1111 / 442-1917
BARBARA WHEELER	Civil Justice Assn OF CALIF	916/443-4900 / 430-8211
Amy Brown	League of Cities	658-8279
TERRY FRANCKE	Cal. 1st Amendment Coalition	974-8888
Phyllis Marshall	PTFC	442-6646
Jim Grant	CNPA	288-6013 / 288-6014
Rubin Lopez	CSAC	327-7500 x45
Elizabeth Howard	CSAC	327-7500 x537
JEFF FULLER	NCIC	(916) 440-1106
MIKE MARTINEZ	MANATT, PHILIPS & PHILLIPS, LLP	916-552-2300

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WINE INSTITUTE

APR 18 2000

April 17, 2000

1127 Eleventh Street
Suite 900
Sacramento
California 95814
(916) 441-6974
Fax (916) 441-7890

The Honorable Herb Wesson
Chair, Assembly Governmental Organization Committee
Room 2179, State Capitol

Herb
Dear Mr. Chair:

Representing the largest, oldest trade association for all California wineries, the Wine Institute must register its strong opposition to AB 2799 (Shelley) regarding public disclosure of private documents.

This measure would mandate a governmental agency or superior court to disclose any documents if on a case-by-case basis "the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record." Essentially, AB 2799 reverses the interests considered in the balancing test by emphasizing the public interest in disclosure over assuring First Amendment protections.

The bill's Section 6255 is particularly problematic because:

- (1) It flips the balancing test, thus jeopardizing such highly sensitive information like trade secrets, marketing data, and attorney-client confidential communications;
- (2) It sets the stage to harass individuals and organizations with threatened litigation;
- (3) It disregards that a judicial remedy already exists if an agency is improperly stonewalling; e.g., Government Code Sections 6258 and 6659;
- (4) It grants agencies more discretion to determine competing interests possibly in a bureaucratic or headline-grabbing manner; and
- (5) It undermines the public interest by discouraging parties from voluntarily providing proprietary information.

The bill's sponsor, California Newspaper Publishers Association, has yet to make a case that there are documented horror stories to reverse current law's well crafted balancing test. AB 2799 treads on individuals' and businesses' right to privacy. The Wine Institute joins the Civil Justice Association of California by urging you to vote "no" on AB 2799.

Respectfully,

Mike

Mike Falasco
Legislative Representative

cc: Assemblymember Kevin Shelley
Assembly G.O. Committee members

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CIVIL JUSTICE
MEMORANDUM ASSOCIATION OF CALIFORNIA



APR 18 2000

April 18, 2000

TO: Hon. Herb Wesson, Chair
Hon. Brett Granlund, Vice Chair
Members, Assembly Governmental Organization Committee

FROM: Barbara M. Wheeler, Vice President-Legislation
Jeff Sievers, Legislative Advocate
John H. Sullivan, President

RE: **AB 2799 (Shelley)**
Status: Assembly GO Committee
Hearing Date: April 24, 2000

CJAC POSITION: OPPOSE

The Civil Justice Association of California (CJAC) regrets to advise that it has adopted an oppose position on AB 2799 (Shelley).

AB 2799 would allow a state agency or a superior court to order disclosure of a record, already made exempt from disclosure under the express and detailed provisions of the California Public Records Act (Government Code Section 6254), if the agency or the court determines that "the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record."

We are concerned that if this bill becomes law, the public's trust in the civil justice system and government in general will erode as citizens lose the relative certainty that information they provide to a state or local agency on the assurance of confidentiality will remain confidential. Additionally, enactment of the bill would effectively eliminate the safeguards which exist for protecting both confidential and proprietary information by allowing any individual, regardless of motivation, to use the civil justice system to invade personal privacy and reveal confidential information or at least harass people and organizations with litigation.

After meeting with the sponsors of the bill (the California Newspaper Publishers' Association) and reading the committee analysis of AB 2799, we do not see any backup evidence of this bill's need. The sponsor states this bill is necessary to balance the ability of private citizens to obtain information in government records with the ability of public agencies to maintain confidentiality. However, a thorough reading of the lengthy Public Records Act exemption section (Government

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Code Section 6254) reveals the Legislature's deliberate crafting of the very balancing the sponsors say is needed. For example:

1. Gov. Code Sec. 6254 (c): personnel, medical, or similar files, the disclosure of which would constitute an *unwarranted* invasion of personal privacy.
2. Gov. Code Sec. 6254 (f): ...*unless* the disclosure would endanger the safety of a witness or other person.

The court's current role under the Public Records Act is to determine whether the information being kept from public view falls into one of the categories detailed in Section 6254. There is no reason to require judges to undertake a broad balancing review to determine whether to override express privacy protections enacted by the Legislature. Why should a company be forced into court to establish the value of its "geological and geophysical data, plant production data...or market or crop reports" (Gov. Code Sec. 6254 (e))? Why should Native Americans be forced to go into court to fight challenges to the secrecy of the records of their graves, cemeteries, and sacred places (Gov. Code Sec. 6254 (r))?

Although primarily a criminal law consideration, we must point out that AB 2799's threat to the security of information obtained in confidence would seriously deter investigations which benefit the public. Why would crime victims come forward to testify or further assist law enforcement agencies if they cannot be guaranteed that information they give to the law enforcement agency will not be disclosed to the public?

We believe California's civil justice system -- and the public's already eroding trust in it -- would be substantially harmed by the enactment of AB 2799. The amendments to the Public Records Act provided in AB 2799 would create undue confusion and muddy the balance the Legislature has achieved in protecting competing public interests. The amendments appear even to allow any state agency to independently override the Public Records Act's privacy protections without going near a courtroom! (Sec. 6255).

We urge your no vote on this measure.

cc: Assemblyman Kevin Shelley
Senator Debra Bowen
Richard Rios, Assembly Governmental Organization
Michael Peterson, Assembly Republican Caucus
Ann Richardson, Deputy Legislative Secretary, Governor's Office



APR - 7 2000



GARY PENROD, SHERIFF

April 3, 2000

The Honorable Kevin Shelley
Assembly Member
Capitol Building #3160
Sacramento, CA 95814

Position: **OPPOSE Assembly Bill 2799** Public Records: Disclosure

Dear Assembly Member Shelley:

The San Bernardino County Sheriff's Department must oppose Assembly Bill 2799 as it would permit a court, despite any other exemption within the Public Records Act, to force the disclosure of an otherwise non-disclosable record if the facts of a particular case show the public interest served by disclosing the information outweighs the public interest served by not disclosing the record. We expect to see public agencies defending victims who have a right under the current law not to have information disclosed about themselves from request by the media, particularly the print media who seek to obtain large volumes of information at times, some of which contains non-disclosable information which requires extensive redacting. If the media could make an appropriate argument, the agency would be prevented from redacting much of this information.

We believe the current section 6253 of the Government Code is functioning well with both sides working from an even playing field and for this reason, we must oppose this measure. I have assigned my Legislative Liaison, Lieutenant Paul Curry, to work with you and your staff to try to resolve this issue. Please feel free to contact Lieutenant Curry at 909.387.0632.

Sincerely,

Gary S. Penrod, Sheriff

cc: Herb Wesson, Chair
Governmental Organization

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California State Sheriffs' Association

Organization Founded by the Sheriffs in 1894

April 7, 2000

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Phillips
Executive Director

The Honorable Kevin Shelley
Member of the Assembly
Room 3160, State Capitol Building
Sacramento, CA 95814

RE: AB 2799 (Shelley) - Oppose unless amended

Dear Assembly Member Shelley:

The California State on behalf of the California State Sheriffs' Association (CSSA), I regret to inform you that we must oppose your AB 2799, relative to public records.

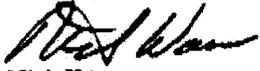
As you know, your AB 2799 contains provisions similar to those in last year's AB 1099 relating to the release of documents in an electronic format. Although we did not oppose AB 1099, we respectfully suggest that AB 2799 makes changes to existing law that are unnecessary and are likely to cause more problems than they solve.

Firstly, the "reverse balancing" provision under Government Code section 6255(b) appears to permit a court—despite any other exemption in the Public Records Act—to order disclosure of records "if, on the facts of the particular case, the public interested served by disclosing the record outweighs the public interest served by not disclosing the record." It would appear, for example, investigation records of local law enforcement agencies, and any other records currently exempted, could be ordered to be released. We are concerned that this provision could jeopardize ongoing investigations. We would suggest that this section be amended to exempt records of an ongoing investigation by law enforcement.

Secondly, we are concerned with the working in section 6253(d), which says that, "Nothing in this chapter shall be construed to delay or obstruct the inspection of copying of public records." Frankly, while reasonable parties may be able to work around this provision, it is ripe for abuse and will likely result in far more contests in this area. We suggest that this amendment be removed or clarified.

We stand ready to work with you and your staff on identifying the exact problem you seek to address by these amendments and to help you amend the bill so that we may remove our opposition. Thank you.

Sincerely,


Nick Warner
Legislative Representative

cc: The Honorable Herb Wesson, Chair, Assembly Governmental Organization Committee

1450 Halyard Drive, Suite 6 * West Sacramento, California 95691-5001
P O Box 980790 * West Sacramento, California 95798-0790
Telephone 916/375-8000 * Fax 916/375-8017

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CALIFORNIA
MANUFACTURERS
& TECHNOLOGY
ASSOCIATION

APR 18 2000

April 17, 2000

Assemblyman Herb Wesson, Chair
Assembly Governmental Organization Committee
Room 2179, State Capitol
Sacramento, CA 95814

Subject: Assembly Bill 2799 (Shelley)
Position: OPPOSED
Hearing: April 24, 2000 Assembly Governmental Organization Committee

Dear Assemblyman Shelley,

California Manufacturers and Technology Association OPPOSES AB 2799.

Current law provides that public records may be kept confidential if there is a specific exemption in the law, or if the agency determines that the public interest served by not making the record public clearly outweighs the public interest served by disclosing the record.

This bill would create a 'reverse' balancing test, allowing exempt information to be made public if the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.

CMTA opposes the application of this reverse balancing test to public records exempt under the law. Agencies, companies and individuals interested in protecting proprietary data would be subject to litigation to protect confidentiality rights now specifically protected by law.

In addition, CMTA opposes the application of the reverse balancing test to public records not exempt under the law. Existing law provides that agencies must weigh the public interest in not disclosing against the public interest in disclosing, the greater burden being placed on the agency to show that confidentiality interests "clearly outweigh" the disclosure interests. This is the appropriate standard to apply for public records.

Respectfully,

Dorothy Rothrock
Policy Director, Corporate Counsel

cc: Members of the Assembly Governmental Organization Committee
Assemblyman Kevin Shelley
Consultants, Assembly Governmental Organization Committee
Michael Petersen, Assembly Republican Minority

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ANALYSIS OF ORIGINAL BILL

APR - 6 2000

Franchise Tax Board

Author: Shelley

Analyst: Darrine Distefano

Bill Number: AB 2799

Related Bills: See Legislative History

Telephone: 845-6458

Introduced Date: 02-28-2000

Attorney: Patrick Kusiak

Sponsor: _____

SUBJECT: Public Record Disclosure/Make Available in Electronic Format if Available & When Requested

SUMMARY

This bill would require any state or local agency that has public information in an electronic format to make that information available to the public in an electronic format in which the state agency holds the information. The requester would pay direct costs of duplicating the public record in an electronic format.

This bill would further require a public record to be disclosed if, on the facts of the particular case, the public interest is served by disclosing the record.

EFFECTIVE DATE

This bill would be effective on January 1, 2001, and operative for all public record act requests made after that date.

LEGISLATIVE HISTORY

SB 1065 (99/00, vetoed) would have required any state or local agency that has public information in an electronic format to make that information available to the public in an electronic format.

Ab 179 (97/98, vetoed) would have required any state or local agency that has public information in an electronic format to make the information available electronically.

AB 142 (95/96), which failed passage in the Assembly Committee of Governmental Organization, would have required any agency that has public information in an electronic format to make the information available in an electronic format.

SPECIFIC FINDINGS

Under current state law, any person may obtain a copy of any identifiable public record, except records exempt from disclosure, upon payment of any fees (statutory or direct costs of duplication). If the record is stored as computer data, the agency is authorized to determine the format in which the computer data are provided to a requester.

This bill would require any agency that has public information in an electronic format to provide that information in any electronic format in which it holds that information. The agency also shall provide a copy of any electronic record in any format requested if the agency uses the requested format to make copies for itself or other agencies.

Board Position:	Department Director	Date
<input type="checkbox"/> S <input type="checkbox"/> SA <input type="checkbox"/> N	<input type="checkbox"/> NA <input type="checkbox"/> O <input type="checkbox"/> OUA	<input type="checkbox"/> NP <input type="checkbox"/> NAR <input checked="" type="checkbox"/> PENDING
	<i>A. Distefano</i>	4/4/00

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This bill would provide that a public agency would not be required to reconstruct a report in an electronic format if the report were no longer available in an electronic format.

This bill would provide that direct costs of duplication include the costs related to duplicating the electronic record.

This bill would delete the existing provision authorizing an agency to determine the format in which computer data are provided.

This bill would provide for a balancing test weighing the public interest served by disclosure against the public interest served by not disclosing. This balancing test would be applied to determine whether an agency or superior court may disclose or order to be disclosed a record otherwise exempt from disclosure.

Implementation Considerations

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

FISCAL IMPACT

Departmental Costs

This bill would not significantly impact the department's costs since existing law allows, and this bill further specifies, that agencies can be reimbursed for direct costs of duplication.

Tax Revenue Discussion

This bill would not impact state income tax revenue.

BOARD POSITION

Pending.



APR 19 2000

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ASSOCIATION OF
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April 17, 2000

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fax (916) 441-6441
(916) 441-6400

Assembly Member Herb Wesson
Chair, Assembly Committee on Governmental Organization
State Capitol Building, Room 2179
Sacramento, CA 95814

1125 West Sixth Street
Suite 304
Los Angeles
California
90017
fax (213) 627-6106
(213) 627-3000

RE: **Oppose: AB 2799 (Shelley)**

Dear Assembly Member Wesson:

The California Association of Health Facilities (CAHF), a non-profit professional organization representing a majority of the state's licensed long-term health care facilities, has taken an oppose position on AB 2799 (Shelley).

P.O. Box 370
Irvine
California
92038
fax (760) 944-1049
(760) 944-1666

AB 2799 would allow a state agency or a superior court in California to order disclosure of a record, already made exempt from disclosure under the express and detailed provisions of the California Public Records Act (Government Code Section 6254), if the agency or the court determines that "the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record."

Roland G. Rapp
Chairman of the Board

The court's current role under the Public Records Act is to determine whether the information being kept from public view falls into one of the categories detailed in Section 6254. There is no reason to require judges to undertake a broad balancing review to determine whether to override express privacy protections enacted by the Legislature.

Richard Mendlen
Vice Chairman of the Board

Paul D. Tunnell
Secretary/Treasurer

CAHF is concerned that enactment of this legislation would effectively eliminate the safeguards which exist for protecting both confidential and proprietary information by allowing any individual, regardless of motivation, to use the civil justice system to invade personal privacy and reveal confidential information, and possibly harass organizations with litigation. The amendments to the Public Records Act provided in AB 2799 would create undue confusion and muddy the balance the Legislature has achieved in protecting competing public interests.

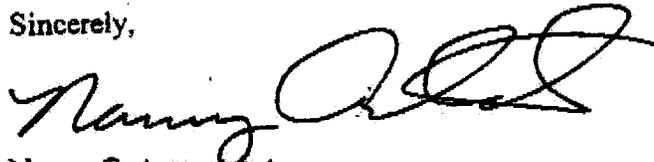
Terry L. Mundy
Immediate Past Chairman

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We urge your "No" vote on AB 2799 (Shelley) when it is heard in the Assembly Committee on Government Organization on April 24, 2000.

Sincerely,



Nancy C. Armentrout
Director of Legislative Affairs

cc: Members of the Assembly Committee on Government Organization
Assembly Member Kevin Shelley

(800) 666-1917

LEGISLATIVE INTENT SERVICE



California State Association of Counties

April 7, 2000



The Honorable Kevin Shelley
Member of the Assembly
Room 3160, State Capitol Building
Sacramento, CA 95814

1100 K Street
Suite 101
Sacramento
California
95814

RE: **AB 2799 (Shelley) – Oppose unless amended**
Set for hearing April 11, Assembly Governmental Organization Committee

Telephone
916.327.7500
Facsimile
916.441.5507

Dear Assembly Member Shelley:

The California State Association of Counties (CSAC) writes to indicate its position of oppose unless amended on AB 2799, your measure relating to public records.

As we indicated in our previous letter, CSAC has grave concerns about what we view as a serious erosion of protections afforded to non-disclosable information by the potentially broad application of Government Code section 6255(b). Although we understand that you are contemplating an amendment to this section to exclude records that are specifically prohibited from release, we must indicate our opposition in principle to the proposed "reverse balancing" provision. Even with the proposed amendment, there exists real apprehension that the "reverse balancing" provision may, at best, lead to confusion as to what materials is subject to disclosure under the Public Records Act and, at worst, result in release of information that was never intended to be subject to public disclosure.

Counties have consistently indicated their desire and willingness to fulfill their statutory obligations in regards to disclosing public records. We believe, however, that sections 6255 (a) and (b) introduce unnecessary confusion and place public agencies in an untenable position as they attempt to assess whether a record should be disclosed. In addition, we continue to solicit specific input from counties as to the practical application of all other changes contained in your measure.

We thank you for your willingness thus far to meet with and address local government concerns. However, to protect what we view as a critical protection in public records law, CSAC must take an oppose unless amended position. Our hope is that we can continue our discussions with you and your staff to resolve our concerns on this bill. Feel free to contact me at 916/327-7500, ext. 513, or Elizabeth Howard at 916-327-7500, ext. 537 to discuss this matter further. Thank you.

Sincerely,

Rubin R. Lopez
Legislative Representative

cc: The Honorable Herb Wesson, Chair, Assembly Governmental Organization Committee
Members and Consultants, Assembly Governmental Organization Committee

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League of California Cities

www.cacities.org



Better Cities - A Better Life

April 6, 2000

Assembly Member Shelley
State Capitol, Room 3160
Sacramento, CA 95814

RE: AB 2799 (Shelley). Public Records: disclosure.
Notice of Opposition, unless amended

Dear Assembly Member Shelley:

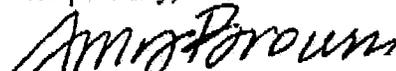
The League of California Cities opposes AB 2799, which would provide that nothing in the act shall be construed to permit an agency to delay or obstruct the inspection or copying of public records and would require that the notification of denial of any request for records justifying its withholding to be in writing.

We oppose AB 2799 for the following reasons: First, it amends Section 6255 of the Government Code to require an agency to respond to a disclosure request in writing by demonstrating that the record in question is exempt under express provisions of this chapter. However, requests for disclosure are not required to be in writing. Amendments should be made to require that all disclosure requests be in writing and should precede any litigation against the agency denying the request.

In addition, Section 3. 6255. (b) states that the superior court is not bound by the statutes set forth under 6254, which outlines all public disclosure exemptions. In other words, if an agency justifiably denies disclosing any material set forth in 6254, that decision may be overturned if the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record. Amendments should be made to eliminate this provision from the bill.

If the above amendments are made, the League will change its position from opposed, to neutral. If you have questions about our position, please feel free to call me at 658-8279.

Respectfully,


Amy Brown
Legislative Representative

cc: Members, Senate Public Employment and Retirement Committee

Conference Registration Office
Post Office Box 1519
Lafayette, CA 94549
925.283.2113
FAX 925.283.7833

Headquarters
1400 K Street
Sacramento, CA 95814
916.658.8200
FAX 916.658.8240

Southern California Office
602 East Huntington Dr., Suite C
Monrovia, CA 91016
626.305.12
FAX 626.305.12

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APR - 6 2000

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(916) 441-1733 • FAX (916) 441-4053 • www.cmua.org

HARRY JORDAN, Executive Director

April 4, 2000

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LUCINA MOSES
Anaheim

Honorable Kevin Shelley
The Assembly
State Capitol
Sacramento, CA 95814

RE: OPPOSITION TO AB 2799 CONCERNING PUBLIC RECORDS

Dear Assembly Member Shelley:

The California Municipal Utilities Association opposes your AB 2799 which is scheduled to be heard in Assembly Governmental Organization Committee. April 10.

Our principle concern is with Section 2 of the bill, proposed Government Code Section 6253.2, which appears to require a public agency to provide information in any electronic format in which it holds that information. This could result in being required to disclose proprietary information or in providing far more information than is actually requested, as when the requested information is contained within a relational data base such as a geographic information system.

We would appreciate an opportunity to discuss our concerns with you with the goal of resolving our particular concern and removing our opposition. Thanks for considering our views.

Sincerely,

Stuart E. Wilson
Assistant Executive Director

cc: Members, Assembly Committee on Governmental Organization.

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Personal Insurance Federation of California

California's Personal Lines Trade Association
REPRESENTING THE LEADING AUTOMOBILE AND HOMEOWNERS INSURERS

MEMORANDUM

Date: April 6, 2000

To: Honorable Herb Wesson
Members of the Governmental Organization Committee

From: Dan C. Dunmoyer, President
Phyllis A. Marshall, Vice President of Legislative and Regulatory Affairs
G. Diane Colborn, Senior Legislative Advocate and Counsel

Re: AB 2799 (Shelley): Public Records: disclosure
Assembly Governmental Organization Committee: April 10, 2000
PIFC Position: Oppose

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& Regulatory Affairs
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Senior Legislative Advocate
& Counsel
Jerry Davies
Director of Communications

The Personal Insurance Federation of California (PIFC), representing insurers selling 40% of the personal lines insurance sold in California, including State Farm, Farmers, 21st Century, SAFECO, and Progressive Insurance Companies opposes AB 2799 by Assemblyman Shelley.

AB 2799 would require a state agency or the superior court of California to disclose a record, made exempt under the express provisions of the California Public Records Act, if the state agency or the superior court determines that, "the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record". This provision effectively eliminates the safeguards which exist for protecting both confidential and proprietary information.

This change in the law will have a substantial and profound adverse effect on the manner in which entities interact with state agencies. Entities would be reluctant to share confidential and/or proprietary information with state agencies which they would otherwise disclose. This will have a crippling effect on the ability of state agencies to carry out their administrative functions. This change would, in effect, substantially diminish the role that state agencies play in regulating entities and would buttress the role of the judiciary. Such a change would spur litigation and would place a strain on the judiciary which would be accessed on a regular basis to issue protective orders as a means of safeguarding against the release of confidential and proprietary information. The effect of this change is to shift oversight authority from state agencies to the judiciary.

Under California's Public Records Act ("PRA"), Government Code Sections 6250 et. seq., a state agency must disclose any "public record" in its possession to any person unless an exemption applies. Government Code Section 6252 (d) defines "public records" to include "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics". While the scope of records covered by the PRA is fairly broad, the statutory scheme includes several specific exemptions. Government Code Section 6254 provides that "nothing in this chapter shall be construed to require disclosure of records that are any of the following" and delineates twenty-six exemptions. These exemptions were designed to protect the privacy of persons who have disclosed confidential information to the government, to preserve state secrets, agency deliberative processes and confidential sources of information.

The safeguards provided in Sections 6254 (a) through (d) of particular importance to PIFC and its member companies are:

- (a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business. . . .
- (b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6. . . .
- (c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.
- (d) Contained in or related to:
 - (1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.
 - (2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referenced in paragraph (1).
 - (3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).
 - (4) Information received in confidence by any state agency referenced in paragraph (1)."

AB 2799 would eliminate these safeguards and would require the disclosure of confidential information. It should be noted that one of the top legislative public policy debates this year centers around the issue of privacy. This legislature is considering proposals to enhance privacy protections in both the private and public sector. This bill contravenes those discussions by requiring the disclosure of confidential information by a state agency or the superior court. As noted above, these are but a few of the list of extensive exemptions provided for in Section 6254. The other exemptions range from law enforcement records including victim information, hospital and medical information, local taxpayer information, etc. In addition, subsection (k) prohibits disclosure of information which is exempted or prohibited pursuant to federal or state



AB 2799 (Shelley)
Page 3

law, including, but not limited to, provisions of the Evidence Code relating to privilege. AB 2799 would require the release of this information, which could have the effect of subjecting entities to liability, based on privacy rights.

The business of insurance is regulated by the Department of Insurance Commissioner. Effective regulation is dependent on the free flow of information from insurers to the Commissioner whether that information be confidential, proprietary or damaging. State agencies, particularly those that are charged with regulating a particular industry, must have the necessary tools to acquire information. The exemptions in Section 6254 were designed to do just that – allow for the free flow of information that is necessary for that state agency to carry out its public purpose. AB 2799 would eliminate this free flow of information and instead would require insurers to access the courts in order to seek protective orders every time information is requested from the Commissioner, be that information to assess a complaint, information pertaining to a market conduct examination or any other information which might otherwise be released into the public domain, thus subjecting insurers to additional liabilities.

AB 2799 would have the effect of creating a "pre-litigation" adversarial atmosphere on interactions between the Commissioner and insurers. This would substantially hinder the administrative process and would have a damaging effect on the resolution of administrative processes. AB 2799 has the effect of shifting administrative and/or regulatory enforcement to class action exposure.

In conclusion, entities that are regulated are required to provide regulators and state agencies with information that is proprietary and adverse to the company's interest. This allows state agencies to carry out their administrative and executive functions. A regulated industry's willingness to continue to provide this kind of information depends on the promise of confidentiality provided by Section 6254. AB 2799 removes that assurance of confidence and thus diminishes the ability of state agencies to carry out their purpose.

For these reasons we urge your "NO" vote on AB 2799, by Assemblyman Shelley. If you have any questions regarding our opposition, please feel free to contact Phyllis Marshall at (916) 442-6646.

cc:
Honorable Kevin Shelley
Ann Richardson, Deputy Legislative Secretary, Governor's Office
Richard Rios, Assembly Governmental Organization
Michael Peterson, Assembly Republican Caucus

4 AB 2799 a gov

LEGISLATIVE INTENT SERVICE (800) 666-1917

LEGISLATIVE INTENT SERVICE



California State Association of Counties

April 3, 2000

APR - 4 2000



The Honorable Kevin Shelley
Member of the Assembly
Room 3160, State Capitol Building
Sacramento, CA 95814

1100 K Street
Suite 101
Sacramento
California
95814

RE: **AB 2799 (Shelley) – Concerns**
Set for hearing April 11, Assembly Governmental Organization Committee

telephone
916.327.7500
facsimile
916.441.5507

Dear Assembly Member Shelley:

The California State Association of Counties (CSAC) writes to express its concerns regarding AB 2799, your measure relating to public records.

As you recall, we were very appreciative that you worked with us last year in discussions on AB 1099 to accommodate the concerns of local governments regarding expanded accessibility to public records in an electronic format. Our review of AB 2799, which contains provisions similar to those in AB 1099 relating to the release of documents in an electronic format, revealed potential new concerns with two specific provisions that may represent a marked shift in existing public record law.

Of greatest concern is the "reverse balancing" provision under Government Code section 6255(b). As we understand this provision, it would permit a court—despite any other exemption in the Public Records Act—to order disclosure of records "if, on the facts of the particular case, the public interested served by disclosing the record outweighs the public interest served by not disclosing the record." It would appear, for example, that preliminary drafts or notes, geological and utility systems data, complaint or investigation records of local law enforcement agencies, and any other records currently exempted could be ordered to be released.

A second area of concern relates to the proposed reinsertion of the word "delay" under section 6253(d) so that the provision reads: "Nothing in this chapter shall be construed to *delay or* obstruct the inspection of copying of public records." We currently are soliciting county input on this proposed revision to determine the significance of the amendment.

We would welcome the opportunity to work with you on addressing concerns of local government on AB 2099. As soon as we receive specific input on the provisions highlighted above, we will contact you. In the meantime, please do not hesitate to contact me at 916/327-7500, ext. 513, or Elizabeth Howard at 916-327-7500, ext. 537 to discuss this matter further. Thank you.

Sincerely,

Rubin R. Lopez
Legislative Representative

cc: The Honorable Herb Wesson, Chair, Assembly Governmental Organization Committee
Members and Consultants, Assembly Governmental Organization Committee

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Association of California
Insurance Companies
1121 L Street, Suite 510
Sacramento, CA 95814-3926
Tel. (916) 442-4581
Fax. (916) 444-3872
e-mail: acic@acic-1.org

April 4, 2000

The Honorable Herb Wesson, Chair
Assembly Governmental Organization Committee
California State Capitol, Room 2179
Sacramento, CA 95814

Re: AB 2799 (Shelley, as introduced) Public records: disclosure
ACIC Position: Oppose

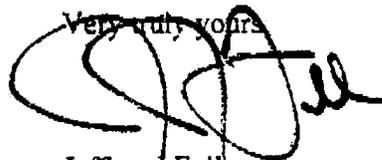
Dear Assemblyman Wesson:

The Association of California Insurance Companies (ACIC) **opposes** AB 2799 which is set to be heard in the Assembly Governmental Organization on **Monday, April 10, 2000**.

AB 2799 would essentially vitiate the protection of confidential records provided by the exemptions of particular records specified in Government Code §6254 of the Public Records Act by subjecting such records to a vague balancing test involving the "public interest." Of particular concern to insurers is the exemption stated in Government Code §6254(d)(1)-(4) which protects the confidentiality of information submitted by insurance companies to the Department of Insurance for regulatory purposes. This exemption is essential to insurers if the department is to assure protection of proprietary information submitted by individual companies. Enactment of AB 2799 could lead to the wholesale diminution of confidentiality protections afforded under current law by possibly disrupting the free flow of information to the department.

The State of California, through enactment of §6254, has established as a matter of public policy that certain types of information should be exempt from the disclosure requirements of the Public Records Act. There is no need to change that determination.

The ACIC respectfully requests your "NO" vote on AB 2799.

Very truly yours,


Jeffrey J. Fuller
Vice President & General Counsel

cc: Assemblyman Kevin Shelley, Author
Richard Rios, Consultant, Assembly G.O. Committee



APR - 5 2000



CALIFORNIA ASSOCIATION of SANITATION AGENCIES

925 L Street, Suite 1400 Sacramento, CA 95814

TEL: (916) 446-0388 - FAX: (916) 448-4808

April 5, 2000

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Executive Director &
Lobbyist

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esapi@emsresources.com

The Honorable Kevin Shelley
State Capitol, Room 3160
Sacramento, CA 95014

SUBJECT: AB 2799 (SHELLEY) RELATING TO THE PUBLIC RECORDS ACT—OPPOSE

Dear Assembly Member Shelley:

On behalf of the California Association of Sanitation Agencies (CASA), I regret to inform you that we must oppose your AB 2799, which would allow a court to order disclosure of documents without regard to whether the documents are protected from disclosure by a privilege.

CASA understands the need to ensure that the public has timely access to public documents. However, not every document produced by a public agency is suitable for disclosure. Current law recognizes that there are valid reasons to withhold documents, such as employee privacy, attorney-client privilege or deliberative process privilege. AB 2799 would allow a court to override these considerations and order disclosure. This would effectively nullify the public entity's right to claim these privileges. Moreover, because the payment of attorney's fees is mandatory under the Public Records Act, a public entity would be obligated to pay a plaintiff's attorney's fees even where a record was properly withheld if the judge decides to override that decision pursuant to the bill.

For these reasons, we must oppose your AB 2799. Thank you for your consideration of our concerns.

Sincerely,

Roberta L. Larson

LEGISLATIVE INTENT SERVICE (800) 666-1917



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CELESTE PHILLIPS*
SETH D. BERLIN
JAY WARD BROWN
*RESIDENT AND ADMITTED IN CALIFORNIA ONLY

April 7, 2000

Honorable Kevin Shelley
California State Assembly
State Capitol, Room 3160
Sacramento, CA 95814

Re: AB 2799

Dear Assembly Member Shelley:

This firm serves as First Amendment counsel to The Orange County Register. I write to express The Register's enthusiastic support for AB 2799. Although AB 2799 contains a number of worthy provisions, this letter specifically addresses one portion of the legislation that may not receive the attention that it deserves.

Specifically, AB 2799 would insert into Gov't Code subsection 6253(d) the words "delay or." The effect of this amendment would be to restore a term to subsection (d) that was previously deleted when the term "obstruct" was inserted in place of the word "delay." Although the proposed amendment may appear only technical and inconsequential, it is not.

The Register, like other metropolitan and community newspapers in California, routinely relies on the California Public Records Act (CPRA) to obtain access to public records that are essential to enable it to inform its readers regarding the operations of government agencies and the conduct of government officials. Too often, public agencies to which CPRA requests are addressed search for technicalities in the statute to delay the release of records that may raise questions regarding the propriety or efficacy of agency decisions and may embarrass agency officials. These agencies know full well that, as one court has stated, "news delayed is often news denied," and that by delaying the release of potentially controversial records, they may deny a news organization information that is vital to time-sensitive reporting.

For example, when The Register investigated and reported on the abuses at the fertility clinic at the University of California-Irvine - reporting that earned it journalism's most distinguished award, the Pulitzer Prize, and prompted reform legislation in California and

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LEVINE SULLIVAN & KOCH, L.L.P.

Honorable Kevin Shelley
April 10, 2000
Page 2

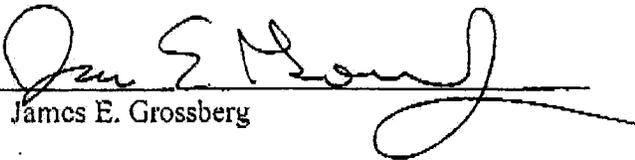
elsewhere – The Register utilized the CPRA to obtain public records that were critical to The Register's reporting. Yet, time and time again, the University of California ignored the CPRA's mandate that public records be open to inspection "at all times" and that, even if the agency has a basis on which to question whether records are exempt from disclosure under applicable law, the agency determine within 10 days whether the records are in fact exempt. Rather, The Register's CPRA requests were typically met with months of delay, even where the University readily conceded that the records were not exempt from disclosure.

The provision of AB 2799 described above would return to the CPRA language that specifically instructs that nothing in the Act shall be utilized as an excuse to delay the inspection of public records as required by law. Although The Register is not so naïve as to believe that this amendment will solve the serious problem of administrative delay in responding to CPRA requests, it will at least remove any doubt that the prior substitution of "obstruct" for "delay" in subsection 6253(d) was not intended to weaken the CPRA's mandate that agencies act in good faith to promptly disclose public records requested under the Act.

Thank you for your consideration of this letter and for your introduction of AB 2799.

Yours sincerely, - -

LEVINE SULLIVAN & KOCH, L.L.P.

By 
James E. Grossberg

(800) 666-1917

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Computerized records bill falls one vote short in committee

Monday, April 24, 2000
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URL: <http://www.sfgate.com/cgi-bin/article.cgi?file=/news/archive/2000/04/24/state1955EDT0209.DTL>

(04-24) 16:55 PDT SACRAMENTO (AP) -- A bill to make it easier for reporters and the public to obtain computerized government records was rejected by an Assembly committee.

The bill, similar to measures vetoed by two governors, received a 7-3 vote Monday, one vote short of the majority needed in the 15-member Governmental Organization Committee.

However, the author, Assemblyman Kevin Shelley, D-San Francisco, asked for a second vote at a future committee meeting.

The state Public Records Act requires state and local government agencies to provide the public with copies of its records. The law lists 650 exceptions, including privacy and security matters.

The bill would require agencies that keep their records on computer to provide them in an electronic format when requested by a member of the public or a reporter.

Backers, including the California Newspaper Publishers Association and the First Amendment Coalition, say agencies now can give out information in a huge stack of paper.

Similar bills passed by the Legislature were vetoed in 1997 by former Gov. Pete Wilson and last year by Gov. Gray Davis. Wilson said agencies get hundreds of records requests every month and specifying the format would have increased costs.

In his veto message, Davis said the bill was "well intentioned" but many state computer systems could not comply with it without compromising confidential material.

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GARY PENROD, SHERIFF

May 3, 2000

The Honorable Kevin Shelley
Assembly Member
Capitol Building #3160
Sacramento, CA 95814

Position: **OPPOSE AS AMENDED** April 27, 2000 AB2799 Public Records: Disclosure

Dear Assembly Member Shelley:

Local law enforcement agencies receive public records requests on a daily basis from news gathering companies, special interests groups and business entities seeking large amounts of data from our files which will further their interests. Ordinary citizens rarely request information and when they do it is usually related to an event in which they were involved in or in their neighborhood. Special interest requests cause local law enforcement employees to spend countless hours researching electronic data bases to identify exempt files, and segregating those files which would invade the personal privacy of citizens.

The inflexible mandate to provide data in an electronic format fails to address the redaction problems created by providing the data in an electronic format. There currently does not exist a program, which would have the capability of extracting exempt records from releasable ones. Law enforcement records can and do at times contain sensitive business and personal data acquired during a criminal investigation. This data, if released, could have an adverse effect on the person or business who reported a crime. Businesses and citizens who do not wish to have their personal information made public (victims of sex crimes, child abuse, domestic violence etc.) by virtue of electronic data would be left with only one choice; to not report a crime.

This bill also fails to address the actual cost to the public of redacting an electronic database. In order to redact the database, each record must be reviewed individually. All of the costs for personnel to review the database are not currently reimbursable, only the cost of the copy of the file.

For these reasons we must continue to oppose this measure.

Sincerely,

Paul R. Curry
Paul R. Curry, Lieutenant
Legislative Liaison
909.387.0632

cc: Assembly Governmental Organization Committee

LEGISLATIVE INTENT SERVICE (800) 666-1917



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**CALIFORNIA ASSOCIATION OF
CLERKS AND ELECTION OFFICIALS**

MAY - 2 2000

April 27, 2000

The Honorable Kevin Shelley
State Capitol, Room 3160
Sacramento, CA 95814

Dear Assembly Member Shelley:

**Assembly Bill 2799 (Shelley) Public Records: Disclosure
OPPOSE, UNLESS AMENDED**

Regretfully, the Clerk of the Board of Supervisors Section of the California Association of Clerks and Election Officials opposes AB 2799, unless amended to remove language contained in Section 3 that would fundamentally change the "balancing test" regarding a public agency's decision to disclose or not to disclose a record.

The Public Records Act requires public agencies to make records available for inspection and copying at all times during normal business hours. The Act exempts certain public records from such disclosure. Further, the Act requires a public agency to justify its decision not to disclose a record that is not specifically exempted from disclosure by the Act, by showing that the public interest in not disclosing the record clearly outweighs the public interest in disclosing the record (the "balancing test").

Your bill would permit an agency to ignore even specific exemptions contained in the Act and disclose a record. It would also permit a superior court to order such a record disclosed and would, in effect shift the burden to a public agency in a court proceeding to show that a decision to withhold the record was justified. This would turn the Act's balancing test on its head. Moreover, it would eviscerate all of the privacy protections afforded to citizens currently contained in the Act.

Although we recognize that most records in the possession of clerks of the board of supervisors are public records and that they are clearly subject to disclosure, we are very concerned about the effects this bill would have on sensitive records that are appropriately exempted from disclosure by the Act and by other sections of state law. We believe that placing public agencies in the position of bearing a burden in court to justify nondisclosure of such records is nonsensical and is poor public policy.



The Honorable Kevin Shelley
April 27, 2000
Page 2

The bill would also add the word "delay" to subdivision (d) of Section 6253 (Section 1 of the bill). We question the necessity and advisability of adding this word since the current language of the Public Records Act is quite clear with respect to the time limit by which an agency must produce a record. Addition of this word merely creates confusion where currently none exists.

Again, we must oppose your bill unless amended to address our concerns. If you require any additional information, please call Legislative Committee member John McKibben at (213) 974-1405 or our legislative advocate Bill Siverling at (916) 444-7592.

Very truly yours,



Violet Varona-Lukens, Co-Chair
Clerks of the Board of Supervisors
Legislative Committee

c: Each Member and Consultant,
Assembly Committee on Governmental Organization
William Siverling, Legislative Advocate

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(800) 666-1917

LEGISLATIVE INTENT SERVICE





California Newspaper Publishers Association CNPA Services, Inc.

930 G Street, Sacramento, CA 95814-1811
Tel: (916) 288-6000 • Fax: (916) 288-6002

APR 26 2000

April 26, 2000

Honorable Herb Wesson
California State Assembly
State Capitol Room 2179
Sacramento, California 95814

RE: SPONSOR AB 2799, AS AMENDED

Dear Assembly member ^{Herb}Wesson:

The California Newspaper Publishers Association urges your support of Assembly Bill 2799 by Assemblyman Kevin Shelley, which was amended in the Assembly Governmental Organization Committee April 23, to remove a provision known as the "Reverse Balancing Test" that was opposed by a large number of diverse interests. AB 2799 is scheduled to be reheard by the Assembly Committee on Governmental Organization on Monday, April 21.

As amended, AB 2799 would:

- **Electronic access** – The bill would require state and local agencies to provide copies of accessible computerized public records in an electronic format. Current law provides virtually no direction on this issue either for the public or agencies governed by the Act. The law merely provides that "Computer data shall be provided in a form determined by the agency "(Govt. Code Sec. 6253 (b))." AB 2799 would provide reasonable rules for public access to electronically held records, including a provision that these records shall be made available in any form in which the agency holds the information.
- **"Delay"** -- AB 2799 would reinsert the word "delay" into Sec. 6253 (d), removed unwisely in 1996 legislation, to provide that, notwithstanding the timelines described in the Act, an agency shall not delay access to the inspection or copying of public records.

The recent amendment to AB 2799 removes most, if not all of the opposition. Last year, legislation with language identical to the electronic access provisions of AB 2799 was unanimously approved by the committee, although the bill was vetoed by the Governor

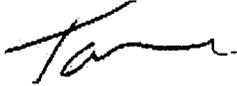
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Honorable Herb Wesson
California State Assembly
RE: SPONSOR AB 2799, AS AMENDED
April 26, 2000
Page 2

because of the uncertainty surrounding the Y2K problem. On behalf of the nearly 500 newspaper members of CNPA, please vote AYE on **AB 2799** when it comes before you.

Sincerely,



Thomas W. Newton
CNPA General Counsel

cc: Honorable Kevin Shelley
 Honorable Debra Bowen
 George Riggs, CNPA President, Publisher and CEO, Contra Costa Times
 Bill Niese, General Counsel, Times Mirror
 Jack Bates, CNPA Executive Director
 James Ewert, CNPA Legal Counsel
 Richard Rios, Senior Consultant to the Assembly Governmental Organization Committee

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LEGISLATIVE INTENT SERVICE





Association of California Insurance Companies
1121 L Street, Suite 510
Sacramento, CA 95814-3926
Tel. (916) 442-4581
Fax. (916) 444-3872
e-mail: acic@acic-1.org

May 3, 2000

The Honorable Kevin Shelley
California State Assembly
California State Capitol, Room 3160
Sacramento, CA 95814

**Re: AB 2799 (Shelley, as amended April 27, 2000) Public records: disclosure
ACIC Position: Opposition withdrawn**

Dear Assemblyman Shelley:

The Association of California Insurance Companies withdraws its opposition to AB 2799, as amended April 27, 2000, which is set to be heard in the Assembly Governmental Organization on Monday, May 8, 2000.

Very truly yours,

Jeffrey J. Fuller
Vice President & General Counsel

cc: Richard Rios, Consultant, Assembly G.O. Committee

LEGISLATIVE INTENT SERVICE (800) 666-1917



Personal Insurance Federation of California

California's Personal Lines Trade Association
REPRESENTING THE LEADING AUTOMOBILE AND HOMEOWNERS INSURERS

MEMORANDUM

Date: May 2, 2000

To: Honorable Herb Wesson, Chairman
Members of the Governmental Organization Committee

From: Dan C. Dunmoyer, President
Phyllis A. Marshall, Vice President of Legislative and Regulatory Affairs
G. Diane Colborn, Senior Legislative Advocate and Counsel

Re: AB 2799 (Shelley): Public Records: disclosure
Assembly Governmental Organization Committee: May 8, 2000
PIFIC Position: Neutral

The Personal Insurance Federation of California (PIFIC), representing insurers selling 40% of the personal lines insurance sold in California, including State Farm, Farmers, 21st Century, SAFECO, and Progressive Insurance Companies is neutral on AB 2799 by Assemblyman Shelley as a result of the April 27, 2000 amendments.

If you have any questions regarding our position, please feel free to contact Phyllis Marshall at (916) 442-8648.

CC:
Honorable Kevin Shelley
Ann Richardson, Deputy Legislative Secretary, Governor's Office
Richard Rios, Assembly Governmental Organization
Michael Peterson, Assembly Republican Caucus

4.AB 2799 a gov2

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California State Association of Counties



May 3, 2000

1100 K Street
Suite 101
Sacramento
California
95814
Telephone
916.327.7500
Facsimile
916.441.5507

The Honorable Kevin Shelley
Member of the Assembly
Room 3160, State Capitol Building
Sacramento, CA 95814

RE: **AB 2799 (Shelley) - REMOVAL OF OPPOSITION (As amended April 27, 2000)**
Set for hearing May 8, Assembly Governmental Organization Committee

Dear Assembly Member Shelley:

The California State Association of Counties (CSAC) has removed its opposition to AB 2799, your measure relating to public records, following amendments on April 27, 2000.

The removal of the "reverse balancing" provision under Government Code section 6255(b) addresses the majority of county concerns on this measure. We look forward to working with you and your staff to continue discussions on other provisions in AB 2799.

Thank you for your continued willingness to work with us. Please feel free to contact me at 916/327-7500, ext. 513, or Elizabeth Howard at 916-327-7500, ext. 537 at any time.

Sincerely,

Rubin R. Lopez
Legislative Representative

cc: The Honorable Herb Wesson, Chair, Assembly Governmental Organization Committee
Members and Consultants, Assembly Governmental Organization Committee

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CALIFORNIA CHAMBER of COMMERCE

April 26, 2000

The Honorable Kevin Shelley
California State Assembly
State Capitol, Room 3160
Sacramento, CA 95814

**SUBJECT: AB 2799 (SHELLEY) DISCLOSURE OF RECORDS
NEUTRAL WITH AMENDMENTS**

Kevin
Dear Assemblyman Shelley:

On behalf of the members of the California Chamber of Commerce I would like to thank you for agreeing to amend AB 2799 (Shelley) to remove the so-called "reverse presumption" language. Your agreement to strike lines 16 through 23 on page five; (Section 3, sub-section (b)) enables us to remove our opposition to the bill.

We remove our opposition to AB 2799 (Shelley) with the adoption of the amendments described above.

I appreciate your willingness and that of your staff to address our concerns through the amendments.

Sincerely,

Dominic DiMarc, Legislative Advocate
Telecommunications, Utilities, Worker's Compensation

DD:kp

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Better Cities - A Better Life

May 1, 2000

Assembly Member Kevin Shelley
State Capitol, Room 3160
Sacramento, CA 95814

RE: AB 2799 (Shelley). Public Records: Disclosure.
NOTICE OF NEUTRAL POSITION.

Dear Assembly Member Shelley:

I would like to inform you that the League of California Cities has removed its opposition to AB 2799. The League is satisfied with recent amendments to the bill which eliminate the provision that denials for public records disclosure may be overturned if the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.

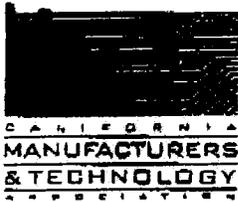
Thank you for your consideration of our concerns and for responding with appropriate amendments. Should you require additional information, please feel free to contact me at 658-8279.

Sincerely,


Amy Brown
Legislative Representative

LEGISLATIVE INTENT SERVICE (800) 666-1917





April 26, 2000

Assemblyman Herb Wesson, Chair
 Assembly Governmental Organization Committee
 Room 2179, State Capitol
 Sacramento, CA 95814

Subject: Assembly Bill 2799 (Shelley)
Position: Removal of Opposition
Hearing: April 24, 2000 Assembly Governmental Organization Committee

Dear Assemblyman Shelley,

California Manufacturers and Technology Association is no longer in opposition of this bill as it will be amended to remove the "reverse balancing test" as it would apply to records exempt from disclosure under the Public Records Act.

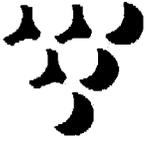
Respectfully,

Dorothy Rothrock
 Policy Director, Corporate Counsel

cc: Members of the Assembly Governmental Organization Committee
 Assemblyman Kevin Shelley
 Consultants, Assembly Governmental Organization Committee
 Michael Petersen, Assembly Republican Minority

LEGISLATIVE INTENT SERVICE (800) 666-1917





WINE INSTITUTE

April 26, 2000

1127 Eleventh Street

Suite 900

Sacramento

California 95814

(916) 441-6974

Fax (916) 441-7890

**Assemblymember Kevin Shelley
Room 3152, State Capitol**

Dear Kevin:

As requested by your staff, this letter is to advise you that the Wine Institute is withdrawing its opposition to your AB 2799. This is because the bill's SEC. 3 relative to reversing the balancing test will be formally deleted in the next set of amendments.

Respectfully,

**Mike Falasco
Legislative Representative**

cc: **Assembly G.O. Committee Chair Herb Wesson
Assembly G.O. Committee Vice Chair Brett Granlund**

LEGISLATIVE INTENT SERVICE (800) 666-1917



APR 26

CIVIL JUSTICE
ASSOCIATION OF CALIFORNIA



April 26, 2000

Assemblyman Kevin Shelley
State Capitol, Room 3160
Sacramento, CA 95814

RE: AB 2799 (Shelley)

Dear Mr. Shelley:

This letter is to advise that the Civil Justice Association of California has moved from a Oppose to a Neutral position on your bill, AB 2799.

As you know, our opposition stemmed from Section 3, subsection (b) of your bill which allowed for a reverse balancing test to be conducted for documents already listed exempt under the California Public Records Act. Our concern was that this subsection would have effectively eliminated the safeguards which currently exist for protecting both confidential and proprietary information.

We are pleased that during the Assembly Governmental Organization Committee on Monday you took an author's amendment to remove Section 3, subsection (b) from your bill. We thank you for the attention you gave to our and others' concerns with the reverse balancing test and for taking an amendment to remove same from your bill.

Sincerely,

A handwritten signature in black ink that reads "Barbara M. Wheeler". The signature is fluid and cursive, with a long horizontal stroke at the end.

Barbara M. Wheeler, Esq.
Vice President-Legislation

bmw

(800) 666-1917

LEGISLATIVE INTENT SERVICE





LEROY D. BACA, SHERIFF

April 20, 2000

County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169

APR 22 2000



Assemblymember Kevin Shelley
California State Assembly
State Capitol, Room 3160
Sacramento, California 95814

Dear Assemblymember Shelley:

ASSEMBLY BILL 2799 - OPPOSE

The Los Angeles County Sheriff's Department opposes Assembly Bill 2799. The bill vests discretion in public agencies or the courts to override express provisions of the Public Records Act which otherwise prohibit disclosure of certain records. Additionally, the bill requires that public records which exist in an electronic format be produced in that format rather than having a "hard-copy" printed.

By vesting discretion in public agencies or the courts, this bill effectively swallows the rule which has identified specific types of sensitive records which should not be disclosed. Under the provisions of this bill, even the names of sex crime victims and information contained in on-going criminal investigations become subject to discretionary disclosure.

Additionally, by requiring records which exist in an electronic format to be produced in the same electronic format, the agency holding the record is prevented from redacting information contained in the record which is confidential and not otherwise subject to disclosure.

Based upon the foregoing reasons, the Los Angeles County Sheriff's Department opposes Assembly Bill 2799.

If I can be of any assistance in this matter, please feel free to contact me or my Legislative Advocates, Sergeant Wayne Bilowit and Sergeant Gerald Cooper at (323) 526-5228.

Sincerely,

LEROY D. BACA
SHERIFF

A Tradition of Service

LH: 526 A - 214

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California State Association of Counties

MAY - 4



May 3, 2000

1100 K Street
Suite 101
Sacramento
California
95814

Telephone
916 327 7500

Facsimile
916 441 5507

The Honorable Kevin Shelley
Member of the Assembly
Room 3160, State Capitol Building
Sacramento, CA 95814

RE: AB 2799 (Shelley) – REMOVAL OF OPPOSITION (As amended April 27, 2000)
Set for hearing May 8, Assembly Governmental Organization Committee

Dear Assembly Member Shelley:

The California State Association of Counties (CSAC) has removed its opposition to AB 2799, your measure relating to public records, following amendments on April 27, 2000.

The removal of the "reverse balancing" provision under Government Code section 6255(b) addresses the majority of county concerns on this measure. We look forward to working with you and your staff to continue discussions on other provisions in AB 2799.

Thank you for your continued willingness to work with us. Please feel free to contact me at 916/327-7500, ext. 513, or Elizabeth Howard at 916-327-7500, ext. 537 at any time.

Sincerely,

Rubin R. Lopez
Legislative Representative

cc: The Honorable Herb Wesson, Chair, Assembly Governmental Organization Committee
Members and Consultants, Assembly Governmental Organization Committee

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Personal Insurance Federation of California

California's Personal Lines Trade Association
REPRESENTING THE LEADING AUTOMOBILE AND HOMEOWNERS INSURERS

Shelley
3160

MEMORANDUM

Date: May 2, 2000

To: Honorable Herb Wesson, Chairman
Members of the Governmental Organization Committee

From: Dan C. Dunmoyer, President
Phyllis A. Marshall, Vice President of Legislative and Regulatory Affairs
G. Diane Colborn, Senior Legislative Advocate and Counsel

Re: AB 2799 (Shelley): Public Records: disclosure
Assembly Governmental Organization Committee: May 8, 2000
PIFIC Position: Neutral

The Personal Insurance Federation of California (PIFIC), representing insurers selling 40% of the personal lines insurance sold in California, including State Farm, Farmers, 21st Century, SAFECO, and Progressive Insurance Companies is neutral on AB 2799 by Assemblyman Shelley as a result of the April 27, 2000 amendments.

If you have any questions regarding our position, please feel free to contact Phyllis Marshall at (916) 442-6646.

cc:
Honorable Kevin Shelley
Ann Richardson, Deputy Legislative Secretary, Governor's Office
Richard Rios, Assembly Governmental Organization
Michael Peterson, Assembly Republican Caucus

4.AB 2799 a gov2

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& Counsel
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MAY - 3 2000



GARY PENROD, SHERIFF

May 3, 2000

The Honorable Kevin Shelley
Assembly Member
Capitol Building #3160
Sacramento, CA 95814

Position: **OPPOSE AS AMENDED** April 27, 2000 AB2799 Public Records: Disclosure

Dear Assembly Member Shelley:

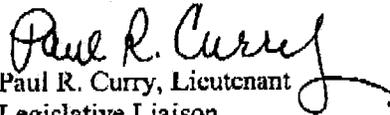
Local law enforcement agencies receive public records requests on a daily basis from news gathering companies, special interests groups and business entities seeking large amounts of data from our files which will further their interests. Ordinary citizens rarely request information and when they do it is usually related to an event in which they were involved in or in their neighborhood. Special interest requests cause local law enforcement employees to spend countless hours researching electronic data bases to identify exempt files, and segregating those files which would invade the personal privacy of citizens.

The inflexible mandate to provide data in an electronic format fails to address the redaction problems created by providing the data in an electronic format. There currently does not exist a program, which would have the capability of extracting exempt records from releasable ones. Law enforcement records can and do at times contain sensitive business and personal data acquired during a criminal investigation. This data, if released, could have an adverse effect on the person or business who reported a crime. Businesses and citizens who do not wish to have their personal information made public (victims of sex crimes, child abuse, domestic violence etc.) by virtue of electronic data would be left with only one choice; to not report a crime.

This bill also fails to address the actual cost to the public of redacting an electronic database. In order to redact the database, each record must be reviewed individually. All of the costs for personnel to review the database are not currently reimbursable, only the cost of the copy of the file.

For these reasons we must continue to oppose this measure.

Sincerely,


Paul R. Curry, Lieutenant
Legislative Liaison
909.387.0632

cc: Assembly Governmental Organization Committee

(800) 666-1917

LEGISLATIVE INTENT SERVICE



Officers 1998-2000
MARSHA YOUNG WHARFF
President
Mendocino County
Mailing Address:
501 Low Gap Rd., Room 1020
Ukiah, CA 95482
(707) 463-4376
(707) 463-4257 (fax)
e-mail mcclrec@pacific.net



CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS

MAY - 9 2000

May 3, 2000

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Alameda County
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Sacramento County

The Honorable Kevin Shelley
State Capitol, Room 3160
Sacramento, CA 95814

Dear Assembly Member Shelley:

Assembly Bill 2799 (Shelley) Public Records: Disclosure As Amended 4/27/00 OPPOSE, UNLESS AMENDED

The members of the California Association of Clerks and Election Officials thank you for amending AB 2799 on April 27, 2000. That amendment addressed many of the objections we had to the bill. However, we regret that we must continue our opposition to AB 2799 until some additional problems are resolved. Please be assured that we are willing to work with your staff toward that end.

Section 2 of the bill would add Section 6253.2 to the Government Code and would require a public agency to provide a copy of a record that is in an electronic format when requested by any person. The bill further would require an agency to make the information available in any electronic format in which the agency holds the information, as requested, if the requested format is one that has been used by the agency to create copies for its own use.

Section 6253.2 of the bill further provides that direct costs of duplication of an electronic record shall include the costs associated with duplicating electronic records. However, it is unclear whether this would include the necessary costs associated with any minor programming that may be required to comply with a request made pursuant to this section of the bill and with costs associated with redaction of any information that is exempted, or prohibited, from disclosure by other sections of law. Additionally, the current language of the bill appears not to address public agency costs or difficulties involved in providing information that, although

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LEGISLATIVE INTENT SERVICE



The Honorable Kevin Shelley
May 3, 2000
Page 2

regularly provided by the agency, is provided at a specific time interval due to the size or complexity of the database from which the information is extracted, or other workload factors that would make it extremely burdensome to provide the record "on demand."

Again, we appreciate your recent amendments to AB 2799. We hope to be able to work with you and your staff to try to resolve our concerns regarding the bill. However, we must continue to oppose AB 2799, unless amended to provide for cost recovery or cost avoidance measures that address the issues raised in this letter.

If you need any additional information concerning our position on AB 2799, please call John McKibben at (213) 974-1405 or our legislative advocate, Bill Siverling, at (916) 444-7592.

Very truly yours,

ORIGINAL SIGNED

Violet Varona-Lukens, Co-Chair
Clerks of the Board of Supervisors
Legislative Committee

c: Each Member and Consultant,
Assembly Committee on Governmental Organization
Thomas W. Newton, California Newspaper Publishers Association
William H. Siverling, Legislative Advocate

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LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
SACRAMENTO LEGISLATIVE OFFICE

GIL GARCETTI • District Attorney
ROBERT P. HEFLIN • Chief Deputy District Attorney

JAMES R. PROVENZA • Special Assistant

May 8, 2000

MAY - 9 2000

The Honorable Kevin Shelley
California State Assembly
State Capitol, Room 3160
Sacramento, California 95814

ASSEMBLY BILL 2799 (SHELLEY)

Dear Assembly Member Shelley:

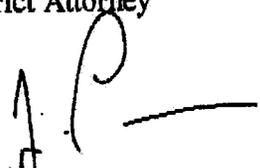
As a result of the amendments of April 27, 2000, we are pleased to withdraw our opposition to Assembly Bill 2799.

Thank you for your consideration of our concerns.

Very truly yours,

GIL GARCETTI
District Attorney

By


JAMES R. PROVENZA
Special Assistant District Attorney

JRP:jk

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President
Mendocino County
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 Ukiah, CA 95482
(707) 483-4376
(707) 483-4257 (fax)
e-mail mcclirec@pacific.net



CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS

May 11, 2000

The Honorable Carole Migden, Chair
Assembly Appropriations Committee
State Capitol, Room 2114
Sacramento, CA 95814

**Re: Assembly Bill 2799 (Shelley) As Amended 4/27/00 Public
Records: Disclosure...OPPOSE UNLESS AMENDED**

Dear Assembly Member Migden:

The members of the California Association of Clerks and Election Officials oppose AB 2799, unless amended, and respectfully request your "no" vote on the bill when it is heard in your Committee on May 17, 2000, unless the bill is amended to mitigate mandated costs for local public agencies.

Section 2 of the bill would add Section 6253.2 to the Government Code and would require a public agency to provide a copy of a record that is in an electronic format when requested by any person. The bill further would require an agency to make the information available in any electronic format in which the agency holds the information, as requested, if the requested format is one that has been used by the agency to create copies for its own use.

Section 6253.2 further provides that the direct costs of duplication of an electronic record for which a public agency may charge the requestor shall include the direct costs associated with duplicating electronic records. However, we understand that it is the intent of the sponsor that such costs not include costs associated with any minor programming that may be required to comply with a request made pursuant to this section of the bill and costs associated with redaction of any information that is exempted, or prohibited, from disclosure by other sections of law.

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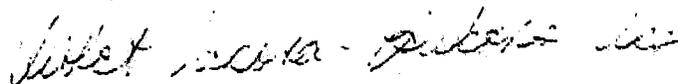
The Honorable Carole Migden
May 11, 2000
Page 2

Additionally, the current language of the bill does not address public agency costs or difficulties involved in providing information that, although regularly provided by the agency, is provided at a specific time interval due to the size or complexity of the database from which the information is extracted, or other workload factors that would make it extremely burdensome to provide the record "on demand."

Again, we respectfully request your "no" vote on AB 2799, unless the bill is amended to provide for cost recovery or cost avoidance measures that address the issues raised in this letter.

If you need any additional information concerning our position on AB 2799, please call John McKibben at (213) 974-1405 or our legislative advocate, Bill Siverling, at (916) 444-7592.

Sincerely,



Violet Varona-Lukens, Co-Chair
Clerks of the Board of Supervisors
Legislative Committee

cc: Assembly Member Kevin Shelley
Each Member and Consultant,
Assembly Committee on Appropriations

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CITY ATTORNEY
Bart J. Thitgen

ASSISTANT CITY ATTORNEY
Robert M. Sherly

DEPUTY CITY ATTORNEY
Alan D. Daniel
Allen M. Shaw
Walter H. Porr, Jr.
Michael G. Allford
Carl Hernandez III
Janice Scanlan
Virginia Gettauro
Andrew C. Thomson

ADMINISTRATIVE ASSISTANT
Lori A. Aquilar



CITY OF BAKERSFIELD

OFFICE OF THE CITY ATTORNEY
1501 TRUXTUN AVENUE
BAKERSFIELD, CA 93301

TELEPHONE: 661-326-3721
FACSIMILE: 661-852-2020

May 15, 2000

MAY 17 2000

Via Facsimile & U.S. Mail
(916) 319-2112

The Honorable Kevin Shelley
CALIFORNIA STATE ASSEMBLY
P.O. Box 942849
Sacramento, California 94249-0001

Re: AB 2799 - Public Records

Dear Assembly Member Shelley:

The City of Bakersfield respectfully submits its opposition to AB 2799.

We believe that AB 2799 imposes additional, and unnecessary, burdens upon local entities concerning the release of public information. In addition, the bill would require local entities, to release information that had been submitted to the local entity in an electronic format back in the same form to other members of the public. Several architects and engineers file electronic maps with the City of Bakersfield and the electronic information contains imbedded and proprietary information which they do not want released to the public. At the present time, we have assured the architects and engineers that we will not release the electronic maps to the public; thus, they are still willing to file the maps electronically. The electronic filing of maps makes the review procedure much more efficient and much faster.

If we were required to release to the public the electronic filings from these architects and engineers, we would also be releasing proprietary information to potential competitors. The competitor would simply appear and request the maps in the electronic format. Presently, the City of Bakersfield would refuse to release the electronic format and agree to supply the maps in the regular printed form; however, under this legislation the City of Bakersfield would have to release the maps in the electronic format in which they were received. Architects and engineers would object to giving the City of Bakersfield

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LEGISLATIVE INTENT SERVICE



The Honorable Kevin Shelley
CALIFORNIA STATE ASSEMBLY
May 15, 2000
Page 2

anything in an electronic format which might be given out to competitors. I believe they would be well justified in this position thereby hampering our ability to efficiently review maps in an electronic format.

The City of Bakersfield can recognize no compelling interest to the public receiving data in an electronic format. The main purpose of the Public Records Act is to release information held by the government to the public. The City of Bakersfield is more than willing to release information to the public; however, we do not believe a public entity should have the required burden of releasing information in electronic formats. This is especially true when the information has been received from sources outside the local entity.

For these reasons we oppose AB 2799.

Very truly yours,


ALAN D. DANIEL
Deputy City Attorney

ADD:dlr

cc: Bart J. Thiltgen, City Attorney
Trudy Slater, Administrative Analyst
League of California Cities

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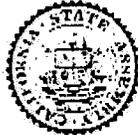
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Assembly California Legislature

KEVIN SHELLEY

Majority Leader



May 8, 2000

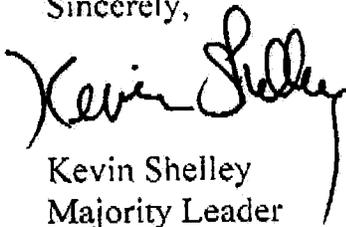
The Honorable Herb Wesson, Chair
Assembly Governmental Organization Committee
State Capitol – Room 2179
Sacramento, CA 95814

Dear Assemblymember Wesson:

I may not be available to present AB 2799 at today's hearing. If I am unavailable, I hereby authorize Assemblymember Ted Lempert to present the bill in my absence.

Thank you for your attention.

Sincerely,


Kevin Shelley
Majority Leader

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04/26/00 12:55 PM
RN0009197 PAGE 1
Substantive

AMENDMENTS TO ASSEMBLY BILL NO. 2799

Amendment 1

On page 5, line 9, strike out "(a)"

Amendment 2

On page 5, strike out lines 16 to 23, inclusive

- 0 -

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LEGISLATIVE INTENT SERVICE

LS3



NO ANALYSIS REQUIRED

Franchise Tax Board

Author: Shelley Analyst: Darrine Distefano Bill Number: AB 2799

Related Bills: See Prior Analysis Telephone: 845-6458 Amended Date: 04-27-2000

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Public Record Disclosure/Make Available in Electronic Format if Available & When Requested

_____ ANALYSIS NOT REQUIRED of this bill -- Not within scope of responsibility of this department.

_____ TECHNICAL BILL -- No program or fiscal changes to existing program.

_____ BILL AS AMENDED NO LONGER WITHIN SCOPE of responsibility or program of the department.

_____ TECHNICAL AMENDMENT - No change in previously submitted analysis required. Approved position of prior analysis is _____.

MINOR AMENDMENT - No change in previously submitted analysis required. Approved position of prior analysis is Pending.

_____ MINOR AMENDMENT - No change in approved position of _____ See comments below.

_____ OTHER - See comments below.

COMMENTS:

This bill would require any state or local agency that has public information in an electronic format to make that information available to the public in an electronic format in which the state agency holds the information. The requester would pay the direct costs of duplicating the public record in an electronic format.

This bill would further require a public record to be disclosed if, on the facts of the particular case, the public interest is served by disclosing the record.

The April 27, 2000, amendments deleted a provision that would have required a public record to be disclosed if, on the facts of the particular case, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.

The reminder of the department's analysis of the bill as introduced February 28, 2000, still applies.

Board Position:

_____ S
_____ SA
_____ N

_____ NA
_____ O
_____ OUA

_____ NP
_____ NAR
 PENDING

Franchise Tax Board Staff

Date

[Signature] 5/17/00

Q:\WEB\WORLD\AB 2799 04-27-00\NAO.DOC
05/17/00 9:05 AM

Assembly Republican Bill Analysis
Governmental Organization Committee

AB 2799 (Shelley)
Support

AB 2799 (SHELLEY)
PUBLIC RECORDS: DISCLOSURE.

Version: 5/23/00 Last Amended
Vote: Majority
Support

Encourages public access to computerized records of state and local agencies.

Vice-Chair: Brett Granlund
Tax or Fee Increase: No

Policy Question

Should state and local agencies be required to facilitate public access to records?

Summary

1. Mandates that public agencies make records in any electronic format in which they store the records.
2. Requires public agencies to justify withholding a requested record in writing by demonstrating that the public interest protected by non-disclosure clearly outweighs the interest in disclosure.
3. Prohibits agency delay in disclosing records.
4. Requires agencies denying a written request for records, in whole or in part, to respond to the request in writing.

Support

California Newspaper Publishers Association (Sponsor), California First Amendment Coalition.

Opposition

California Municipal Utilities Association, California State Sheriffs' Association, California Association of Clerks and Election Officials, Los Angeles County Board of Supervisors, San Bernardino County Sheriff.

Assembly Republican Governmental Organization Votes (12-2) 5/8/00

Ayes: Granlund, Bartin, Briggs, Maldonado, Strickland
Noes: Brewer
Abs. / NV: Margett

Assembly Republican Appropriations Votes (17-2) 5/17/00

Ayes: Campbell, Ashburn, Maldonado, Zettel
Noes: Ackerman, Brewer
Abs. / NV: Runner

Assembly Republican Votes (0-0) 1/1/00

Ayes: None
Noes: None
Abs. / NV: None

Assembly Republican Votes (0-0) 1/1/00

Ayes: None
Noes: None
Abs. / NV: None

Arguments In Support of the Bill

Permitting the broadest access to public records is consistent with the principles of our form of government and current state law. We should do what we can to assure such access. It is how the citizens know what the government is doing.

Arguments In Opposition to the Bill

This bill would increase the costs of state and local agencies by making more records available. This is just another state mandate on local governments.

Fiscal Effect

As approved by the Assembly Appropriations Committee (5/17/00):

MINOR LOCAL AND STATE COSTS –
Unknown, probably minor costs to state and local public agencies for release of records, potentially state-reimbursable.

Fiscal Comment

The costs are associated with public entities that are required to release public records in any electronic form in which it currently exists. Public entities may keep large amounts of information in a database, some of which may not be for public consumption. Public entities may then have to purge the database and eliminate nondiscloseable records, which could be a costly endeavor.

Comments

1. Under current law, the California Public Records Act requires that public records be made available for inspection and copying by the public, unless some specific and explicit exception would deny access. Copies are to be made available at a nominal charge. Computer records may be accessed through the system that the agency permits.
2. This bill would require agencies, both state and local, to make records available in any format that the agency uses itself or uses to make records available to any other agency. It would also require state and local agencies to determine that any new electronic data system

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AB 2799 (Shelley)

Assembly Republican Bill Analysis

or software would not impede or impair public access before acquiring or developing it.

3. Making records more accessible and requiring agencies to take into account the affect on accessibility will promote public knowledge about governmental action. That is a supportable goal. Because citizens have to know what government is doing and government now does so much, steps need to be taken to make information accessible in easily used ways.

- 4. The San Bernardino County Sheriff is concerned that requiring law enforcement agencies to provide records electronically prevents them from redacting (removing) the sensitive parts of records that other laws may obligate them not to release. He cites victims of sex crimes, child abuse and domestic violence as examples.
- 5. The other opponents claim that the costs of redacting exceed the amounts that legally they may charge for copies.

Policy Consultant: Mike Petersen 5/24/00
Fiscal Consultant: Paul J. Deiro 5/22/00

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LEGISLATIVE INTENT SERVICE



Assembly Republican Bill Analysis
Governmental Organization Committee

AB 2799 (Shelley)
Support

AB 2799 (SHELLEY)
PUBLIC RECORDS: DISCLOSURE.

Version: 4/27/00 Last Amended
Vote: Majority
Support

Vice-Chair: Brett Granlund
Tax or Fee Increase: No
Encourages public access to computerized records of state and local agencies.

THIS BILL HAS BEEN AMENDED TO REMOVE THE PROVISIONS WHICH WOULD HAVE ENCOURAGED DISCLOSURE OF PRIVATE AND CONFIDENTIAL INFORMATION IN THE POSSESSION OF STATE AND LOCAL AGENCIES.

Policy Question

Should state and local agencies be required to facilitate public access to records?

Summary

1. Mandates that public agencies make records in any electronic format in which they store the records.
2. Requires public agencies to justify withholding a requested record in writing by demonstrating that the public interest protected by non-disclosure clearly outweighs the interest in disclosure.
3. Prohibits agency delay in disclosing records.

Support

California Newspaper Publishers Association (sponsor).

Opposition

The business trade groups which had formerly opposed this bill have removed their opposition due to the amendments which maintain the status quo regarding disclosure and exemptions from disclosure.

Assembly Republican Governmental Organization
Votes (6-3) 4/24/00 FAIL PASSAGE

Ayes: None
Noes: Granlund, Brewer, Margett

Abs. / NV: Batin, Briggs, Maldonado

Assembly Republican **Votes (0-0) 1/1/00**

Ayes: None
Noes: None
Abs. / NV: None

Assembly Republican **Votes (0-0) 1/1/00**

Ayes: None
Noes: None
Abs. / NV: None

Assembly Republican **Votes (0-0) 1/1/00**

Ayes: None
Noes: None
Abs. / NV: None

Arguments In Support of the Bill

Permitting the broadest access to public records is consistent with the principles of our form of government and current state law. We should do what we can to assure such access. It is how the citizens know what the government is doing.

Arguments In Opposition to the Bill

This bill would increase the costs of state and local agencies by making more records available. This is just another state mandate on local governments.

Fiscal Effect

Unknown.

Comments

1. Under current law, the California Public Records Act requires that public records be made available for inspection and copying by the public, unless some specific and explicit exception would deny access. Copies are to be made available at a nominal charge. Computer records may be accessed through the system that the agency permits.
2. This bill would require agencies, both state and local, to make records available in any format that the agency uses itself or uses to make records available to any other agency. It would also require state and local agencies to determine that any new electronic data system or software would not impede or impair public access before acquiring or developing it.
3. Making records more accessible and requiring agencies to take into account the affect on accessibility will promote public knowledge about governmental action. That is a supportable goal. Because citizens have to know what government is doing and government now does so much, steps need to be taken to make information accessible in easily used ways.

Policy Consultant: Mike Petersen 5/4/00

Fiscal Consultant:

(800) 666-1917

LEGISLATIVE INTENT SERVICE



ASSEMBLY BILL

No. 2799

Introduced by Assembly Member Shelley
(Principal coauthor: Senator Bowen)

February 28, 2000

An act to amend Sections 6253 and 6255 of, and to add Section 6253.2 to, the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST
AB 2799, as introduced, Shelley. Public records: disclosure.

(1) The California Public Records Act provides that any person may receive a copy of any identifiable public record from any state or local agency upon payment of specified fees. The act provides that it shall not be construed to permit an agency to obstruct the inspection or copying of public records and requires any notification of denial of any request for records pursuant to the act to set forth the names and titles or positions of each person responsible for the denial. The act also requires computer data to be provided in a form determined by the agency.

This bill would provide that nothing in the act shall be construed to permit an agency to delay or obstruct the inspection or copying of public records and would require that the notification of denial of any request for records justifying its withholding to be in writing. This bill would delete the requirement that computer data be provided in a form determined by the agency and would require any



The people of the State of California do enact as follows:

SECTION 1. Section 6253 of the Government Code is amended to read:

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

~~Computer data shall be provided in a form determined by the agency.~~

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days.

As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

agency that has information that constitutes an identifiable public record that is in an electronic format to make that information available in an electronic format when requested by any person. The bill would require the agency to make the information available in any electronic format in which it holds the information. Because these requirements would apply to local agencies as well as state agencies, this bill would impose a state-mandated local program.

(2) The act requires the agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the act or that, on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

This bill would authorize the agency or the superior court to disclose a record made exempt under the express provisions of the act if the agency or the superior court determines that, on the facts of the particular case, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record. By imposing new duties on local public officials, the bill would create a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



(c) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(d) Nothing in this section shall be construed to permit public access to records held by the Department of Motor Vehicles to which access is otherwise restricted by statute.

SEC. 3. Section 6255 of the Government Code is amended to read:

6255. (a) The agency shall justify withholding any record in writing by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not making disclosing the record ~~public~~ clearly outweighs the public interest served by disclosure of the record.

(b) Notwithstanding any provision of this chapter, an agency, or the superior court in any action brought pursuant to Section 6259, may disclose or order to be disclosed any record made exempt by express provisions of this chapter if, on the facts of the particular case, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. Any The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

SEC. 2. Section 6253.2 is added to the Government Code, to read:

6253.2. (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. Direct costs of duplication shall include the costs associated with duplicating electronic records.

(b) Nothing in this section shall be construed to require the public agency to reconstruct a report in an electronic format if the agency no longer has the report itself available in an electronic format.



AB 2799 (Shelley): Public Records

Origin: California Newspaper Publishers Association

Problem: In California, all government agencies are subject to the California Public Records Act (CPRA). The CPRA governs the public's right to access information from state and local agencies, including cities and counties, school districts, municipal corporations, and any other boards or commissions that are part of a covered political entity (Gov. Code Section 6252).

Records held electronically have become the focus of great debate. Under current law, when a person makes a request for data contained in computer format, the agency has the discretion to determine in which form the information should be provided. An agency can effectively frustrate a public record's request by providing the requested records in a form different from the public's request.

It is very important that an agency disclose public information in a timely fashion. If there is a legitimate dispute over whether or not a record is covered by an exemption, the agency is entitled to take up to 10 working days to either provide the information or provide the written grounds for its denial. The 10-day period is not intended to delay access to records; however, many state agencies believe the 10-day grace period can be used for any record. By delaying the process, the public often gives up and never acquires the record.

The disclosure of various records is left solely at the discretion of public agencies. Current law allows for the public interest balancing test, a "catchall" provision that allows the government to withhold access to any record if the public interest warrants it. This provision is a one-way street – if it is used by an agency, it is used only for the purpose of denying access to a record. For those records that are not specifically exempt for the CPRA, the public should have the same right as the government to use the balancing test to access the record when the public interest demands it.

Solution: AB 2799 would improve the open government process by:

- Stating that no public agency shall obstruct or delay the inspection or copying of public records.
- Requiring a public agency to make copies of public information available electronically (on a diskette, usually in Word or WordPerfect format, etc.).
- Allowing citizens wishing to view information to prove that the public interest served by releasing the record clearly outweighs the public interest served by not disclosing the information.

Support: California Newspaper Publishers Association, California First Amendment Coalition

Opposition: Attorney General, League of California Cities, CSAC, California Municipal Utilities Association, Personal Insurance Federation of California, California Association of Sanitation Agencies, Association of California Insurance Companies, California Chamber of Commerce, Civil Justice Association of California, American Insurance Association, CNPA, Wine Institute, Los Angeles County D.A., California Manufacturers & Technology Association, CAHF, California State Sheriffs Assoc.

Status: Assembly Government Organizational Committee
Hearing: April 24, 2000

(800) 666-1917

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FIRST AMENDMENT COALITION

APR - 6 2000

PROMOTE AND DEFEND
THE PEOPLE'S RIGHT TO KNOW

April 5, 2000

Assemblyman Kevin Shelley
 Room 3160
 State Capitol
 10th & L Streets
 Sacramento, CA 9814

RE: AB 2799 -- SUPPORT

Dear Assemblyman Shelley:

The California First Amendment Coalition strongly supports AB 2799 because it would create an overdue balance in how the discretion to withhold significant information from the public operates in California law.

Presently a public agency may, under the California Public Records Act, deny citizens' access to a document which has not been made exempt from disclosure by any of the hundreds of express confidentiality provisions of state or federal statute. Government Code Section 6255, the notorious "catchall" exemption, allows withholding of a record if the agency demonstrates that on the basis of the particular facts and circumstances, the public interest in not making the information public outweighs the public interest in disclosure.

This provision acts too often as a "secrecy wild card" permitting ad hoc decisions to withhold a record that the Legislature has never seen fit to consider sensitive or confidential.

AB 2799 would give the public a reciprocal chance to argue the effects of unforeseen circumstances by providing that a court could conclude that, based on such circumstances, the public interest in disclosure outweighed any public interest in secrecy.

This provision would not operate on records where disclosure is flatly prohibited. It would govern only those records where the public agency has the discretion to release or not -- and has opted against release.

It is indisputable that most public agencies, virtually without exception, always exercise such discretion in favor of concealment. So "permissive" exemptions are, in practice, treated as secrecy mandates.

2701 Cottage Way, Suite 12
 Sacramento, CA 95825-1226

(916) 974-8888

FAX: (916) 974-8880

E-mail: cfa@cfac.org

http://www.547 A - 235



Your bill would allow the agency, of course, to defend its option favoring secrecy. But it would also allow a judge, based on the totality of the circumstances, to rule that there is an extraordinary public interest in making the information available to the community.

If agencies can, as they clearly can under the law as it stands, improvise a calculus of the public interest to withhold normally public records, fairness and good government dictates that a court should have the same power, at least where the agency could have said "Yes" in the first place, but chose for its own reasons not to do so.

Sincerely,



Terry Francke
General Counsel

cc: Richard Rios, Consultant
Assembly Committee on Governmental Organization
1020 N St., Room 159

(800) 666-1917

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California Newspaper Publishers Association
CNPA Services, Inc.

MAR 24 2000

930 G Street, Sacramento, CA 95814-1811
Tel: (916) 288-6000 • Fax: (916) 288-6002



March 24, 2000

Honorable Kevin Shelley
California State Assembly
State Capitol Room 3160
Sacramento, California 95814

RE: SPONSOR AB 2799

Dear Assemblyman *Kevin* Shelley:

I am writing on behalf of the California Newspaper Publishers Association to acknowledge the association's sponsorship of your Assembly Bill 2799, which would make several important changes to the California Public Records Act. Specifically, **AB 2799** would:

- **Electronic access** – The bill would require state and local agencies to provide copies of accessible computerized public records in an electronic format. Current law provides virtually no direction on this issue either for the public or agencies governed by the Act. The law merely provides that “Computer data shall be provided in a form determined by the agency “(Govt. Code Sec. 6253 (b)).” **AB 2799** would provide reasonable rules for public access to electronically held records, including a provision that these records shall be made available in any form in which the agency holds the information.
- **“Delay”** -- **AB 2799** would reinsert the word “delay” into Sec. 6253 (d), removed unwisely in 1996 legislation, to provide that, notwithstanding the timelines described in the Act, an agency shall not delay access to the inspection or copying of public records.
- **Reverse Balancing Test** – Govt. Code Section 6255 provides for the public interest balancing test, a “catchall” provision that allows the government to withhold access to any record, even if it is not specifically exempt by law, if the public interest warrants it. The provision is a one-way street – if it is used by an agency, it is used only for the purpose of denying access to a records request (E.g., “we admit there is no statutory exemption allowing the agency to withhold the record, but we believe under the facts of this request, the public interest in disclosure is clearly outweighed by the public interest in nondisclosure. Access denied.”) **AB 2799** would level the playing field by giving the same balancing test to the public for records that may be exempt pursuant to statute. The bill would give discretion to an agency or the Superior Court to provide any record exempt by provisions of the law if, “. . . on the facts of the particular case, the public interest served by disclosing the record clearly outweighs the public interest in not disclosing the record.” **AB 2799** would merely give the public the same tool as the government to provide -- rather than deny -- access, when the public interest demands it.

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Honorable Kevin Shelley
California State Assembly
RE: SPONSOR AB 2799
March 24, 2000
Page 2

This provision dovetails with existing Sec. 6253 (e), which allows agencies to adopt requirements that allow for "faster, more efficient, or greater access to records" than prescribed by the minimum standards set forth in the Act.

AB 2799 will ensure quicker, more useful access to public records that should be disclosed in the public interest. On behalf of the nearly 500 newspaper member of CNPA, Thank you for introducing AB 2799. We look forward to working with you to ensure the governor's signature approval of this important legislation.

Sincerely,



Thomas W. Newton
CNPA General Counsel

cc: George Riggs, CNPA President, Publisher and CEO, Contra Costa Times
Bill Niese, General Counsel, Times Mirror
Jack Bates, CNPA Executive Director
James Ewert, CNPA Legal Counsel
Richard Rios, Senior Consultant to the Assembly Governmental Organization Committee

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LEGISLATIVE INTENT SERVICE



3160

Date of Hearing: April 24, 2000

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION
Herb Wesson, Chair
AB 2799 (Shelley) – As introduced: February 28, 2000

SUBJECT: Public records

SUMMARY: Provides for the release of public records in an electronic format and authorizes the release of records that are exempt from the Public Records Act (the PRA) in specified circumstances. Specifically, this bill:

- 1) Deletes the requirement that public records kept on computer be disclosed in a form determined by the public agency. Requires a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following guidelines:
 - a) The agency must make the information available in any electronic format in which it holds the information.
 - b) Each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.
 - c) An agency may not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- 2) Authorizes an agency, or the superior court in an action brought under the PRA, to disclose or order to be disclosed any record exempted from the PRA if, on the facts of the particular case, the public interest served in disclosing the record clearly outweighs the public interest served by not disclosing the record.
- 3) Requires an agency that withholds a public record to justify its withholding in writing.
- 4) Specifies that the requirements of the bill shall not be construed to permit an agency to make information available only in an electronic format nor shall they be construed to permit access to records held by the Department of Motor Vehicles that are otherwise restricted under the PRA.
- 5) Specifies that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

EXISTING LAW

- 1) Defines "public record" to include any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

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- 2) Requires public records to be open to inspection at all times during the office hours of a state or local agency and affords every person the right to inspect any public record, except as specifically provided.
- 3) Requires a public agency to justify withholding a public record by demonstrating that the record in question is exempt under express provisions of the PRA or that on the facts of a particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosing the record.
- 4) Requires a court, when it finds that a public official's decision not to disclose a public record is unjustified, to order the public official to make the record public.

FISCAL EFFECT: Unknown.

COMMENTS:

1. Need for the bill. The PRA permits a state or local agency to provide computer records in any format determined by the agency. This bill would require an agency to provide computer records in any format that it currently uses. According to the sponsor, the California Newspaper Publishers Association, this bill is intended to ensure quicker, more useful access to public records. The sponsor also notes that the bill seeks to provide reasonable guidelines for public access to electronically held records. The sponsor claims that this bill will balance the ability of private citizens to access public records with the discretion of public agencies to deny such records requests.
2. Reverse balancing test. The PRA generally establishes broad guidelines about the types of documents that may not be subject to public disclosure and affords state agencies discretion to apply a balancing test when determining whether or not to release a record. In applying the test, the agency must determine that the "public interest served by not making the record public clearly outweighs the public interest served by disclosing the record." This bill attempts to apply a reverse balancing test by giving courts and state agencies the authority to disclose any public record if the agency or superior court determines that, depending on the facts of a particular case, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record. The reverse balancing test disclosure would apply even when a court finds that the record is exempted from disclosure under the PRA.
3. Opposition. Opponents argue that the bill subjects confidential records to a "vague" balancing test. Opponents claim that the test undermines key provisions of the PRA which protect proprietary information such as applications for the issuance of securities or of financial institutions, including banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies. Opponents also contend that the bill would permit a court to order disclosure of a record it found to pass the reverse balancing test. Opponents are concerned that this provision would permit the release of specifically exempted information such as preliminary drafts or notes, geological and utility systems data, or complaint or investigation of records of local law enforcement agencies.



4. Policy consideration. The committee may wish to consider whether the courts should have the discretion, even when they find that a record is generally exempt from disclosure under the PRA, to require disclosure of that record if it meets the reverse balancing test. The committee may also wish to consider whether the reverse balancing test gives courts and agencies too much discretionary authority to release records that are *specifically* prohibited from release under the PRA or any other provision of law.

REGISTERED SUPPORT / OPPOSITION:

Support

California Newspaper Publishers Association
First Amendment Coalition

Opposition

Association of California Insurance Companies
California Association of Sanitation Agencies
California Chamber of Commerce
California Manufacturers & Technology Association
California Municipal Utilities Association
California State Association of Counties
California State Sheriffs Association
Civil Justice Association of California
Office of the State Attorney General
Personal Insurance Federation of California
San Bernardino County Sheriff's Department
Wine Institute

Analysis Prepared by: Richard Rios / G. O. / (916) 319-2531



**AB 2279 – Public Records Act
Assembly Governmental Organization
Monday April 24, 2000
9:00 a.m. – Room 4202**

Mr. Chair and Members:

- Today, I present to you AB 2279, a bill which significantly improves the California Public Records Act.
- The California Public Records Act is a vital tool that allows Californians to keep track of what their public agencies are doing.
- Although it sounds simple, it isn't and many public agencies still deny or complicate requests for public information.
- This bill will help rectify this problem three different ways.
- First, the bill minimizes the flow of paper needed to accommodate certain requests by requiring public agencies to provide computerized data in any electronic form in which that data is already kept.

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•Second, my bill ensures that no agency deliberately delays the access of requested information, unless they provide sufficient justification.

•Finally, AB 2799 levels the playing field between the citizens and the government by giving the citizens the same balancing test as the government to determine whether or not a document can be disclosed.

•Current law allows for the public interest balancing test, a “catchall” provision that allows the government to withhold access to any record if the public interest warrants it.

•This provision is a one-way street – if it is used by an agency, it is used only for the purpose of denying access to a record.

•For those records that are not specifically exempt for the CPRA, the public should have the same right as the government to use the balancing test to access the record when the public interest demands it.

•My bill will only apply to records that are exempted at the discretion of a public agency. It does not apply to records that are



exempt by order of the legislature or specifically forbidden from disclosure.

- Access to public records lies at the foundation of open and responsible government. AB 2799 facilitates that access. I ask for your "aye" vote.

- With me today to help answer any questions you may have are:
Tom Newton, California Newspaper Publishers Association
Terry Francke, California First Amendment Coalition

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AB 2799
Questions and Answers

Q - What does this bill do?

A - This bill has three parts:

1. It states that no public agency shall obstruct or delay the inspection or copying of public records.
2. It requires a public agency to make copies of public information available electronically (on a diskette, usually in Word or WordPerfect format, etc).
3. It allows a citizen the opportunity to prove that the public's best interest is served by releasing an exempt record than by withholding the exempt record.

Q - Why add the word "delay?"

A - When the law was changed several years ago, the word "delay" was removed and "obstruct" replaced it. This was not the intent of the legislature.

Public agencies have the perception that current law allows them up to 10- days to produce **any** record or document, once request by the public. Although the 10-day grace period does exist, it is meant for specific purposes. Public agencies are given the 10 days to acquire information if they believe the record requested is exempt from disclosure and they need time to confer with their legal counsel. The 10-day period was not intended to allow state agencies to stall any document for any reason.

This law will require a public agency to produce the document as soon as feasibly possible, unless the agency genuinely believes there is a legal issue.

Q - Will public agencies need to give provide records in any electronic format the requestor asks for?

A - No, AB 1099 will not require agencies to make costly data conversions



from one format to another. The bill only states that agencies provide information to the public in a form in which that information is already available and used in everyday business.

Q - Does the reverse balancing test give to much discretion to courts?

A - No, this test is about a matter of fairness. Currently, public agencies determine whether or not the public interest is served best when an exempt record is withheld or disclosed. If a public agency chooses to withhold the information, the public must challenge this decision in court. This bill gives citizens the opportunity to challenge for the release of a record that a state agency has currently made exempt under the California Records Act, if he or she can prove that the release of the document serves best the public interest. This challenge can be made with either the public agency or, if necessary, in a court of law.

Basically, this bill equals the playing field by allowing both state agencies and citizens to argue for record disclosure.

Q - Does this bill allow disclosure of records that are specifically exempt by law?

A - No, this bill only applies to those records that are currently held at the discretion of public agencies. If the legislature has determined that a record shall not be disclosed, only an act of legislation may reverse that decision.

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ASSEMBLYMEMBER HERB WESSON, CHAIR
Assembly Governmental Organization Committee

ACIC ✓

Sanitation

Municipal utility Assoc

CSAC ✓

Sheriffs

AG ✓

Insurance Fed ✓

San Bernardino

From the desk of...

RICHARD RIOS, Senior Consultant

319-2531

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~~Don Gjerdex~~ * 3 clusters

~~9101-2825~~

1. protection for speakers
2. problem of not being able to be held accountable

* CPRA

1. public relations consultant
 - How much is being spent at local level

This bill is vital to bring down

* Attorney fees & Enforcement actions

- personal interest

Do not want to jeopardize this

* Only applies to discretion - does not apply prohibited.

3/17/99 phone calls

* Sheri Smith

(707) 527-2661

- Letter to Editor in Ukiah Paper

Laura Bibelheimer

- new NASW Leg person

1. OCTIP

2. 8:30 a.m.

1. Kathy Grant

1. Tom Newton

258 - 6015

1. (559) 739-9940 pay phone

Tim Franke

* worried would be to overload
the bill - want it to be addressed

celec @ hg. dir.
ca.gov

(415) 703-4277

Clair Ervin Lee

Dept. of Industrial
Relations

needs
background
sheet

(800) 666-1917

LEGISLATIVE INTENT SERVICE



RYAN SPENCER
Office of the Majority Leader
(916) 319-2042 562 A - 250

AB 2799

* Fax Background sheet to Tom Newton

* GO - Assembly

Judiciary - Senate (more problems -
Gloria Ochow)

Brown's Bill - SB ? (vs 4 - lines 20 → page 5 -
line 6)

* CA Newspaper Publishers Association

- Sponsor of AB 2799

- Protector of the Brown Act & other public
access issues

- concerned w/ lack of government
records.

- How can public access the computer
records? It is agreed that it is
a public record

A) pay out a photocopy of record =

B) disclosure or non-disclosure

C) how does public access or
how do they know to access the
electronic records

* Require agencies to supply records in a
modern format (CD, disc, tape, etc.)

* Need to review AB 1099 (Shelley)

LH: 563 A-251

* Task forces have been convened, etc.
* Fear that a major increase in costs to state agency, too much info. will be given out, etc. ? → State Agency

* Should be no problem w/ the Legislators & presumably ~~so~~ have the Governor sign it.

How does the bill address electronic access ?

* State shall provide electronic data in electronic format

Legacy System - Antiquated method of holding or dealing w/ data
A) Addressed in Sub 2
B) If State doesn't have it, they do not need to supply it.

Paul Richard

CA Board of Pharmacy
(916) 445-5014 ext 4016

* inquired about AB 2799

LEGISLATIVE INTENT SERVICE (800) 666-1917

Contacts for AB 2799

1. Terry Francke

(916) 974-8888

* good source of info. for public info. act

* possible witnesses

2. Society of Los Journalists (SPT)

contact: Randy Lyman

~~SPT~~ Bay Guardian, magazine

3. Dan Wikel, SPT (So Cal Dept.)

contact: 1-800-LATIMES

* Possible Support

- LWU, AARP, ACLU

AB 2279

1. Norm Hill

CDF

653-4153

needs AB 2799 Background

2. Stan Whig
CA Assoc. of Realtors

444-2045

needs info on AB 2799

3. Richard Ries

ext. 2663

4. Patricia
442-6646

RYAN SPENCER

Office of the Majority Leader

(916) 319-2012: 567 A - 255

* Do we have incidents that warrant the reverse balancing act.

* Simply put, this helps ~~convince~~ prove that a public record is truly public.

* The requester needs to see a public agency record to receive an exempted public record. This will allow the agency to consider the citizens argument that the release of the record serve the public's best interest.

* Records are exempt by discretion NOT prohibition.

* CSAC reserves the right to oppose

* ~~allow~~ the public interest rule

~~is~~ - use this to protect this.

* Judge can decide.

AB 2799

* All records are open

* 6254 - there are many exemptions
- prohibited by law.

* Give public the ability to consider
the exemption but ask that the exemption
be waived.

* What records are not being received

- preliminary drafts

- subdivision C of 6254

- subdivision F - arrest reports

- Will an agency disclose information in
face of conflict?

a) possibly, but all the records are
truly public. The agency is the
one who decides to exempt the particular
record from disclosure. It would also
be the one who can disclose.

* unwarranted invasion of privacy.

- Agency can withhold the information even
if no specific exemption is placed.

* This bill will equalize the rights of
the agency & the people.

1 (2) The need to search for, collect, and appropriately
2 examine a voluminous amount of separate and distinct
3 records that are demanded in a single request.

4 (3) The need for consultation, which shall be
5 conducted with all practicable speed, with another
6 agency having substantial interest in the determination
7 of the request or among two or more components of the
8 agency having substantial subject matter interest therein.

9 (d) Nothing in this chapter shall be construed to
10 permit an agency to delay or obstruct the inspection or
11 copying of public records. The notification of denial of
12 any request for records required by Section 6255 shall set
13 forth the names and titles or positions of each person
14 responsible for the denial.

15 (e) Except as otherwise prohibited by law, a state or
16 local agency may adopt requirements for itself that allow
17 for faster, more efficient, or greater access to records than
18 prescribed by the minimum standards set forth in this
19 chapter.

20 SEC. 2. Section 6253.2 is added to the Government
21 Code, to read:

22 6253.2. (a) Unless otherwise prohibited by law, any
23 agency that has information that constitutes an
24 identifiable public record that is in an electronic format
25 shall make that information available in an electronic
26 format when requested by any person and, when
27 applicable, shall comply with the following:

28 (1) The agency shall make the information available in
29 any electronic format in which it holds the information.

30 (2) Each agency shall provide a copy of an electronic
31 record in the format requested if the requested format is
32 one that has been used by the agency to create copies for
33 its own use or for provision to other agencies. Direct costs
34 of duplication shall include the costs associated with
35 duplicating electronic records.

36 (b) Nothing in this section shall be construed to
37 require the public agency to reconstruct a report in an
38 electronic format if the agency no longer has the report
39 itself available in an electronic format.

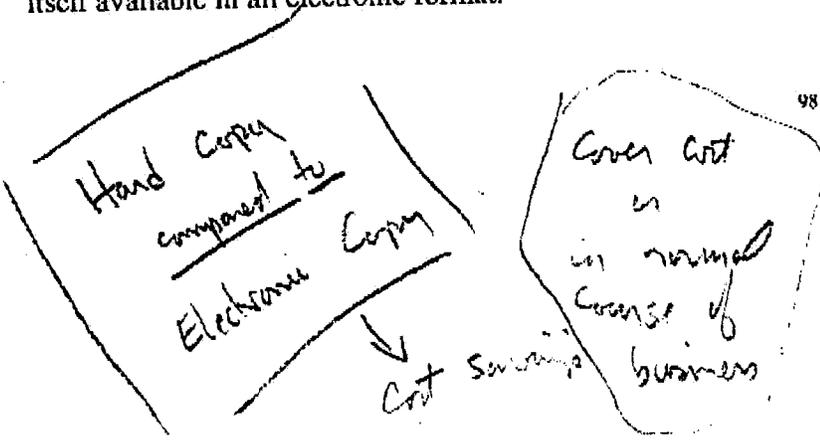
Pay for costs of redaction

*County Clerk
"redacting" issue*

** to provide an electronic document*

** extracting data from electronic materials - it takes time to produce the document outside the court*

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1 (c) Nothing in this section shall be construed to permit
2 an agency to make information available only in an
3 electronic format.

4 (d) Nothing in this section shall be construed to permit
5 public access to records held by the Department of Motor
6 Vehicles to which access is otherwise restricted by statute.

7 SEC. 3. Section 6255 of the Government Code is
8 amended to read:

9 6255. (a) The agency shall justify withholding any
10 record in writing by demonstrating that the record in
11 question is exempt under express provisions of this
12 chapter or that on the facts of the particular case the
13 public interest served by not disclosing the record clearly
14 outweighs the public interest served by disclosure of the
15 record.

16 ~~(b) Notwithstanding any provision of this chapter, an~~
17 ~~agency, or the superior court in any action brought~~
18 ~~pursuant to Section 6259, may disclose or order to be~~
19 ~~disclosed any record made exempt by express provisions~~
20 ~~of this chapter if, on the facts of the particular case, the~~
21 ~~public interest served by disclosing the record clearly~~
22 ~~outweighs the public interest served by not disclosing the~~
23 ~~record.~~

24 SEC. 4. Notwithstanding Section 17610 of the
25 Government Code, if the Commission on State Mandates
26 determines that this act contains costs mandated by the
27 state, reimbursement to local agencies and school
28 districts for those costs shall be made pursuant to Part 7
29 (commencing with Section 17500) of Division 4 of Title
30 2 of the Government Code. If the statewide cost of the
31 claim for reimbursement does not exceed one million
32 dollars (\$1,000,000), reimbursement shall be made from
33 the State Mandates Claims Fund.

O



AMENDED IN ASSEMBLY APRIL 27, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2799

Introduced by Assembly Member Shelley
(Principal coauthor: Senator Bowen)

February 28, 2000

An act to amend Sections 6253 and 6255 of, and to add Section 6253.2 to, the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 2799, as amended, Shelley. Public records: disclosure.

(1) The California Public Records Act provides that any person may receive a copy of any identifiable public record from any state or local agency upon payment of specified fees. The act provides that it shall not be construed to permit an agency to obstruct the inspection or copying of public records and requires any notification of denial of any request for records pursuant to the act to set forth the names and titles or positions of each person responsible for the denial. The act also requires computer data to be provided in a form determined by the agency.

This bill would provide that nothing in the act shall be construed to permit an agency to delay or obstruct the inspection or copying of public records and would require that the notification of denial of any request for records justifying its withholding to be in writing. This bill would delete the requirement that computer data be provided in a



form determined by the agency and would require any agency that has information that constitutes an identifiable public record that is in an electronic format to make that information available in an electronic format when requested by any person. The bill would require the agency to make the information available in any electronic format in which it holds the information. Because these requirements would apply to local agencies as well as state agencies, this bill would impose a state-mandated local program.

(2) The act requires the agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the act or that, on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

~~This bill would authorize the agency or the superior court to disclose a record made exempt under the express provisions of the act if the agency or the superior court determines that, on the facts of the particular case, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record require the agency to justify withholding any record in writing.~~ By imposing this new ~~duties~~ duty on local public officials, the bill would create a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



The people of the State of California do enact as follows:

1 SECTION 1. Section 6253 of the Government Code is
2 amended to read:

3 6253. (a) Public records are open to inspection at all
4 times during the office hours of the state or local agency
5 and every person has a right to inspect any public record,
6 except as hereafter provided. Any reasonably segregable
7 portion of a record shall be available for inspection by any
8 person requesting the record after deletion of the
9 portions that are exempted by law.

10 (b) Except with respect to public records exempt
11 from disclosure by express provisions of law, each state or
12 local agency, upon a request for a copy of records that
13 reasonably describes an identifiable record or records,
14 shall make the records promptly available to any person
15 upon payment of fees covering direct costs of duplication,
16 or a statutory fee if applicable. Upon request, an exact
17 copy shall be provided unless impracticable to do so.

18 (c) Each agency, upon a request for a copy of records,
19 shall, within 10 days from receipt of the request,
20 determine whether the request, in whole or in part, seeks
21 copies of disclosable public records in the possession of
22 the agency and shall promptly notify the person making
23 the request of the determination and the reasons
24 therefor. In unusual circumstances, the time limit
25 prescribed in this section may be extended by written
26 notice by the head of the agency or his or her designee to
27 the person making the request, setting forth the reasons
28 for the extension and the date on which a determination
29 is expected to be dispatched. No notice shall specify a date
30 that would result in an extension for more than 14 days.
31 As used in this section, "unusual circumstances" means
32 the following, but only to the extent reasonably necessary
33 to the proper processing of the particular request:

34 (1) The need to search for and collect the requested
35 records from field facilities or other establishments that
36 are separate from the office processing the request.



1999-2000

COMPLETE BILL HISTORY

BILL NUMBER : A.B. No. 1099
 AUTHOR : Shelley
 TOPIC : Elections: ballots.
 TYPE OF BILL :

INACTIVE BILL	NON-URGENCY
NON-APPROPRIATION	2/3
NON-STATE-MANDATED LOCAL PROGRAM	FISCAL
NON-TAX-LEVY	

BILL HISTORY

1999

Oct. 10 Chaptered by Secretary of State - Chapter 843, Statutes of 1999.
 Oct. 8 Approved by the Governor.
 Sept. 24 Enrolled and to the Governor at 12:45 p.m.
 Sept. 10 Senate amendments concurred in. To enrollment. (Ayes 55. Noes 21. Page 4478.)
 Sept. 9 In Assembly. Concurrence in Senate amendments pending.
 Sept. 9 From inactive file. To third reading. Read third time. Amended. Senate Rule 29.3 suspended. Read third time, passed, and to Assembly. (Ayes 29. Noes 0. Page 3177.)
 Sept. 7 To inactive file on motion of Senator Schiff.
 Sept. 1 Read third time, passage refused. (Ayes 20. Noes 10. Page 2807.) Motion to reconsider made by Senator Schiff. Reconsideration granted. (Ayes 39. Noes 0. Page 2808.)
 Aug. 19 (Corrected August 18.)
 July 12 Read second time, amended, and to third reading.
 July 8 From committee: Amend, and do pass as amended. (Ayes 7. Noes 1.)
 June 29 In committee: Hearing postponed by committee.
 June 2 Referred to Com. on JUD.
 May 17 In Senate. Read first time. To Com. on RLS. for assignment.
 May 17 Read third time, passed, and to Senate. (Ayes 79. Noes 0. Page 1667.)
 May 13 Read second time. To third reading.
 May 12 Read second time and amended. Ordered returned to second reading.
 May 11 From committee: Amend, and do pass as amended. (Ayes 15. Noes 0.) (May 10).
 Apr. 27 In committee: Set, first hearing. Hearing canceled at the request of author.
 Mar. 15 Referred to Com. on G.O.
 Feb. 26 From printer. May be heard in committee March 28.
 Feb. 25 Read first time. To print.



1999-2000

COMPLETE BILL HISTORY

BILL NUMBER : S.B. No. 1065
 AUTHOR : Bowen
 TOPIC : Public records: electronic format.
 TYPE OF BILL :

INACTIVE BILL	NON-URGENCY
NON-APPROPRIATION	2/3
STATE-MANDATED LOCAL PROGRAM	FISCAL
NON-TAX-LEVY	

BILL HISTORY

2000

Jan. 10 Stricken from Senate file. Veto sustained.

1999

Oct. 11 In Senate. To unfinished business. (Veto)

Oct. 10 Vetoes by Governor.

Sept. 10 Enrolled. To Governor at 11 a.m.

Sept. 3 In Senate. To enrollment.

Sept. 3 Read third time. Passed. (Ayes 68. Noes 6. Page 3839.) To Senate.

Sept. 2 From inactive file to third reading file.

Sept. 1 Notice of motion to remove from inactive file given by Assembly Member Romero.

Aug. 31 Placed on inactive file pursuant to Assembly Rule 78.

Aug. 19 From committee: Do pass. (Ayes 18. Noes 3.) Read second time. To third reading.

July 12 From committee: Do pass, but first be re-referred to Com. on APPR. (Ayes 13. Noes 2.) Re-referred to Com. on APPR.

June 17 To Com. on G.O.

May 26 In Assembly. Read first time. Held at Desk.

May 25 Read third time. Passed. (Ayes 31. Noes 7. Page 1354.) To Assembly.

May 19 Read second time. To third reading.

May 18 From committee: Do pass. (Ayes 9. Noes 3. Page 1215.)

May 6 Set for hearing May 17.

Apr. 27 Read second time. Amended. Re-referred to Com. on APPR.

Apr. 26 From committee: Do pass as amended, but first amend, and re-refer to Com. on APPR. (Ayes 6. Noes 0. Page 830.)

Apr. 7 Set for hearing April 20.

Mar. 18 To Com. on JUD.

Mar. 1 Read first time.

Feb. 27 From print. May be acted upon on or after March 29.

Feb. 26 Introduced. To Com. on RLS. for assignment. To print.

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UNOFFICIAL BALLOT

1999-2000 Votes - ROLL CALL

MEASURE: AB 1099
 TOPIC: Elections: ballots.
 DATE: 09/01/99
 LOCATION: SEN. FLOOR
 MOTION: Assembly 3rd Reading AB1099 Shelley By Schiff
 (AYES 20. NOES 10.) (FAIL)

AYES

Baca	Burton	Chesbro	Costa
Dunn	Haynes	Hughes	Johannessen
McPherson	Murray	O'Connell	Peace
Perata	Poochigian	Raincy	Schiff
Sher	Solis	Speier	Vasconcellos

NOES

Alarcon	Bruite	Johnson	Kelley
Knight	Leslic	Lewis	Monteith
Mountjoy	Wright		

ABSENT, ABSTAINING, OR NOT VOTING

Alpert	Bowen	Escutia	Figueroa
Hayden	Johnston	Karnette	Morrow
Ortiz	Polanco		

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1999-2000

COMPLETE BILL HISTORY

BILL NUMBER : A.B. No. 1099
 AUTHOR : Shelley
 TOPIC : Elections: ballots.
 TYPE OF BILL :

INACTIVE BILL	NON-URGENCY
NON-APPROPRIATION	2/3
NON-STATE-MANDATED LOCAL PROGRAM	FISCAL
NON-TAX-LEVY	

BILL HISTORY

1999

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 Mar. 15 Referred to Com. on G.O.
 Feb. 26 From printer. May be heard in committee March 28.
 Feb. 25 Read first time. To print.



FIRST AMENDMENT COALITION

APR - 6 2000

PROMOTE AND DEFEND
THE PEOPLE'S RIGHT TO KNOW

April 5, 2000

Assemblyman Kevin Shelley
Room 3160
State Capitol
10th & L Streets
Sacramento, CA 9814

RE: AB 2799 -- SUPPORT

Dear Assemblyman Shelley:

The California First Amendment Coalition strongly supports AB 2799 because it would create an overdue balance in how the discretion to withhold significant information from the public operates in California law.

Presently a public agency may, under the California Public Records Act, deny citizens' access to a document which has not been made exempt from disclosure by any of the hundreds of express confidentiality provisions of state or federal statute. Government Code Section 6255, the notorious "catchall" exemption, allows withholding of a record if the agency demonstrates that on the basis of the particular facts and circumstances, the public interest in not making the information public outweighs the public interest in disclosure.

This provision acts too often as a "secrecy wild card" permitting ad hoc decisions to withhold a record that the Legislature has never seen fit to consider sensitive or confidential.

AB 2799 would give the public a reciprocal chance to argue the effects of unforeseen circumstances by providing that a court could conclude that, based on such circumstances, the public interest in disclosure outweighed any public interest in secrecy.

This provision would not operate on records where disclosure is flatly prohibited. It would govern only those records where the public agency has the discretion to release or not -- and has opted against release.

It is indisputable that most public agencies, virtually without exception, always exercise such discretion in favor of concealment. So "permissive" exemptions are, in practice, treated as secrecy mandates.

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Sacramento, CA 95825-1226
(916) 974-8888
FAX: (916) 974-8880
E-mail: cfac@cfac.org

http://w
LH: 579 A - 267

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Your bill would allow the agency, of course, to defend its option favoring secrecy. But it would also allow a judge, based on the totality of the circumstances, to rule that there is an extraordinary public interest in making the information available to the community.

If agencies can, as they clearly can under the law as it stands, improvise a calculus of the public interest to withhold normally public records, fairness and good government dictates that a court should have the same power, at least where the agency could have said "Yes" in the first place, but chose for its own reasons not to do so.

Sincerely,



Terry Francke
General Counsel

cc: Richard Rios, Consultant
Assembly Committee on Governmental Organization
1020 N St., Room 159



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JAMES E. GROSSBERG
CELESTE PHILLIPS*
SETH D. BERLIN
JAY WARD BROWN

* RESIDENT AND ADMITTED IN CALIFORNIA ONLY

April 7, 2000

Honorable Kevin Shelley
California State Assembly
State Capitol, Room 3160
Sacramento, CA 95814

Re: AB 2799

Dear Assembly Member Shelley:

This firm serves as First Amendment counsel to The Orange County Register. I write to express The Register's enthusiastic support for AB 2799. Although AB 2799 contains a number of worthy provisions, this letter specifically addresses one portion of the legislation that may not receive the attention that it deserves.

Specifically, AB 2799 would insert into Gov't Code subsection 6253(d) the words "delay or." The effect of this amendment would be to restore a term to subsection (d) that was previously deleted when the term "obstruct" was inserted in place of the word "delay." Although the proposed amendment may appear only technical and inconsequential, it is not.

The Register, like other metropolitan and community newspapers in California, routinely relies on the California Public Records Act (CPRA) to obtain access to public records that are essential to enable it to inform its readers regarding the operations of government agencies and the conduct of government officials. Too often, public agencies to which CPRA requests are addressed search for technicalities in the statute to delay the release of records that may raise questions regarding the propriety or efficacy of agency decisions and may embarrass agency officials. These agencies know full well that, as one court has stated, "news delayed is often news denied," and that by delaying the release of potentially controversial records, they may deny a news organization information that is vital to time-sensitive reporting.

For example, when The Register investigated and reported on the abuses at the fertility clinic at the University of California-Irvine - reporting that earned it journalism's most distinguished award, the Pulitzer Prize, and prompted reform legislation in California and

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Honorable Kevin Shelley
April 10, 2000
Page 2

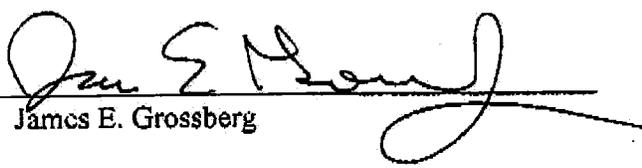
elsewhere – The Register utilized the CPRA to obtain public records that were critical to The Register's reporting. Yet, time and time again, the University of California ignored the CPRA's mandate that public records be open to inspection "at all times" and that, even if the agency has a basis on which to question whether records are exempt from disclosure under applicable law, the agency determine within 10 days whether the records are in fact exempt. Rather, The Register's CPRA requests were typically met with months of delay, even where the University readily conceded that the records were not exempt from disclosure.

The provision of AB 2799 described above would return to the CPRA language that specifically instructs that nothing in the Act shall be utilized as an excuse to delay the inspection of public records as required by law. Although The Register is not so naïve as to believe that this amendment will solve the serious problem of administrative delay in responding to CPRA requests, it will at least remove any doubt that the prior substitution of "obstruct" for "delay" in subsection 6253(d) was not intended to weaken the CPRA's mandate that agencies act in good faith to promptly disclose public records requested under the Act.

Thank you for your consideration of this letter and for your introduction of AB 2799.

Yours sincerely,

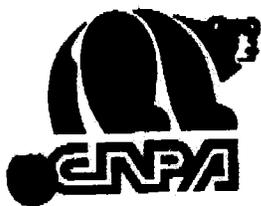
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By 
James E. Grossberg

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LEGISLATIVE INTENT SERVICE





California Newspaper Publishers Association

CNPA Services, Inc.

MAR 24 2000

930 G Street, Sacramento, CA 95814-1811
Tel: (916) 288-6000 • Fax: (916) 288-6002

March 24, 2000

Honorable Kevin Shelley
California State Assembly
State Capitol Room 3160
Sacramento, California 95814

RE: SPONSOR AB 2799

Dear Assemblyman *Shelley*:

I am writing on behalf of the California Newspaper Publishers Association to acknowledge the association's sponsorship of your Assembly Bill 2799, which would make several important changes to the California Public Records Act. Specifically, **AB 2799** would:

- **Electronic access** -- The bill would require state and local agencies to provide copies of accessible computerized public records in an electronic format. Current law provides virtually no direction on this issue either for the public or agencies governed by the Act. The law merely provides that "Computer data shall be provided in a form determined by the agency "(Govt. Code Sec. 6253 (b))." **AB 2799** would provide reasonable rules for public access to electronically held records, including a provision that these records shall be made available in any form in which the agency holds the information.
- **"Delay"** -- **AB 2799** would reinsert the word "delay" into Sec. 6253 (d), removed unwisely in 1996 legislation, to provide that, notwithstanding the timelines described in the Act, an agency shall not delay access to the inspection or copying of public records.
- **Reverse Balancing Test** -- Govt. Code Section 6255 provides for the public interest balancing test, a "catchall" provision that allows the government to withhold access to any record, even if it is not specifically exempt by law, if the public interest warrants it. The provision is a one-way street -- if it is used by an agency, it is used only for the purpose of denying access to a records request (E.g., "we admit there is no statutory exemption allowing the agency to withhold the record, but we believe under the facts of this request, the public interest in disclosure is clearly outweighed by the public interest in nondisclosure. Access denied.") **AB 2799** would level the playing field by giving the same balancing test to the public for records that may be exempt pursuant to statute. The bill would give discretion to an agency or the Superior Court to provide any record exempt by provisions of the law if, "... on the facts of the particular case, the public interest served by disclosing the record clearly outweighs the public interest in not disclosing the record." **AB 2799** would merely give the public the same tool as the government to provide -- rather than deny -- access, when the public interest demands it.

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Honorable Kevin Shelley
California State Assembly
RE: SPONSOR AB 2799
March 24, 2000
Page 2

This provision dovetails with existing Sec. 6253 (e), which allows agencies to adopt requirements that allow for "faster, more efficient, or greater access to records" than prescribed by the minimum standards set forth in the Act.

AB 2799 will ensure quicker, more useful access to public records that should be disclosed in the public interest. On behalf of the nearly 500 newspaper member of CNPA, Thank you for introducing AB 2799. We look forward to working with you to ensure the governor's signature approval of this important legislation.

Sincerely,



Thomas W. Newton
CNPA General Counsel

cc: George Riggs, CNPA President, Publisher and CEO, Contra Costa Times
Bill Niese, General Counsel, Times Mirror
Jack Bates, CNPA Executive Director
James Ewert, CNPA Legal Counsel
Richard Rios, Senior Consultant to the Assembly Governmental Organization Committee

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COUNTY OF LOS ANGELES

Sacramento Legislative Office

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Board of Supervisors

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Fifth District

DANIEL J. WALL
Chief Legislative Representative

May 22, 2000

ASSEMBLY FLOOR LETTER

**ASSEMBLY BILL 2799 (SHELLEY)
AS AMENDED APRIL 27, 2000
POSITION: OPPOSE
ASSEMBLY THIRD READING FILE**

The Los Angeles County Board of Supervisors opposes Assembly Bill 2799 (Shelley), as amended April 27, 2000, relating to public records. That measure soon will be on the Assembly Third Reading File.

Current provisions of the California Public Records Act (PRA) permit computer data held by a public agency to be disclosed in a form determined by the public agency.

Assembly Bill 2799 deletes the authority for a public agency to determine the form in which computer data is to be released. It requires a public agency to provide computer records in any format that the agency utilizes and requires written justification of a public agency's decision to withhold an electronic file.

The broad approach of Assembly Bill 2799 causes problems within several County departments. For example, the Auditor-Controller reports that Countywide time keeping systems contain data that would require special programming to provide information without jeopardizing employee privacy.

The Audit Division utilizes special proprietary software that cannot be redacted in its original electronic format. The electronic format proposal will increase substantially the cost of legal review, redaction and special programming.

Because of the potential costs associated with its implementation, I urge your "NO" vote on Assembly Bill 2799.

Very truly yours,

Steve Zehner
Principal Deputy County Counsel
SZ:lf

cc: Each Assembly Member

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CALIFORNIA CHAMBER of COMMERCE

April 20, 2000

The Honorable Kevin Shelley
California State Assembly
State Capitol, Room 3160
Sacramento, CA 95814

RE: - AB 2799 - Disclosure of Records

Dear Assemblyman Shelley:

On behalf of the members of the California Chamber of Commerce, I write to inform you of our opposition to your Assembly Bill 2799, which would allow a state agency or Superior Court to order disclosure of a record, currently exempt from disclosure under the provisions of the California Public Records Act.

Your bill would authorize the agency or Court to disclose these exempt records if the agency or Court determines that "the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record." Moreover, your bill essentially reverses the test presently used by an agency or Court when determining whether or not to disclose non-exempted records.

We are concerned that this proposed change to the California Public Records Act would result in undermining many of California's regulatory programs, which often rely on submission of proprietary commercial information and data by members of the regulated community. Many of the businesses in California that submit information and data, that would otherwise be proprietary, rely on the State agencies and their sub-divisions to use the information solely for regulatory purposes. Willingness by the regulated community to participate in regulatory programs is often predicated upon the understanding that proprietary information will be used exclusively by the regulating entity. Allowing agencies or courts to disclose this information will serve as disincentive to cooperation between the regulated community and regulators.

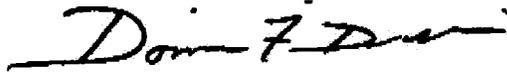
We believe that reversing the balancing test presently used by agencies and the Court, could disrupt the exchange of information that exists between regulator and regulated, resulting in more litigious and less effective regulatory administration.



Page 2

For these and other reasons we oppose your Assembly Bill 2799. I am happy to meet with your staff to more fully discuss the issue.

Sincerely,



Dominic F. DiMare, Legislative Advocate
Telecommunications, Utilities and Worker's Compensation

cc: The Honorable Herb Wesson, Chairman, Assembly Governmental
Organization Committee
Mike Gotch, Office of the Governor
Michael Peterson, Assembly Republican Caucus

LEGISLATIVE INTENT SERVICE (800) 666-1917

LEGISLATIVE INTENT SERVICE



BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: 916.445.9555
Telephone: 916.445.3519
Facsimile: 916.322.2630
E-Mail: JAyala@hdcdojnet.state.ca.us

April 17, 2000

Honorable Herb Wesson, Chair
Assembly Committee on Governmental Organization
Legislative Office Building
1020 N Street, Room 159
Sacramento, CA 95814

RE: Opposition to Assembly Bill 2799 (Shelley)

Dear Assembly Member Wesson:

On behalf of the Office of the State Attorney General, I wish to express our opposition to AB 2799 relating to public records. The bill would undermine many of the express exceptions from public disclosure contained in the California Public Records Act for records relating to personnel and medical records of employees, pending litigation, ongoing investigations of law enforcement agencies, and other records recognized as privileged from disclosure, among other things. In our view, the exemption from public disclosure contained in existing law for these types of records serve important and compelling public policies.

Sincerely,

JOE J. AYALA
Legislative Advocate

For **BILL LOCKYER**
Attorney General

cc: Honorable Brett Granlund, Vice-Chair
Assembly Committee on Governmental Organization
Honorable Kevin Shelley

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LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
SACRAMENTO LEGISLATIVE OFFICE

GIL GARCETTI • District Attorney
ROBERT P. HEFLIN • Chief Deputy District Attorney

JAMES R. PROVENZA • Special Assistant

April 11, 2000

APR 12 2000

The Honorable Kevin Shelley
California State Assembly
State Capitol, Room 3160
Sacramento, California 95814

**ASSEMBLY BILL 2799 (SHELLEY)
OPPOSE**

Dear Assembly Member Shelley:

We regret to inform you that the Los Angeles District Attorney's Office is opposed to Assembly Bill 2799. AB 2799 would add subdivision (b) to Section 6255 of the Government Code which would provide:

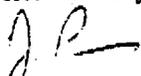
Notwithstanding any provision of this chapter, an agency, or the superior court in any action brought pursuant to Section 6259, may disclose or order to be disclosed any record made exempt by express provisions of this chapter if, on the facts of the particular case, the public interest served by disclosing the record clearly outweighs the public interest served by non disclosure of the record.

The above provision would potentially permit the release of confidential victim and witness information in a criminal case, such as the location and identity of these individuals. It could also require the disclosure of information in a pending investigation. We feel that this could make witnesses and victims more reluctant to come forward and could jeopardize the prosecution of criminal cases. The above provision could also result in an actionable violation of the right to privacy under Article 1, Sec 1 of the California Constitution.

We have other concerns regarding the bill, however, we understand that the sponsors have requested a meeting to discuss the bill and that the bill may be amended. We will discuss our remaining concerns at the meeting. We appreciate the willingness of the author and sponsor to meet with us regarding Assembly Bill 2799.

Very truly yours,

GIL GARCETTI
District Attorney

By 
JAMES R. PROVENZA
Special Assistant District Attorney
JRP:jk

(800) 666-1917

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1100 K Street, Suite 404
Sacramento,

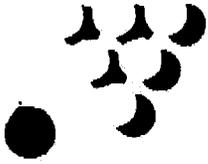
LH 9589 A - 277
Fax: (916)

4/13/95 AB 2799 (Shelley)
Meeting Attendees

Name	Representing	Ph / FAX
Ryan Spencer	Assem. Kevin Shelley	319-2340 / 319-2240
John Campbell	AIA	4724584 / 441-4925
Mike Dillon	Calif. State Senators Offices	448-2196
Dwight Steenbakken	League of Cities	658-8213
Ruthann Ziegler	Kronick, Moskowitz / CASA	321-4500 321-4555
Jeffrey Leacock	Livingston & Matthews	942-1111 / 445-1917
BARBARA WHEELER	Civil Justice Assn OF CALIF	916/443-4900 / 430-8888
Amy Brown	League of Cities	658-8279
TERRY FRANCKE	CAL. 1st Amendment Coalition	916-974-8888
Phyllis Marshall	PIFC	442-6646
Jim Grant	CNPA	288-6013 / 288-6013
Rubin Lopez	CSAC	327-7500 x45
Elizabeth Howard	CSAC	327-7500 x537
JEFF FULLER	NCIC	(916) 440-1106
MIKE MARTINEZ	MANATT, PHELPS & PHILLIPS, LLP	916-552-2300

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WINE INSTITUTE

APR 18 2000

April 17, 2000

1127 Eleventh Street
Suite 900
Sacramento
California 95814
(916) 441-6974
Fax (916) 441-7090

The Honorable Herb Wesson
Chair, Assembly Governmental Organization Committee
Room 2179, State Capitol

Herb
Dear Mr. Chair:

Representing the largest, oldest trade association for all California wineries, the Wine Institute must register its strong opposition to AB 2799 (Shelley) regarding public disclosure of private documents.

This measure would mandate a governmental agency or superior court to disclose any documents if on a case-by-case basis "the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record." Essentially, AB 2799 reverses the interests considered in the balancing test by emphasizing the public interest in disclosure over assuring First Amendment protections.

The bill's Section 6255 is particularly problematic because:

- (1) It flips the balancing test, thus jeopardizing such highly sensitive information like trade secrets, marketing data, and attorney-client confidential communications;
- (2) It sets the stage to harass individuals and organizations with threatened litigation;
- (3) It disregards that a judicial remedy already exists if an agency is improperly stonewalling; e.g., Government Code Sections 6258 and 6659;
- (4) It grants agencies more discretion to determine competing interests possibly in a bureaucratic or headline-grabbing manner; and
- (5) It undermines the public interest by discouraging parties from voluntarily providing proprietary information.

The bill's sponsor, California Newspaper Publishers Association, has yet to make a case that there are documented horror stories to reverse current law's well crafted balancing test. AB 2799 treads on individuals' and businesses' right to privacy. The Wine Institute joins the Civil Justice Association of California by urging you to vote "no" on AB 2799.

Respectfully,

Mike Falasco
Legislative Representative

cc: Assemblymember Kevin Shelley
Assembly G.O. Committee members

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✓



MEMORANDUM **CIVIL JUSTICE ASSOCIATION OF CALIFORNIA**

APR 18 2000

April 18, 2000

TO: Hon. Herb Wesson, Chair
Hon. Brett Granlund, Vice Chair
Members, Assembly Governmental Organization Committee

FROM: Barbara M. Wheeler, Vice President-Legislation
Jeff Sievers, Legislative Advocate
John H. Sullivan, President

RE: **AB 2799 (Shelley)**
Status: Assembly GO Committee
Hearing Date: April 24, 2000

CJAC POSITION: OPPOSE

The Civil Justice Association of California (CJAC) regrets to advise that it has adopted an oppose position on AB 2799 (Shelley).

AB 2799 would allow a state agency or a superior court to order disclosure of a record, already made exempt from disclosure under the express and detailed provisions of the California Public Records Act (Government Code Section 6254), if the agency or the court determines that "the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record."

We are concerned that if this bill becomes law, the public's trust in the civil justice system and government in general will erode as citizens lose the relative certainty that information they provide to a state or local agency on the assurance of confidentiality will remain confidential. Additionally, enactment of the bill would effectively eliminate the safeguards which exist for protecting both confidential and proprietary information by allowing any individual, regardless of motivation, to use the civil justice system to invade personal privacy and reveal confidential information or at least harass people and organizations with litigation.

After meeting with the sponsors of the bill (the California Newspaper Publishers' Association) and reading the committee analysis of AB 2799, we do not see any backup evidence of this bill's need. The sponsor states this bill is necessary to balance the ability of private citizens to obtain information in government records with the ability of public agencies to maintain confidentiality. However, a thorough reading of the lengthy Public Records Act exemption section (Government

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Code Section 6254) reveals the Legislature's deliberate crafting of the very balancing the sponsors say is needed. For example:

1. Gov. Code Sec. 6254 (c): personnel, medical, or similar files, the disclosure of which would constitute an *unwarranted* invasion of personal privacy.
2. Gov. Code Sec. 6254 (f): ...*unless* the disclosure would endanger the safety of a witness or other person.

The court's current role under the Public Records Act is to determine whether the information being kept from public view falls into one of the categories detailed in Section 6254. There is no reason to require judges to undertake a broad balancing review to determine whether to override express privacy protections enacted by the Legislature. Why should a company be forced into court to establish the value of its "geological and geophysical data, plant production data...or market or crop reports" (Gov. Code Sec. 6254 (e))? Why should Native Americans be forced to go into court to fight challenges to the secrecy of the records of their graves, cemeteries, and sacred places (Gov. Code Sec. 6254 (r))?

Although primarily a criminal law consideration, we must point out that AB 2799's threat to the security of information obtained in confidence would seriously deter investigations which benefit the public. Why would crime victims come forward to testify or further assist law enforcement agencies if they cannot be guaranteed that information they give to the law enforcement agency will not be disclosed to the public?

We believe California's civil justice system -- and the public's already eroding trust in it -- would be substantially harmed by the enactment of AB 2799. The amendments to the Public Records Act provided in AB 2799 would create undue confusion and muddy the balance the Legislature has achieved in protecting competing public interests. The amendments appear even to allow any state agency to independently override the Public Records Act's privacy protections without going near a courtroom! (Sec. 6255).

We urge your no vote on this measure.

cc: Assemblyman Kevin Shelley
Senator Debra Bowen
Richard Rios, Assembly Governmental Organization
Michael Peterson, Assembly Republican Caucus
Ann Richardson, Deputy Legislative Secretary, Governor's Office



APR - 7 2000



GARY PENROD, SHERIFF

April 3, 2000

The Honorable Kevin Shelley
Assembly Member
Capitol Building #3160
Sacramento, CA 95814

Position: **OPPOSE** Assembly Bill 2799 Public Records: Disclosure

Dear Assembly Member Shelley:

The San Bernardino County Sheriff's Department must oppose Assembly Bill 2799 as it would permit a court, despite any other exemption within the Public Records Act, to force the disclosure of an otherwise non-disclosable record if the facts of a particular case show the public interest served by disclosing the information outweighs the public interest served by not disclosing the record. We expect to see public agencies defending victims who have a right under the current law not to have information disclosed about themselves from request by the media, particularly the print media who seek to obtain large volumes of information at times, some of which contains non-disclosable information which requires extensive redacting. If the media could make an appropriate argument, the agency would be prevented from redacting much of this information.

We believe the current section 6253 of the Government Code is functioning well with both sides working from an even playing field and for this reason, we must oppose this measure. I have assigned my Legislative Liaison, Lieutenant Paul Curry, to work with you and your staff to try to resolve this issue. Please feel free to contact Lieutenant Curry at 909.387.0632.

Sincerely,

Gary S. Penrod, Sheriff

cc: Herb Wesson, Chair
Governmental Organization

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APR 18 2000

April 17, 2000

Assemblyman Herb Wesson, Chair
 Assembly Governmental Organization Committee
 Room 2179, State Capitol
 Sacramento, CA 95814

Subject: Assembly Bill 2799 (Shelley)
Position: OPPOSED
Hearing: April 24, 2000 Assembly Governmental Organization Committee

Dear Assemblyman Shelley,

California Manufacturers and Technology Association OPPOSES AB 2799.

Current law provides that public records may be kept confidential if there is a specific exemption in the law, or if the agency determines that the public interest served by not making the record public clearly outweighs the public interest served by disclosing the record.

This bill would create a 'reverse' balancing test, allowing exempt information to be made public if the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.

CMTA opposes the application of this reverse balancing test to public records exempt under the law. Agencies, companies and individuals interested in protecting proprietary data would be subject to litigation to protect confidentiality rights now specifically protected by law.

In addition, CMTA opposes the application of the reverse balancing test to public records not exempt under the law. Existing law provides that agencies must weigh the public interest in not disclosing against the public interest in disclosing, the greater burden being placed on the agency to show that confidentiality interests "clearly outweigh" the disclosure interests. This is the appropriate standard to apply for public records.

Respectfully,

A handwritten signature in cursive script, appearing to read "Dorothy Rothrock".

Dorothy Rothrock
 Policy Director, Corporate Counsel

cc: Members of the Assembly Governmental Organization Committee
 Assemblyman Kevin Shelley
 Consultants, Assembly Governmental Organization Committee
 Michael Petersen, Assembly Republican Minority

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 A logo consisting of a grid of small squares, some filled and some empty, arranged in a pattern that tapers to the right.

ANALYSIS OF ORIGINAL BILL

APR - 6 2000

Author: Shelley

Analyst: Darrine Distefano

Bill Number: AB 2799

Related Bills: See Legislative History

Telephone: 845-6458

Introduced Date: 02-28-2000

Attorney: Patrick Kusiak

Sponsor:

SUBJECT: Public Record Disclosure/Make Available in Electronic Format if Available & When Requested

SUMMARY

This bill would require any state or local agency that has public information in an electronic format to make that information available to the public in an electronic format in which the state agency holds the information. The requester would pay direct costs of duplicating the public record in an electronic format.

This bill would further require a public record to be disclosed if, on the facts of the particular case, the public interest is served by disclosing the record.

EFFECTIVE DATE

This bill would be effective on January 1, 2001, and operative for all public record act requests made after that date.

LEGISLATIVE HISTORY

SB 1065 (99/00, vetoed) would have required any state or local agency that has public information in an electronic format to make that information available to the public in an electronic format.

AB 179 (97/98, vetoed) would have required any state or local agency that has public information in an electronic format to make the information available electronically.

AB 142 (95/96), which failed passage in the Assembly Committee of Governmental Organization, would have required any agency that has public information in an electronic format to make the information available in an electronic format.

SPECIFIC FINDINGS

Under current state law, any person may obtain a copy of any identifiable public record, except records exempt from disclosure, upon payment of any fees (statutory or direct costs of duplication). If the record is stored as computer data, the agency is authorized to determine the format in which the computer data are provided to a requester.

This bill would require any agency that has public information in an electronic format to provide that information in any electronic format in which it holds that information. The agency also shall provide a copy of any electronic record in any format requested if the agency uses the requested format to make copies for itself or other agencies.

Board Position:

S
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NA
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OUA

NP
NAR
PENDING

Department Director

Date

[Signature]

4/4/00

This bill would provide that a public agency would not be required to reconstruct a report in an electronic format if the report were no longer available in an electronic format.

This bill would provide that direct costs of duplication include the costs related to duplicating the electronic record.

This bill would delete the existing provision authorizing an agency to determine the format in which computer data are provided.

This bill would provide for a balancing test weighing the public interest served by disclosure against the public interest served by not disclosing. This balancing test would be applied to determine whether an agency or superior court may disclose or order to be disclosed a record otherwise exempt from disclosure.

Implementation Considerations

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

FISCAL IMPACT

Departmental Costs

This bill would not significantly impact the department's costs since existing law allows, and this bill further specifies, that agencies can be reimbursed for direct costs of duplication.

Tax Revenue Discussion

This bill would not impact state income tax revenue.

BOARD POSITION

Pending.



CALIFORNIA
ASSOCIATION OF
HEALTH FACILITIES



*Supporting People.
Health and
Quality of Life*

April 17, 2000

2201 K Street
P.O. Box 537009
Sacramento
California
(95816) 95853-7004
fax (916) 441-6441
(916) 441-6400

Assembly Member Herb Wesson
Chair, Assembly Committee on Governmental Organization
State Capitol Building, Room 2179
Sacramento, CA 95814

1125 West Sixth Street
Suite 304
Los Angeles
California
90017
fax (213) 627-6106
(213) 627-3000

RE: **Oppose: AB 2799 (Shelley)**

Dear Assembly Member Wesson:

P.O. Box 370
Bella
California
92038
fax (760) 944-1049
(760) 944-1666

The California Association of Health Facilities (CAHF), a non-profit professional organization representing a majority of the state's licensed long-term health care facilities, has taken an oppose position on AB 2799 (Shelley).

AB 2799 would allow a state agency or a superior court in California to order disclosure of a record, already made exempt from disclosure under the express and detailed provisions of the California Public Records Act (Government Code Section 6254), if the agency or the court determines that "the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record."

Roland G. Rapp
Chairman of the Board

The court's current role under the Public Records Act is to determine whether the information being kept from public view falls into one of the categories detailed in Section 6254. There is no reason to require judges to undertake a broad balancing review to determine whether to override express privacy protections enacted by the Legislature.

Richard Mendlen
Vice Chairman of the Board

Paul D. Tunnell
Secretary/Treasurer

CAHF is concerned that enactment of this legislation would effectively eliminate the safeguards which exist for protecting both confidential and proprietary information by allowing any individual, regardless of motivation, to use the civil justice system to invade personal privacy and reveal confidential information, and possibly harass organizations with litigation. The amendments to the Public Records Act provided in AB 2799 would create undue confusion and muddy the balance the Legislature has achieved in protecting competing public interests.

Terry L. Mundy
Immediate Past Chairman



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We urge your "No" vote on AB 2799 (Shelley) when it is heard in the Assembly Committee on Government Organization on April 24, 2000.

Sincerely,



Nancy C. Armentrout
Director of Legislative Affairs

cc: Members of the Assembly Committee on Government Organization
Assembly Member Kevin Shelley

(800) 666-1917

LEGISLATIVE INTENT SERVICE



April 7, 2000



The Honorable Kevin Shelley
Member of the Assembly
Room 3160, State Capitol Building
Sacramento, CA 95814

1100 K Street
Suite 101
Sacramento
California
95814

RE: AB 2799 (Shelley) – Oppose unless amended
Set for hearing April 11, Assembly Governmental Organization Committee

Telephone
916.327.7500

Facsimile
916.441.5507

Dear Assembly Member Shelley:

The California State Association of Counties (CSAC) writes to indicate its position of oppose unless amended on AB 2799, your measure relating to public records.

As we indicated in our previous letter, CSAC has grave concerns about what we view as a serious erosion of protections afforded to non-disclosable information by the potentially broad application of Government Code section 6255(b). Although we understand that you are contemplating an amendment to this section to exclude records that are specifically prohibited from release, we must indicate our opposition in principle to the proposed "reverse balancing" provision. Even with the proposed amendment, there exists real apprehension that the "reverse balancing" provision may, at best, lead to confusion as to what materials is subject to disclosure under the Public Records Act and, at worst, result in release of information that was never intended to be subject to public disclosure.

Counties have consistently indicated their desire and willingness to fulfill their statutory obligations in regards to disclosing public records. We believe, however, that sections 6255 (a) and (b) introduce unnecessary confusion and place public agencies in an untenable position as they attempt to assess whether a record should be disclosed. In addition, we continue to solicit specific input from counties as to the practical application of all other changes contained in your measure.

We thank you for your willingness thus far to meet with and address local government concerns. However, to protect what we view as a critical protection in public records law, CSAC must take an oppose unless amended position. Our hope is that we can continue our discussions with you and your staff to resolve our concerns on this bill. Feel free to contact me at 916/327-7500, ext. 513, or Elizabeth Howard at 916-327-7500, ext. 537 to discuss this matter further. Thank you.

Sincerely,

Rubin R. Lopez
Legislative Representative

cc: The Honorable Herb Wesson, Chair, Assembly Governmental Organization Committee
Members and Consultants, Assembly Governmental Organization Committee

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