

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

APR 02 2019

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

Judge Inavariete Clerk

Deputy

DECLARATION OF JUSTIN NISHIOKA

EXHIBIT B

— VOLUME IV —

(PAGES 901-1200)

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(3)

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)

Form DF-43

AUTHOR

AMENDMENT DATE

BILL NUMBER

K. Shelley, et al.

July 6, 2000

AB 2799

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)						Fund Code
	LA	(Dollars in Thousands)						
	CO	PROP						
	RV	98	FC	2000-2001	FC	2001-2002	FC	2002-2003
9901/Var Depts	SO	No			See Fiscal Summary			0001

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SENATE RULES COMMITTEE	AB 2799
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 445-6614 Fax: (916)	
327-4478	

THIRD READING

Bill No: AB 2799
Author: Shelley (D), et al
Amended: 7/6/00 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE : 5-0, 6/29/00
AYES: Escutia, Morrow, O'Connell, Peace, Schiff

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

ASSEMBLY FLOOR : 70-4, 5/25/00 - See last page for vote

SUBJECT : Public records: disclosure

SOURCE : California Newspaper Publishers Association

DIGEST : This bill 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. It specifies what costs the requester would bear for obtaining copies of records in an electronic format.

The bill adds, 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 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 the

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Public Records Act shall not be construed to permit an agency to delay or obstruct inspection or copying of public records.

ANALYSIS: 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:

1. 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;
2. 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;
3. 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;



- 4. Provide that nothing in the Act shall be construed to permit the agency to delay or obstruct the inspection or copying of public records;
- 5. Provide that a requester bear the costs of programming and computer services necessary to produce a record not otherwise readily produced, as specified;
- 6. Delete the provision in current law that computer data

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that is a public record shall be provided in a form determined by the agency.

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

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.

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

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format to make that information available in an electronic format upon request. Additionally,

1. the agency is required to provide information in any electronic format in which it holds the information; and
2. 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.

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

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in an electronic format. These conditions are:

1. 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.
2. An agency would not be permitted to make information available only in an electronic format.

Even though this bill is intended to make records 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.

This bill requires a public 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, the public agency is required to tell the requester that the information is available in electronic format.

3. 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, 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

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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 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.

4. Any agency 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."

Costs of reproduction of records: what requester pays for

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

1. 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.
2. If the public agency would be required to produce a copy

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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.

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.

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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(a).]

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 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?"



"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.

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.

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.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: Yes

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SUPPORT: (Verified 8/14/00)

California Newspaper Publishers Association (source)
Orange County Register
State Franchise Tax Board
1st Amendment Coalition

OPPOSITION: (Verified 8/14/00)

County of Orange

ARGUMENTS IN SUPPORT: According to the author's office, 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 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,

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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.

ARGUMENTS IN OPPOSITION: 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."

ASSEMBLY FLOOR:

AYES: Aanestad, Alquist, Aroner, Baldwin, Bates, Battin, Bock, Briggs, Calderon, Campbell, Cardenas, Cardoza, Cedillo, Corbett, Correa, Cox, Cunneen, Davis, Dickerson, Ducheny, Dutra, Firebaugh, Florez, Floyd, Gallegos, Granlund, Havice, Honda, House, Jackson, Keeley, Knox, Kuehl, Leach, Lempert, Leonard, Longville, Lowenthal, Machado, Maddox, Maldonado, Mazzoni, McClintock, Migden, Nakano, Olberg, Robert Pacheco, Rod Pacheco, Papan, Pescetti, Reyes, Romero, Runner, Scott, Shelley, Steinberg, Strickland, Strom-Martin, Thompson, Thomson, Torlakson, Vincent, Washington, Wayne, Wesson, Wiggins, Wildman, Wright, Zettel, Hertzberg

NOES: Ackerman, Ashburn, Brewer, Kaloogian

KJG:jk 8/16/00 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****



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Press Release



OFFICE OF THE GOVERNOR

L00:208

FOR IMMEDIATE RELEASE

October 1, 2000

GOVERNOR DAVIS SIGNS CONSUMER LEGISLATION TO PROTECT PRIVACY

Also Signs Public Records Request Bills

SACRAMENTO—Governor Gray Davis has signed bills designed to help keep personal information of California citizens confidential.

"Protecting privacy is an increasing challenge in the information age," said Governor Davis. "These new laws safeguards valuable keep personal information."

Governor Davis signed:

SB 129 by Senator Steve Peace (D-El Cajon) - This legislation establishes the Office of Privacy Protection in the state's Department of Consumer Affairs. The new office will be responsible for handling consumer privacy complaints and developing strategies to protect privacy.

SB 1724 by Senator Joseph Dunn (D-Santa Ana) - This bill prohibits the unrelated use and disclosure of information obtained from a tax return submitted by a consumer. It also makes it a crime to dispose of information obtained in preparing a tax return in a manner in which the identity of the taxpayer may be determined.

SB 1903 by Senator Jackie Speier (D-Hillsborough) - This bill restricts disclosure of medical information to corporations and their subsidiaries and affiliates. It also requires a valid authorization for release of such information, and allows adult patients to insert written addendums into their medical records believed incorrect or incomplete.

SB 2072 by Senator Jackie Speier (D-Hillsborough) - Under this law, victims of stalking or those whose who have received court permission to have their personal Department of Motor

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Vehicle records suppressed simply need to send a letter, instead of a court document, to protect their records.

AB 1862 by Assemblyman Tom Torlakson (D-Antioch) - This bill requires the Department of Justice (DOJ) to establish and maintain a database of identity theft victims in order to assist them in clearing their names, and maintain a toll-free telephone number to provide access to such information. This bill will also establish procedures for entering names of identity theft victims into the DOJ database.

AB 1897 by Assemblywoman Susan Davis (D-San Diego) - This bill enables a person that suspects that he or she is the victim of identity theft to initiate an investigation with a local law enforcement agency. The bill also allows the person to petition the court for an expedited judicial determination of factual innocence when the perpetrator is arrested or convicted.

AB 1965 by Assemblyman Lynne Leach (D-Walnut Creek) - This bill prohibits the Board of Equalization from releasing the names and address of individuals who have licenses, permits, or are registered with the Board, except in specified circumstances.

AB 2246 by Assemblyman Howard Wayne (D-San Diego) - This bill requires businesses to take all reasonable steps possible to destroy customer records containing personal information prior to their disposal.

AB 2559 by Assemblyman Dennis Cardoza (D-Merced) - This new law expressly states that the personnel records of peace officers will not be shared by their employers.

The Governor also signed a bill relating to public records:

AB 2799 by Assemblyman Kevin Shelley (D-San Francisco) - This legislation requires state agencies to provide documents electronically. It also prohibits state agencies from delaying or obstructing the inspection or copying of public records and requires the notification of a denial of any request for public records to be in writing.

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2000
DIGEST OF LEGISLATION

JANUARY 3, 2000 THROUGH SEPTEMBER 1, 2000

VOLUME I
NOVEMBER 2000

PREPARED BY
OFFICE OF SENATE FLOOR ANALYSES

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Government: Other State Government

AB 2708 (Wesson-D) State deposits

Establishes conditions of eligibility for financial institutions, which are subject to the Community Reinvestment Act to participate in receipt of public funds.

Chapter 1036, Statutes of 2000

AB 2724 (Olberg-R) Public officials: voter-approved enactments

Prohibits public officials from using public funds for a legal challenge to a voter-approved enactment.

(Failed passage in Assembly Elections, Reapportionment and Constitutional Amendments Committee)

AB 2735 (Cox-R) Birth certificates

Establishes a procedure for the State Registrar to issue a new birth certificate to a person whose original birth certificate contained an error in gender identification.

Chapter 780, Statutes of 2000

AB 2761 (Brewer-R) Public entities: contracts

Provides that, in the event that a contract with a public entity contains a provision stating the date for accrual of a cause of action for breach of contract, the accrual date shall not be earlier than the date the project is completed or the conclusion of the claims resolution procedure required by the contract, whichever is later.

(Died in Assembly Judiciary Committee)

AB 2786 (Bates-R) Escheated funds: affordable housing: elderly persons

Requires that all unclaimed property, including unclaimed money from a deceased person's estate, that is currently escheated to the state be, instead, deposited in the Housing Rehabilitation Loan Fund. Specifies that the fund is to be used for the construction, rehabilitation, or acquisition and rehabilitation of multifamily rental housing developments for elderly persons or households.

Vetoed by the Governor

AB 2791 (Alquist-D) School and essential services facilities: stop work notice

Grants the State Department of General Services the authority to issue a stop work order for certain construction projects.

Chapter 463, Statutes of 2000

AB 2799 (Shelley-D) Public records: disclosure

Revises various provisions in the Public Records Act 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. Specifies what costs the requester will bear for obtaining copies of records in an electronic format. Adds, 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. 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 the Public Records Act shall not be construed to permit an agency to delay or obstruct inspection or copying of public records.

Chapter 982, Statutes of 2000

AB 2805 (Papan-D) Financial institutions

Requires the California Research Bureau (CRB) to provide a report, until November 30, 2004, to the Legislature addressing the disposition of all state funds, the names of financial institutions receiving state funds, including the geographic location and use of the funds, and the percentage of funds remaining in California and invested out of state. Requires the CRB to complete a study by December 31, 2001, examining, among other things, the present geographical and socioeconomic disposition of California's state funds, the efforts made by state agencies in investing state funds to ensure the funds receive the best rates, and the feasibility and social benefits of mandating that a set percentage of California's public funds be used in California.

Chapter 913, Statutes of 2000

AB 2806 (Papan-D) Public investments: financial institutions

Establishes the Community Reinvestment Act ratings and disclosure conditions precedent for financial institutions, as defined, to receive preference to participate in certain public businesses.

(Failed passage in Assembly Banking and Finance Committee)

AB 2817* (Honda-D) Information technology: innovation projects grant program

Establishes the "Information Technology Innovation Grants program" for the purpose of awarding grants to state agencies to fund innovative information technology projects.

Chapter 608, Statutes of 2000

AB 2846 (Ducheny-D) State contracts

Adds to the Small Business Procurement and Contract Act the requirement that the owners of the business to be domiciled in California in order to be considered a "small business."

(Died in Assembly Consumer Protection, Governmental Efficiency and Economic Development Committee)

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Volume 4

Journal of the Assembly

Legislature of the State of California

1999–2000 Regular Session

December 7, 1998 to November 30, 2000



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CALIFORNIA LEGISLATURE
1999-2000 REGULAR SESSION

ASSEMBLY DAILY JOURNAL

Monday, February 28, 2000

**ONE HUNDRED FORTY-SECOND SESSION DAY
FOUR HUNDRED FORTY-NINTH CALENDAR DAY
AT SACRAMENTO, CALIFORNIA**



NOTE: Official record of roll call votes; all amendments considered by the Assembly on this day are on file with the Chief Clerk of the Assembly and available on request. A list of all measures amended and on which amendments were offered is shown on the final page of this day's Assembly Journal.

(Please Direct Any Inquiries and Report Any Omissions or Errors to Minute Clerk: Phone 319-2360)

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To the Committee on Rules:

Pursuant to Assembly Rule 49, I request permission to suspend the bill introduction limitation with respect to the following bill:

RN 0004982.

ROBERT M. HERTZBERG

Permission of Rules Committee

Assembly Chamber, February 28, 2000

The Committee on Rules grants permission to suspend Assembly Rule 49(c) with respect to the following bill: RN 0004982.

ROBERT M. HERTZBERG, Chairman

**INTRODUCTION AND FIRST READING OF
ASSEMBLY BILLS**

The following bills were introduced and read the first time:

ASSEMBLY BILL NO. 2790—Alquist. An act to amend Sections 44720, 44721, 44722, 44724, and 44725 of, and to amend the heading of Chapter 3.33 (commencing with Section 44720) of Part 25 of, the Education Code, relating to mathematics education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

ASSEMBLY BILL NO. 2791—Alquist. An act to add Sections 17307.5 and 81133.5 to the Education Code, and to add Section 16017.5 to the Health and Safety Code, relating to facilities construction.

ASSEMBLY BILL NO. 2792—Honda. An act to add Section 8562 to the Government Code, relating to hazard mitigation.

ASSEMBLY BILL NO. 2793—House. An act to add Section 42238.51 to the Education Code, relating to school finance.

ASSEMBLY BILL NO. 2794—Havice. An act to amend Section 78021 of, and to add Part 52 (commencing with Section 88500) to, the Education Code, and to repeal Chapter 3.6 (commencing with Section 15379.20) of Part 6.7 of Division 3 of Title 2 of the Government Code, relating to community colleges.

ASSEMBLY BILL NO. 2795—Florez. An act to amend Sections 3511, 4700, 5050, and 5515 of the Fish and Game Code, relating to fish and game, and making an appropriation therefor.

ASSEMBLY BILL NO. 2796—Reyes. An act to add Chapter 2.5 (commencing with Section 13181) to Division 7 of the Food and Agricultural Code, relating to pest control.

ASSEMBLY BILL NO. 2797—Papan. An act to amend the heading of Chapter 5 (commencing with Section 56.26) of Part 2.6 of Division 1 of, and to add Section 56.265 to, the Civil Code, relating to medical information confidentiality.

ASSEMBLY BILL NO. 2798—Thomson. An act to amend Section 4027 of, and to add Article 3.5 (commencing with Section 7260) to Chapter 2 of Division 7 of, the Welfare and Institutions Code, relating to mental health, and declaring the urgency thereof, to take effect immediately.

→ **ASSEMBLY BILL NO. 2799—Shelley (Principal coauthor: Senator Bowen).** An act to amend Sections 6253 and 6255 of, and to add Section 6253.2 to, the Government Code, relating to public records.

ASSEMBLY BILL NO. 2800—Shelley. An act to add Chapter 7 (commencing with Section 36600) to Division 27 of the Public Resources Code, relating to marine resources.

ASSEMBLY BILL NO. 2801—Shelley. An act to add Section 2025.2 to the Code of Civil Procedure, and to amend Section 69955 of the Government Code, relating to deposition officers and court reporters.

ASSEMBLY BILL NO. 2802—Shelley. An act to add Section 830.81 to the Penal Code, relating to tribal law enforcement.



CALIFORNIA LEGISLATURE

1999-2000 REGULAR SESSION

ASSEMBLY DAILY JOURNAL

Thursday, March 16, 2000

ONE HUNDRED FORTY-NINTH SESSION DAY
FOUR HUNDRED SIXTY-SIXTH CALENDAR DAY
AT SACRAMENTO, CALIFORNIA



NOTE: Official record of roll call votes; all amendments considered by the Assembly on this day are on file with the Chief Clerk of the Assembly and available on request. A list of all measures amended and on which amendments were offered is shown on the final page of this day's Assembly Journal.

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LEGISLATIVE INTENT SERVICE



March 16, 2000

*E. Dotson Wilson
Chief Clerk
State Capitol, Room 3196
Sacramento, California*

Dear Dotson: I will be absent from session today, Thursday, March 16, 2000, due to legislative business in my district.

Sincerely,

ANTONIO R. VILLARAIGOSA
Speaker of the Assembly

(NOTE: For letter explaining the absence of Assembly Member Briggs on this day on legislative business pursuant to the Assembly Rules, see Assembly Daily Journal for March 14, 2000.)

COMMUNICATIONS

The following communication was presented by the Speaker, and ordered printed in the Journal:

March 15, 2000

*Mr. E. Dotson Wilson, Chief Clerk
California State Assembly
State Capitol, Room 3196
Sacramento, California*

Dear Mr. Wilson: Please be advised I have named Ms. Diane M. Griffiths to serve as my designee on the California Earthquake Insurance Authority Governing Board and Advisory Panel. This is a pleasure appointment starting immediately. Ms. Griffiths will be replacing Fredericka Moore McGee.

Sincerely,

ANTONIO R. VILLARAIGOSA
Speaker of the Assembly

ENGROSSMENT AND ENROLLMENT REPORTS

Assembly Chamber, March 16, 2000

Mr. Speaker: Pursuant to your instructions, the Chief Clerk has examined:

Assembly Bill No. 1706

Assembly Bill No. 1795

Assembly Bill No. 1712

Assembly Bill No. 1826

And reports the same correctly engrossed.

E. DOTSON WILSON, Chief Clerk

Above bills re-referred to committee.

REFERENCE OF BILLS TO COMMITTEE

Pursuant to the Assembly Rules, the following bills were referred to committee:

Assembly

Bill No.

Committee

1794 ----- L. Gov. and W.,P. & W.

1834 ----- L. Gov. and W.,P. & W.

1873 ----- Ed.

1912 ----- Trans.

1951 ----- Trans.

1986 ----- Hum. S.

1990 ----- Jud. and Health

1998 ----- Pub. S.

2000 ----- Jud.

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→ 2740 ----- Ed. and Info Tech.
 2741 ----- Rev. & Tax.
 2743 ----- Ed.
 2744 ----- Pub. S.
 2745 ----- P.E.,R. & S.S.
 2747 ----- H. & C.D.
 2748 ----- Nat. Res.
 2749 ----- Trans.
 2753 ----- G.O.
 2755 ----- H. & C.D.
 2756 ----- H. & C.D.
 2757 ----- U. & C.
 2758 ----- Health
 2759 ----- G.O.
 2760 ----- G.O.
 2761 ----- Jud.
 2762 ----- U. & C.
 2763 ----- Rev. & Tax.
 2764 ----- Rev. & Tax.
 2765 ----- Rev. & Tax.
 2766 ----- Rev. & Tax.
 2767 ----- Trans.
 2768 ----- Rev. & Tax.
 2769 ----- Trans.
 2772 ----- I.T. & D. and Info Tech.
 2773 ----- Ed.
 2779 ----- L. Gov.
 2780 ----- Pub. S.
 2782 ----- Pub. S.
 2784 ----- Trans.
 2785 ----- W.,P. & W.
 2786 ----- Jud. and H. & C.D.
 2787 ----- Pub. S.
 2789 ----- Health
 2790 ----- Ed.
 2792 ----- G.O.
 2793 ----- Ed.
 2794 ----- Higher Ed.
 2795 ----- W.,P. & W.
 2798 ----- Health and Jud.
 2799 ----- G.O.
 2801 ----- Jud.
 2804 ----- Health
 2806 ----- B. & F.
 2807 ----- Trans.
 2808 ----- Jud.
 2809 ----- Health
 2810 ----- Jud.
 2811 ----- Ed.
 2812 ----- Ed.
 2814 ----- Pub. S.
 2815 ----- Ins.
 2816 ----- Trans.
 2817 ----- Info Tech. and C.P.,G.E. & E.D.

LEGISLATIVE INTENT SERVICE (800) 666-1917



CALIFORNIA LEGISLATURE
1999–2000 REGULAR SESSION

ASSEMBLY DAILY JOURNAL

Thursday, April 27, 2000

ONE HUNDRED SIXTY-SEVENTH SESSION DAY
FIVE HUNDRED EIGHTH CALENDAR DAY
AT SACRAMENTO, CALIFORNIA



NOTE: Official record of roll call votes; all amendments considered by the Assembly on this day are on file with the Chief Clerk of the Assembly and available on request. A list of all measures amended and on which amendments were offered is shown on the final page of this day's Assembly Journal.

(Please Direct Any Inquiries and Report Any Omissions or Errors to Minute Clerk: Phone 319-2360)



ASSEMBLY BILL NO. 1782 (Committee on Agriculture)—An act to add Chapter 4 (commencing with Section 10610) to part 2 of Division 5 of the Food and Agricultural Code, relating to cattle disease control.

Bill read third time, presented by Assembly Member Florez, and passed by the following vote:

AYES—70

Aanestad	Davis	Longville	Shelley
Ackerman	Dickerson	Lowenthal	Steinberg
Alquist	Ducheny	Machado	Strickland
Aroner	Dutra	Maddox	Strom-Martin
Battin	Firebaugh	Maldonado	Thompson
Baugh	Florez	Margett	Torlakson
Bock	Floyd	Migden	Villaraigosa
Brewer	Gallegos	Nakano	Vincent
Briggs	Havice	Olberg	Washington
Calderon	Honda	Oller	Wayne
Campbell	House	Pacheco, Robert	Wesson
Cardenas	Jackson	Pacheco, Rod	Wiggins
Cardoza	Kaloogian	Papan	Wildman
Cedillo	Keeley	Pescetti	Wright
Corbett	Knox	Reyes	Zettel
Correa	Kuehl	Romero	Mr. Speaker
Cox	Leach	Runner	
Cunneen	Lempert	Scott	

NOES—None

Bill ordered transmitted to the Senate.

CALL OF THE ASSEMBLY DISPENSED WITH ON URGENCY CLAUSE AND CONCURRENCE IN SENATE AMENDMENTS TO ASSEMBLY BILL NO. 1494

At 9:58 a.m., on motion of Assembly Member Wildman, and in the absence of any objection, further proceedings under the call of the Assembly were dispensed with.

The roll was opened.

Call of the Assembly Continued

Pending the announcement of the vote, Assembly Member Wildman moved to continue the call of the Assembly.

Motion carried. Time, 9:59 a.m.

The Sergeant at Arms was directed to close the doors, and to bring in the absent Members.

RESOLUTIONS

The following resolutions were offered:

Resolutions to Suspend Joint Rules

By Assembly Member Wright:

Resolved, That Joint Rule 61(b)(5) be suspended to permit the Committees on Utilities and Commerce and Transportation to meet, consider, and report Assembly Bills Nos. 2076 and 2098 for further action.

By Assembly Member Torlakson:

Resolved, That Joint Rule 61(b)(5) be suspended to permit the Committee on Transportation to meet, consider, and report Assembly Bill No. 2784 for further action.



By Assembly Member Wesson:

Resolved, That Joint Rule 61(b)(5) be suspended to permit the Committee on Governmental Organization to meet, consider, and report Assembly Bill No. 2712 for further action.

By Assembly Member Aroner:

Resolved, That Joint Rule 61(b)(5) be suspended to permit the Committee on Human Services to meet, consider, and report Assembly Bill No. 2623 for further action.

By Assembly Member Papan:

Resolved, That Joint Rule 61(b)(5) be suspended to permit the Committee on Banking and Finance to meet, consider, and report Assembly Bills Nos. 2708 and 2806 for further action.

By Assembly Member Davis:

Resolved, That Joint Rule 61(b)(5) be suspended to permit the Committees on Consumer Protection, Governmental Efficiency and Economic Development and Utilities and Commerce to meet, consider, and report Assembly Bill No. 2721 for further action.

By Assembly Member Mazzoni:

Resolved, That Joint Rule 61(b)(5) be suspended to permit the Committee on Education to meet, consider, and report Assembly Bill No. 1745 for further action.

By Assembly Member Knox:

Resolved, That Joint Rule 61(b)(5) be suspended to permit the Committee on Revenue and Taxation to meet, consider, and report Assembly Bill No. 1959 for further action.

By Assembly Member Knox:

Resolved, That Joint Rule 61(b)(5) be suspended to permit the Committees on Revenue and Taxation and Information Technology to meet, consider, and report Assembly Bill No. 2412 for further action.

By Assembly Member Wesson:

Resolved, That Joint Rule 61(b)(5) be suspended to permit the Committee on Governmental Organization to meet, consider, and report Assembly Bills Nos. 1876 and 2799 for further action.

By Assembly Member Torlakson:

Resolved, That Joint Rule 61(b)(5) be suspended to permit the Committee on Transportation to meet, consider, and report Assembly Bill No. 2454 for further action.

By Assembly Member Wright:

Resolved, That Joint Rule 61(b)(5) be suspended to permit the Committees on Utilities and Commerce and Natural Resources to meet, consider, and report Assembly Bill No. 1956 for further action.



AUTHOR'S AMENDMENTS
Committee on Revenue and Taxation

April 27, 2000

Mr. Speaker: The Chair of your Committee on Revenue and Taxation reports:
 Assembly Bill No. 2237

With author's amendments with the recommendation: Amend, and re-refer to the committee.

KNOX, Chairman

ASSEMBLY BILL NO. 2237—An act to add Sections 17053.41 and 23641 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

Bill read second time; author's amendments, presented pursuant to Assembly Rules, read and adopted; bill ordered reprinted, and to be re-referred to the committee.

AUTHOR'S AMENDMENTS
Committee on Labor and Employment

April 27, 2000

Mr. Speaker: The Chair of your Committee on Labor and Employment reports:
 Assembly Bill No. 2827

With author's amendments with the recommendation: Amend, and re-refer to the committee.

STEINBERG, Chairman

ASSEMBLY BILL NO. 2827—An act to add Article 5 (commencing with Section 9900) to Chapter 2 of Part 1 of Division 3 of the Unemployment Insurance Code, relating to employment development, and making an appropriation therefor.

Bill read second time; author's amendments, presented pursuant to Assembly Rules, read and adopted; bill ordered reprinted, and to be re-referred to the committee.

AUTHOR'S AMENDMENTS
Committee on Governmental Organization

April 27, 2000

Mr. Speaker: The Chair of your Committee on Governmental Organization reports:
 Assembly Bill No. 2799

With author's amendments with the recommendation: Amend, and re-refer to the committee.

WESSON, Chairman

→ **ASSEMBLY BILL NO. 2799**—An act to amend Sections 6253 and 6255 of, and to add Section 6253.2 to, the Government Code, relating to public records.

Bill read second time; author's amendments, presented pursuant to Assembly Rules, read and adopted; bill ordered reprinted, and to be re-referred to the committee.

AUTHOR'S AMENDMENTS
Committee on Consumer Protection, Governmental Efficiency and Economic Development

April 27, 2000

Mr. Speaker: The Chair of your Committee on Consumer Protection, Governmental Efficiency and Economic Development reports:

Assembly Bill No. 1793

With author's amendments with the recommendation: Amend, and re-refer to the committee.

DAVIS, Chairwoman



CALIFORNIA LEGISLATURE

1999-2000 REGULAR SESSION

ASSEMBLY DAILY JOURNAL

Monday, May 8, 2000

ONE HUNDRED SEVENTY-SECOND SESSION DAY

FIVE HUNDRED NINETEENTH CALENDAR DAY

AT SACRAMENTO, CALIFORNIA



NOTE: Official record of roll call votes; all amendments considered by the Assembly on this day are on file with the Chief Clerk of the Assembly and available on request. A list of all measures amended and on which amendments were offered is shown on the final page of this day's Assembly Journal.

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AUTHOR'S AMENDMENTS
Committee on Utilities and Commerce

May 8, 2000

Mr. Speaker: The Chair of your Committee on Utilities and Commerce reports:
Assembly Bill No. 2638

With author's amendments with the recommendation: Amend, and re-refer to the committee.

WRIGHT, Chairman

ASSEMBLY BILL NO. 2638—An act to amend Sections 330 and 374 of, and to add Sections 454.1 and 9067 to, the Public Utilities Code, relating to public utilities.

Bill read second time; author's amendments, presented pursuant to Assembly Rules, read and adopted; bill ordered reprinted, and to be re-referred to the committee.

REPORTS OF STANDING COMMITTEES
Committee on Appropriations

Date of Hearing: May 3, 2000

Mr. Speaker: Your Committee on Appropriations reports:

Assembly Bill No. 1781
Assembly Bill No. 1847

With the recommendation: Do pass, as amended.

Pursuant to the provisions of Joint Rules Nos. 22.1, 22.2, and 22.3, the committee recommends that the above bills be placed on the Consent Calendar.

MIGDEN, Chairwoman

Above bills ordered to second reading.

Committee on Governmental Organization

Date of Hearing: May 8, 2000

Mr. Speaker: Your Committee on Governmental Organization reports:

Assembly Bill No. 2777 Assembly Bill No. 2792
Assembly Bill No. 2788 Assembly Bill No. 2799

With the recommendation: Do pass, and be re-referred to the Committee on Appropriations.

WESSON, Chairman

Above bills re-referred to the Committee on Appropriations.

Committee on Consumer Protection, Governmental Efficiency and Economic Development

Date of Hearing: May 2, 2000

Mr. Speaker: Your Committee on Consumer Protection, Governmental Efficiency and Economic Development reports:

Assembly Bill No. 1810
Assembly Bill No. 2366

With amendments with the recommendation: Amend, and do pass, as amended.

DAVIS, Chairwoman

Above bills ordered to second reading.

Date of Hearing: May 2, 2000

Mr. Speaker: Your Committee on Consumer Protection, Governmental Efficiency and Economic Development reports:

Assembly Bill No. 1866
Assembly Bill No. 2023
Assembly Bill No. 2359

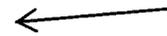
With amendments with the recommendation: Amend, do pass, as amended, and be re-referred to the Committee on Appropriations.

DAVIS, Chairwoman

Above bills ordered to second reading.

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LEGISLATIVE INTENT SERVICE



Volume 5

Journal of the Assembly

Legislature of the State of California

1999–2000 Regular Session

December 7, 1998 to November 30, 2000



HON. ROBERT M. HERTZBERG
Speaker

HON. FRED KEELEY
Speaker pro Tempore

HON. HELEN THOMSON
Assistant Speaker pro Tempore

HON. KEVIN SHELLEY
Majority Floor Leader

HON. SCOTT BAUGH
Minority Floor Leader

E. DOTSON WILSON
Chief Clerk of the Assembly

PAM CAVILEER
Minute Clerk

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LH: 930

CALIFORNIA LEGISLATURE
1999-2000 REGULAR SESSION

ASSEMBLY DAILY JOURNAL

Monday, May 22, 2000

**ONE HUNDRED EIGHTIETH SESSION DAY
FIVE HUNDRED THIRTY-THIRD CALENDAR DAY
AT SACRAMENTO, CALIFORNIA**



NOTE: Official record of roll call votes; all amendments considered by the Assembly on this day are on file with the Chief Clerk of the Assembly and available on request. A list of all measures amended and on which amendments were offered is shown on the final page of this day's Assembly Journal.

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ASSEMBLY BILL NO. 2367—An act to add Sections 605.1 and 6201.5 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

Bill read second time; author's amendments, presented pursuant to Assembly Rules, read and adopted; bill ordered reprinted, and to be re-referred to the committee.

ASSEMBLY BILL NO. 2561—An act to add Section 17140.6 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

Bill read second time; author's amendments, presented pursuant to Assembly Rules, read and adopted; bill ordered reprinted, and to be re-referred to the committee.

REPORTS OF STANDING COMMITTEES

Committee on Transportation

May 18, 2000

Mr. Speaker: Your Committee on Transportation reports the following bill pursuant to the provisions of Joint Rule 62(a):

Assembly Bill No. 1776

TORLAKSON, Chairman

Above bill ordered filed with the Chief Clerk.

Committee on Banking and Finance

May 19, 2000

Mr. Speaker: Your Committee on Banking and Finance reports the following bill pursuant to the provisions of Joint Rule 62(a):

Assembly Bill No. 1707

PAPAN, Chairman

Above bill ordered filed with the Chief Clerk.

Committee on Public Safety

May 11, 2000

Mr. Speaker: Your Committee on Public Safety reports the following bill pursuant to the provisions of Joint Rule 62(a):

Assembly Bill No. 2776

WASHINGTON, Chairman

Above bill ordered filed with the Chief Clerk.

Committee on Judiciary

May 16, 2000

Mr. Speaker: Your Committee on Judiciary reports the following bill pursuant to the provisions of Joint Rule 62(a):

Assembly Bill No. 2555

KUEHL, Chairwoman

Above bill ordered filed with the Chief Clerk.

Committee on Revenue and Taxation

Date of Hearing: May 15, 2000

Mr. Speaker: Your Committee on Revenue and Taxation reports:

Assembly Bill No. 2170

With amendments with the recommendation: Amend, do pass, as amended, and be re-referred to the Committee on Appropriations.

KNOX, Chairman

Above bill ordered to second reading.



Committee on Labor and Employment

Date of Hearing: May 17, 2000

Mr. Speaker: Your Committee on Labor and Employment reports:
Assembly Bill No. 2860

With the recommendation: Do pass, and be re-referred to the Committee on Appropriations.

STEINBERG, Chairman

Above bill re-referred to the Committee on Appropriations.

Committee on Transportation

Date of Hearing: May 15, 2000

Mr. Speaker: Your Committee on Transportation reports:
Assembly Bill No. 2784

With amendments with the recommendation: Amend, do pass, as amended, and be re-referred to the Committee on Appropriations.

TORLAKSON, Chairman

Above bill ordered to second reading.

Committee on Consumer Protection, Governmental Efficiency and Economic Development

Date of Hearing: May 16, 2000

Mr. Speaker: Your Committee on Consumer Protection, Governmental Efficiency and Economic Development reports:

Assembly Bill No. 2252

With amendments with the recommendation: Amend, and do pass, as amended.

DAVIS, Chairwoman

Above bill ordered to second reading.

Committee on Appropriations

Date of Hearing: May 17, 2000

Mr. Speaker: Your Committee on Appropriations reports:
Senate Bill No. 215

With amendments with the recommendation: Amend, and do pass, as amended.

MIGDEN, Chairwoman

Above bill ordered to second reading.

Date of Hearing: May 17, 2000

Mr. Speaker: Your Committee on Appropriations reports:

Assembly Bill No. 1747

Assembly Bill No. 2420

With the recommendation: Do pass, as amended.

Pursuant to the provisions of Joint Rules Nos. 22.1, 22.2, and 22.3, the committee recommends that the above bills be placed on the Consent Calendar.

MIGDEN, Chairwoman

Above bills ordered to second reading.

Date of Hearing: May 17, 2000

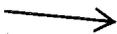
Mr. Speaker: Your Committee on Appropriations reports:

Assembly Bill No. 2799

With amendments with the recommendation: Amend, and do pass, as amended.

MIGDEN, Chairwoman

Above bill ordered to second reading.



CALIFORNIA LEGISLATURE
1999-2000 REGULAR SESSION

ASSEMBLY DAILY JOURNAL

Tuesday, May 23, 2000

**ONE HUNDRED EIGHTY-FIRST SESSION DAY
FIVE HUNDRED THIRTY-FOURTH CALENDAR DAY
AT SACRAMENTO, CALIFORNIA**



NOTE: Official record of roll call votes; all amendments considered by the Assembly on this day are on file with the Chief Clerk of the Assembly and available on request. A list of all measures amended and on which amendments were offered is shown on the final page of this day's Assembly Journal.

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ASSEMBLY BILL NO. 2639—An act to amend Section 1623 of the Insurance Code, relating to insurance.

Bill read second time; author's amendments, presented pursuant to Assembly Rules, read and adopted; bill ordered reprinted, and to be re-referred to the committee.

AUTHOR'S AMENDMENTS
Committee on Public Safety

May 23, 2000

Mr. Speaker: The Chair of your Committee on Public Safety reports:

Senate Bill No. 446

With author's amendments with the recommendation: Amend, and re-refer to the committee.

WASHINGTON, Chairman

SENATE BILL NO. 446—An act to add Article 4.5 (commencing with Section 21649) of Division 8 of the Business and Professions Code, relating to stolen property, and making an appropriation therefor.

Bill read second time; author's amendments, presented pursuant to Assembly Rules, read and adopted; bill ordered reprinted, and to be re-referred to the committee.

AUTHOR'S AMENDMENTS
Committee on Education

May 23, 2000

Mr. Speaker: The Chair of your Committee on Education reports:

Assembly Bill No. 2242

With author's amendments with the recommendation: Amend, and re-refer to the committee.

MAZZONI, Chairwoman

ASSEMBLY BILL NO. 2242—An act to amend Sections 52122, 52122.7, 52122.8, 52123, 52124, 52124.5, and 52126 of the Education Code, relating to class size.

Bill read second time; author's amendments, presented pursuant to Assembly Rules, read and adopted; bill ordered reprinted, and to be re-referred to the committee.

CONSIDERATION OF DAILY FILE
ASSEMBLY BILLS RETURNED TO SECOND READING FILE
PURSUANT TO THE RULES

Pursuant to the Assembly Rules, the following Assembly bills were this day on the second reading file:

Assembly Bills Nos. 1860, 1893, 2535, 2721, 1773, and 2112, ordered to third reading;

Assembly Bills Nos. 1836, 2007, 2109, and 2909, ordered to the Consent Calendar.

SECOND READING OF ASSEMBLY BILLS

ASSEMBLY BILL NO. 2170—An act to add Sections 17276.7 and 24416.7 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

Bill read second time; amendments proposed by the Committee on Revenue and Taxation read and adopted, bill ordered reprinted and to be re-referred to the Committee on Appropriations.



ASSEMBLY BILL NO. 2784—An act to amend Section 43830.8 of the Health and Safety Code, relating to air pollution.

Bill read second time; amendments proposed by the Committee on Transportation read and adopted, bill ordered reprinted and to be re-referred to the Committee on Appropriations.

ASSEMBLY BILL NO. 2252—An act to amend Sections 22002, 22553, 22555, and 22702 of the Public Utilities Code, relating to aviation.

Bill read second time; amendments proposed by the Committee on Consumer Protection, Governmental Efficiency and Economic Development read and adopted, bill ordered reprinted and to be returned to the second reading file.

ASSEMBLY BILL NO. 1747—An act to amend Section 52720 of the Education Code, relating to public schools.

Bill read second time; amendments proposed by the Committee on Appropriations read and adopted, bill ordered reprinted and to be returned to the second reading file, and to be placed upon the Consent Calendar.

ASSEMBLY BILL NO. 2420—An act to amend Sections 1807 and 1815 of the Financial Code, relating to money transmissions.

Bill read second time; amendments proposed by the Committee on Appropriations read and adopted, bill ordered reprinted and to be returned to the second reading file, and to be placed upon the Consent Calendar.

ASSEMBLY BILL NO. 2799—An act to amend Sections 6253 and 6255 of, and to add Section 6253.2 to, the Government Code, relating to public records.

Bill read second time; amendments proposed by the Committee on Appropriations read and adopted, bill ordered reprinted and to be returned to the second reading file.

ASSEMBLY BILL NO. 2448—An act to amend Section 369i of the Penal Code, relating to trespass.

Bill read second time; amendments proposed by the Committee on Appropriations read and adopted, bill ordered reprinted and to be returned to the second reading file.

ASSEMBLY BILL NO. 2435—An act to add Sections 17053.44 and 23644 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

Bill read second time; amendments proposed by the Committee on Revenue and Taxation read and adopted, bill ordered reprinted and to be re-referred to the Committee on Agriculture.

ASSEMBLY BILL NO. 2805—An act to add Sections 146.1 and 152 to the Financial Code, relating to financial institutions.

Bill read second time; amendments proposed by the Committee on Banking and Finance read and adopted, bill ordered reprinted and to be returned to the second reading file.

SECOND READING OF SENATE BILLS

SENATE BILL NO. 215—An act to amend Section 6263 of, to add Sections 6909 and 6910 to, and to repeal Sections 6261 and 6262 of, the Revenue and Taxation Code, relating to vehicles, and making an appropriation therefor.

Bill read second time; amendments proposed by the Committee on Appropriations read and adopted, bill ordered reprinted and to be returned to the second reading file.



CALIFORNIA LEGISLATURE
1999-2000 REGULAR SESSION

ASSEMBLY DAILY JOURNAL

Wednesday, May 24, 2000

**ONE HUNDRED EIGHTY-SECOND SESSION DAY
FIVE HUNDRED THIRTY-FIFTH CALENDAR DAY
AT SACRAMENTO, CALIFORNIA**



NOTE: Official record of roll call votes; all amendments considered by the Assembly on this day are on file with the Chief Clerk of the Assembly and available on request. A list of all measures amended and on which amendments were offered is shown on the final page of this day's Assembly Journal.

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**CONSIDERATION OF DAILY FILE
ASSEMBLY BILLS RETURNED TO SECOND READING FILE
PURSUANT TO THE RULES**

Pursuant to the Assembly Rules, the following Assembly bills were this day on the second reading file:

Assembly Bills Nos. 2252, 2799, 2448, and 2805, ordered to third reading;

Assembly Bills Nos. 1747 and 2420, ordered to the Consent Calendar.

SECOND READING OF ASSEMBLY BILLS

ASSEMBLY BILL NO. 2185—An act to add Article 6.4 (commencing with Section 124111) to Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, relating to child health.

Bill read second time; amendments proposed by the Committee on Appropriations read and adopted, bill ordered reprinted and to be returned to the second reading file.

ASSEMBLY BILL NO. 2547—An act to amend Section 1265 of the Health and Safety Code, relating to health facilities.

Bill read second time; amendments proposed by the Committee on Appropriations read and adopted, bill ordered reprinted and to be returned to the second reading file.

ASSEMBLY BILL NO. 2933—An act to amend Section 73.6 of the Military and Veterans Code, relating to veterans.

Bill read second time; amendments proposed by the Committee on Veterans Affairs read and adopted, bill ordered reprinted and to be returned to the second reading file.

ASSEMBLY BILL NO. 2528—An act to add and repeal Chapter 16.5 (commencing with Section 11570) of Part 7 of the Education Code, relating to pupils, and making an appropriation therefor.

Bill read second time; amendments proposed by the Committee on Education read and adopted, bill ordered reprinted and to be re-referred to the Committee on Appropriations.

ASSEMBLY BILL NO. 1740—An act making appropriations for the support of the government of the State of California and for several public purposes in accordance with the provisions of Section 12 of Article IV of the Constitution of the State of California, and declaring the urgency thereof, to take effect immediately.

Bill read second time; amendments proposed by the Committee on Budget read and adopted, bill ordered reprinted and to be returned to the second reading file.

**SENATE BILLS RETURNED TO SECOND READING FILE
PURSUANT TO THE RULES**

Pursuant to the Assembly Rules, the following Senate bill was this day on the second reading file:

Senate Bill No. 215, ordered to third reading.

SECOND READING OF SENATE BILLS

SENATE BILL NO. 945—An act to amend Section 1171 of the Labor Code, and to amend Section 634.5 of the Unemployment Insurance Code, relating to employment.

Bill read second time; amendments proposed by the Committee on Labor and Employment read and adopted, bill ordered reprinted and to be returned to the second reading file.



LEGISLATIVE INTENT SERVICE (800) 666-1917



CALIFORNIA LEGISLATURE
1999-2000 REGULAR SESSION

ASSEMBLY DAILY JOURNAL

Thursday, May 25, 2000

ONE HUNDRED EIGHTY-THIRD SESSION DAY
FIVE HUNDRED THIRTY-SIXTH CALENDAR DAY
AT SACRAMENTO, CALIFORNIA



NOTE: Official record of roll call votes; all amendments considered by the Assembly on this day are on file with the Chief Clerk of the Assembly and available on request. A list of all measures amended and on which amendments were offered is shown on the final page of this day's Assembly Journal.

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Motion to Reconsider Assembly Bill No. 2509 on Next Legislative Day

Assembly Member McClintock moved to reconsider on the next legislative day the vote whereby Assembly Bill No. 2509 was this day passed.

Assembly Bill No. 2509 ordered to the unfinished business file.

(NOTE: Later this day, the above motion to reconsider by Assembly Member McClintock was withdrawn.)

**CONSIDERATION OF DAILY FILE (RESUMED)
THIRD READING OF ASSEMBLY BILLS (RESUMED)**

ASSEMBLY BILL NO. 2799 (Shelley)—An act to amend Sections 6253 and 6255 of, and to add Section 6253.2 to, the Government Code, relating to public records.

Bill read third time, and passed by the following vote:

AYES—70

Aanestad	Dickerson	Longville	Shelley
Alquist	Ducheny	Lowenthal	Steinberg
Aroner	Dutra	Machado	Strickland
Baldwin	Firebaugh	Maddox	Strom-Martin
Bates	Florez	Maldonado	Thompson
Battin	Floyd	Mazzoni	Thomson
Bock	Gallegos	McClintock	Torlakson
Briggs	Granlund	Migden	Vincent
Calderon	Havice	Nakano	Washington
Campbell	Honda	Olberg	Wayne
Cardenas	House	Pacheco, Robert	Wesson
Cardoza	Jackson	Pacheco, Rod	Wiggins
Cedillo	Keeley	Papan	Wildman
Corbett	Knox	Pescetti	Wright
Correa	Kuehl	Reyes	Zettel
Cox	Leach	Romero	Mr. Speaker
Cunneen	Lempert	Runner	
Davis	Leonard	Scott	

NOES—4

Ackerman	Ashburn	Brewer	Kaloogian
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Bill ordered transmitted to the Senate.

ASSEMBLY BILL NO. 2448 (Torlakson)—An act to amend Section 369i of the Penal Code, relating to trespass.

Bill read third time.

The roll was opened.

Call of the Assembly

Pending the announcement of the vote, Assembly Member Torlakson moved a call of the Assembly.

Motion carried. Time, 12:33 p.m.

The Sergeant at Arms was directed to close the doors, and to bring in the absent Members.



Volume 6

Journal of the Assembly

Legislature of the State of California

1999–2000 Regular Session

December 7, 1998 to November 30, 2000

1999–2000 First Extraordinary Session

January 19, 1999 to March 25, 1999



HON. ROBERT M. HERTZBERG
Speaker

HON. FRED KEELEY
Speaker pro Tempore

HON. HELEN THOMSON
Assistant Speaker pro Tempore

HON. KEVIN SHELLEY
Majority Floor Leader

HON. SCOTT BAUGH
Minority Floor Leader

E. DOTSON WILSON
Chief Clerk of the Assembly

PAM CAVILEER
Minute Clerk

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LEGISLATIVE INTENT SERVICE



LH: 941

CALIFORNIA LEGISLATURE
1999-2000 REGULAR SESSION

ASSEMBLY DAILY JOURNAL

Friday, August 25, 2000

TWO HUNDRED EIGHTEENTH SESSION DAY
SIX HUNDRED TWENTY-EIGHTH CALENDAR DAY
AT SACRAMENTO, CALIFORNIA



NOTE: Official record of roll call votes; all amendments considered by the Assembly on this day are on file with the Chief Clerk of the Assembly and available on request. A list of all measures amended and on which amendments were offered is shown on the final page of this day's Assembly Journal.

(Please Direct Any Inquiries and Report Any Omissions or Errors to Minute Clerk: Phone 319-2360)



Assembly Bill No. 2536
Assembly Bill No. 2612
Assembly Bill No. 2714

Assembly Bill No. 2799
Assembly Bill No. 2800
Assembly Bill No. 2941

And respectfully requests the Assembly to concur in said amendments.

GREG P. SCHMIDT, Secretary of the Senate
By John W. Rovane, Assistant Secretary

Above bills ordered to unfinished business file.

BILLS PLACED ON SPECIAL CONSENT CALENDAR

The following bills were placed upon the Special Consent Calendar:

Assembly Bills Nos. 1669, 1927, 2109, 2168, 2405, 2729, 2888, 2894, 2909, 2919, 2921, 2939, and 816.

ASSEMBLY RULE 77 SUSPENDED

Assembly Member Keeley was granted unanimous consent that Assembly Rule 77 be suspended to permit consideration of Assembly Bills Nos. 1398, 1779, 2069, 2848, 83, 820, 1233, 1597, 2054, 2088, 2246, 2254, 2259, 2306, 2519, 2536, 2612, 2714, 2799, 2800, and 2941.

RE-REFERENCE OF BILLS TO COMMITTEE PURSUANT TO ASSEMBLY RULE 77.2

Pursuant to Assembly Rule 77.2, the Speaker pro Tempore re-referred ~~Assembly Bill No. 278 to the Committee on Public Employees, Retirement and Social Security;~~ Assembly Bill No. 602 to the Committee on Transportation; and Senate Bill No. 1644 to the Committee on Appropriations.

(NOTE: On August 28, 2000, the action was rescinded whereby Assembly Bill No. 278 was re-referred to the Committee on Public Employees, Retirement and Social Security pursuant to Assembly Rule 77.2. See page 8437.)

MESSAGES FROM THE SENATE

August 25, 2000

*Hon. E. Dotson Wilson
Chief Clerk of the Assembly
Assembly Chamber*

Dear Dotson: By direction of the Senate I am returning Senate Bill 2006 to the Assembly for further action.

Sincerely,

GREGORY SCHMIDT
Secretary of the Senate

Above bill held at the Desk.

Senate Chamber, August 25, 2000

Mr. Speaker: I am directed to inform your honorable body that the Senate on this day adopted:

Senate Concurrent Resolution No. 91
Senate Joint Resolution No. 37

GREG P. SCHMIDT, Secretary of the Senate
By John W. Rovane, Assistant Secretary

Senate Chamber, August 25, 2000

Mr. Speaker: I am directed to inform your honorable body that the Senate on this day adopted:

Senate Concurrent Resolution No. 98
Senate Concurrent Resolution No. 99
Senate Joint Resolution No. 39

GREG P. SCHMIDT, Secretary of the Senate
By John W. Rovane, Assistant Secretary



**CALL OF THE ASSEMBLY DISPENSED WITH
ON CONCURRENCE IN SENATE AMENDMENTS TO
ASSEMBLY BILL NO. 2519**

At 9:17 p.m., on motion Assembly Member Shelley, and in the absence of any objection, further proceedings under the call of the Assembly were dispensed with.

The Assembly concurred in Senate amendments to Assembly Bill No. 2519 by the following vote:

AYES—51

Alquist	Firebaugh	Machado	Strom-Martin
Aroner	Florez	Maldonado	Thomson
Bock	Floyd	Mazzoni	Torlakson
Calderon	Gallegos	Migden	Villaraigosa
Cardenas	Havice	Nakano	Vincent
Cardoza	Honda	Olberg	Washington
Cedillo	Jackson	Papan	Wayne
Corbett	Keeley	Pescetti	Wesson
Correa	Knox	Reyes	Wiggins
Cunneen	Kuehl	Romero	Wildman
Davis	Lempert	Scott	Wright
Ducheny	Longville	Shelley	Mr. Speaker
Dutra	Lowenthal	Steinberg	

NOES—24

Aanestad	Baugh	Granlund	Margett
Ackerman	Brewer	House	McClintock
Ashburn	Briggs	Kaloogian	Oller
Baldwin	Campbell	Leach	Pacheco, Robert
Bates	Cox	Leonard	Strickland
Battin	Dickerson	Maddox	Zettel

Above bill ordered enrolled.

**CONSIDERATION OF DAILY FILE (RESUMED)
UNFINISHED BUSINESS (RESUMED)
CONSIDERATION OF SENATE AMENDMENTS**

ASSEMBLY BILL NO. 2714 (Wesson)—An act to amend Section 1626 of the Health and Safety Code, relating to blood products.

The question being: Shall the Assembly concur in the Senate amendments to the above bill?

(NOTE: Text of Senate amendments on file with the Secretary of the Senate.)



The roll was opened, and the Assembly concurred in Senate amendments by the following vote:

AYES—60

Aanestad	Cunneen	Leach	Romero
Ackerman	Davis	Lempert	Scott
Alquist	Dickerson	Leonard	Shelley
Aroner	Ducheny	Longville	Steinberg
Bates	Dutra	Lowenthal	Strickland
Bock	Firebaugh	Maddox	Thomson
Brewer	Floyd	Maldonado	Torlakson
Calderon	Gallegos	Margett	Villaraigosa
Campbell	Granlund	McClintock	Vincent
Cardenas	Havice	Migden	Washington
Cardoza	Honda	Nakano	Wayne
Cedillo	Jackson	Olberg	Wesson
Corbett	Keeley	Oller	Wiggins
Correa	Knox	Pacheco, Robert	Wright
Cox	Kuehl	Papan	Mr. Speaker

NOES—12

Ashburn	Briggs	Machado	Pescetti
Battin	Florez	Mazzoni	Reyes
Baugh	House	Pacheco, Rod	Zettel

Above bill ordered enrolled.

ASSEMBLY BILL NO. 2799 (Shelley)—An act to amend Sections 6253 and 6255 of, and to add Section 6253.9 to, the Government Code, relating to public records.

The question being: Shall the Assembly concur in the Senate amendments to the above bill?

(NOTE: Text of Senate amendments on file with the Secretary of the Senate.)

The roll was opened, and the Assembly concurred in Senate amendments by the following vote:

AYES—72

Aanestad	Cunneen	Leonard	Romero
Alquist	Davis	Longville	Scott
Aroner	Dickerson	Lowenthal	Shelley
Ashburn	Ducheny	Machado	Steinberg
Baldwin	Dutra	Maddox	Strickland
Bates	Firebaugh	Maldonado	Strom-Martin
Battin	Florez	Margett	Thomson
Baugh	Floyd	Mazzoni	Torlakson
Bock	Gallegos	McClintock	Villaraigosa
Briggs	Granlund	Migden	Vincent
Calderon	Havice	Nakano	Washington
Campbell	Honda	Olberg	Wayne
Cardenas	House	Oller	Wesson
Cardoza	Jackson	Pacheco, Robert	Wiggins
Cedillo	Keeley	Pacheco, Rod	Wildman
Corbett	Knox	Papan	Wright
Correa	Leach	Pescetti	Zettel
Cox	Lempert	Reyes	Mr. Speaker

NOES—2

Ackerman	Kaloogian
----------	-----------

Above bill ordered enrolled.



CALIFORNIA LEGISLATURE
1999-2000 REGULAR SESSION

ASSEMBLY JOURNAL

RECESS JOURNAL NO. 15

FINAL RECESS

Assembly Chamber, Sacramento
Monday, October 2, 2000

Pursuant to the provisions of Joint Rule 59, the following Assembly Journal for the 1999-2000 Regular Session was printed while the Assembly was in Final Recess:

COMMUNICATIONS

The following communications were presented by the Speaker, and ordered printed in the Journal:

Explanation of Absence—Balance of the Day August 30, 2000

September 15, 2000

*The Honorable Speaker Hertzberg
State Capitol, Room 219
Sacramento, California*

Dear Mr. Speaker:

Re: August 30th, 2000.

Please reflect in the Legislative records that I was excused from Session after approximately noon on August 30, 2000, due to illness.

Sincerely,

GEORGE NAKANO, Assembly Member
Fifty-third District

September 1, 2000

*Mr. E. Dotson Wilson, Chief Clerk
California State Assembly
State Capitol, Room 3196
Sacramento, California*

RE: Appointment of Assemblymember Darrell Steinberg to the Judicial Council of California

Dear Mr. Wilson: Please be advised I have appointed Assemblymember Darrell Steinberg to the Judicial Council of

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Department of Education, dated September 5, 2000, referred by the Speaker to the Committee on Education.

**California Environmental Protection Agency's
Innovation Initiative Environmental Management System
Project Report to the Legislature: Third Quarterly Update
(Pursuant to Public Resources Code Section 71045)**

Above transmitted report, together with letter of transmittal from Winston H. Hickox, Agency Secretary, California Environmental Protection Agency, dated August 23, 2000, referred by the Speaker to the Committee on Environmental Safety and Toxic Materials.

**2000 Annual Report to the State Legislature
on Surplus Proprietary Lands
(Pursuant to Government Code Section 11011)**

Above transmitted report, together with letter of transmittal from Barry D. Keene, Director, Department of General Services, dated August 25, 2000, referred by the Speaker to the Committee on Consumer Protection, Governmental Efficiency and Economic Development.

**Franchise Tax Board:
Daily Compound Interest Rate Table from
January 1, 2001 through June 30, 2001
(Pursuant to Revenue and Taxation Code Section 19521)**

Above transmitted report, together with letter of transmittal from George Ramsey, Manager, Statistical Research Section, Economic and Statistical Research Bureau, Franchise Tax Board, dated August 17, 2000, referred by the Speaker to the Committee on Revenue and Taxation.

**The Fiscal Impact on the Disability Insurance Fund of
Extending Disability Benefits to Individuals Granted Family Leave**

Above transmitted report, together with letter of transmittal from Michael S. Bernick, Director, Employment Development Department, dated August 23, 2000, referred by the Speaker to the Committee on Insurance.

**California's Job Agent Program
(Pursuant to Unemployment Insurance Code Section 9614(a)(2))**

Above transmitted report, together with letter of transmittal from Michael S. Bernick, Director, Employment Development Department, dated August 30, 2000, referred by the Speaker to the Committee on Labor and Employment.

ENGROSSMENT AND ENROLLMENT REPORTS

Assembly Chamber, September 1, 2000

Mr. Speaker: Pursuant to your instructions, the Chief Clerk has examined:

Assembly Bill No. 505
Assembly Bill No. 1838
Assembly Bill No. 2330

And reports the same correctly enrolled, and presented to the Governor on the 1st day of September, 2000, at 11:30 a.m.

E. DOTSON WILSON, Chief Clerk



Assembly Chamber, September 6, 2000

Mr. Speaker: Pursuant to your instructions, the Chief Clerk has examined:

- | | |
|------------------------|------------------------|
| Assembly Bill No. 83 | Assembly Bill No. 1755 |
| Assembly Bill No. 321 | Assembly Bill No. 1784 |
| Assembly Bill No. 536 | Assembly Bill No. 1779 |
| Assembly Bill No. 642 | Assembly Bill No. 1807 |
| Assembly Bill No. 701 | Assembly Bill No. 1820 |
| Assembly Bill No. 750 | Assembly Bill No. 1879 |
| Assembly Bill No. 1220 | Assembly Bill No. 1896 |
| Assembly Bill No. 1390 | Assembly Bill No. 1927 |
| Assembly Bill No. 1398 | Assembly Bill No. 1931 |
| Assembly Bill No. 1704 | Assembly Bill No. 1945 |

And reports the same correctly enrolled, and presented to the Governor on the 6th day of September, 2000, at 3:30 p.m.

E. DOTSON WILSON, Chief Clerk

Assembly Chamber, September 7, 2000

Mr. Speaker: Pursuant to your instructions, the Chief Clerk has examined:

- | | |
|------------------------|------------------------|
| Assembly Bill No. 132 | Assembly Bill No. 2317 |
| Assembly Bill No. 675 | Assembly Bill No. 2338 |
| Assembly Bill No. 820 | Assembly Bill No. 2471 |
| Assembly Bill No. 1382 | Assembly Bill No. 2569 |
| Assembly Bill No. 1858 | Assembly Bill No. 2631 |
| Assembly Bill No. 2054 | Assembly Bill No. 2670 |
| Assembly Bill No. 2068 | Assembly Bill No. 2723 |
| Assembly Bill No. 2088 | Assembly Bill No. 2786 |
| Assembly Bill No. 2092 | Assembly Bill No. 2913 |
| Assembly Bill No. 2294 | Assembly Bill No. 2941 |

And reports the same correctly enrolled, and presented to the Governor on the 7th day of September, 2000, at 12:30 p.m.

E. DOTSON WILSON, Chief Clerk

Assembly Chamber, September 7, 2000

Mr. Speaker: Pursuant to your instructions, the Chief Clerk has examined:

- | | |
|------------------------|------------------------|
| Assembly Bill No. 1963 | Assembly Bill No. 2536 |
| Assembly Bill No. 2069 | Assembly Bill No. 2562 |
| Assembly Bill No. 2212 | Assembly Bill No. 2612 |
| Assembly Bill No. 2246 | Assembly Bill No. 2639 |
| Assembly Bill No. 2254 | Assembly Bill No. 2685 |
| Assembly Bill No. 2259 | Assembly Bill No. 2714 |
| Assembly Bill No. 2421 | Assembly Bill No. 2746 |
| Assembly Bill No. 2458 | Assembly Bill No. 2753 |
| Assembly Bill No. 2481 | Assembly Bill No. 2799 |
| Assembly Bill No. 2519 | Assembly Bill No. 2848 |

And reports the same correctly enrolled, and presented to the Governor on the 7th day of September, 2000, at 9:30 a.m.

E. DOTSON WILSON, Chief Clerk

Assembly Chamber, September 8, 2000

Mr. Speaker: Pursuant to your instructions, the Chief Clerk has examined:

- | | |
|------------------------|------------------------|
| Assembly Bill No. 278 | Assembly Bill No. 2161 |
| Assembly Bill No. 317 | Assembly Bill No. 2219 |
| Assembly Bill No. 1758 | Assembly Bill No. 2286 |
| Assembly Bill No. 1969 | Assembly Bill No. 2415 |
| Assembly Bill No. 2011 | Assembly Bill No. 2409 |
| Assembly Bill No. 2076 | Assembly Bill No. 2553 |
| Assembly Bill No. 2098 | Assembly Bill No. 2558 |
| Assembly Bill No. 2101 | Assembly Bill No. 2683 |
| Assembly Bill No. 2107 | Assembly Bill No. 2778 |
| Assembly Bill No. 2109 | Assembly Bill No. 2800 |

And reports the same correctly enrolled, and presented to the Governor on the 8th day of September, 2000, at 10 a.m.

E. DOTSON WILSON, Chief Clerk

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DEPARTMENT OF FINANCE ENROLLED BILL REPORT

AMENDMENT DATE: July 6, 2000
RECOMMENDATION: Sign

BILL NUMBER: AB 2799
AUTHOR: K. Shelley, et al.

ASSEMBLY: 72/2
SENATE: 34/0

BILL SUMMARY: Public Records: Disclosure

This bill would revise various provisions in the Public Records Act (PRA) related to electronic copies of information.

FISCAL SUMMARY

The PRA provides that any person may receive a copy of any identifiable public record upon payment of fees covering direct costs of duplication or a statutory fee if applicable. This bill would provide that in regards to the payment of fees for records released in an electronic format, the requester of information would bear the "direct cost" of programming and computer services necessary to produce a record not otherwise readily produced, as specified. Therefore, any additional costs to the state would be paid by the requester.

This bill would result in increased duties to local agencies to provide records in electronic format. However, since the local agency has authority to receive payment for these services, any costs associated with this bill would not be reimbursable as a state mandated local program.

COMMENTS

This bill could provide greater access to information maintained by various agencies by providing the information in a form that may be more economical and convenient to requesters. Therefore, signature is recommended.

The PRA provides that any person may receive a copy of any identifiable public record from any state or local agency upon payment of fees covering direct costs of duplication or a statutory fee if applicable. The act provides that it should 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. The PRA 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 the disclosure of the record.

Analyst/Principal (0263) J. Lombard	Date 2/1/2000	Program Budget Manager S. Calvin Smith	Date 9-1-00
Department Director <i>Jim Lombard</i>		Original signed by <i>J. W. Mills</i>	Date SEP 6 2000
		B. Timothy Gage	

ENROLLED BILL REPORT

Form DE-43 (Rev 03/95)



BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)

Form DF-43

AUTHOR**AMENDMENT DATE****BILL NUMBER**

K. Shelley, et al.

July 6, 2000

AB 2799

This bill would:

- Provide that nothing in the PRA should be construed to permit an agency to delay or obstruct the inspection or copying of public records.
- 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 not otherwise exempt from disclosure that is in an electronic format to make that information available in an electronic format when requested by any person.
- Require the agency to make the information available in any electronic format in which it holds the information, but would not require release of a record in an electronic form in which the security or integrity of the original record or any proprietary software could be compromised.
- This bill would require a response to a written request for public records that includes a denial of the request in whole or in part to be in writing.

Because these requirements would apply to local agencies as well as state agencies, this bill would impose a state-mandated local program. However, this bill would provide that the requester of this information would 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. Any costs upon local governments that result from this bill would be paid by the requester of information, therefore, no reimbursement would be required.

Because of the current state of technology, more people may want access to information in an electronic format. However, there is not current authority under which the public could obtain such records. For example, if an agency makes a CD or disk of 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. According to the author's staff, the expense of copying these records in paper format, especially when there are many records, makes it inaccessible to the public.

Section 17556(d) of the Government Code provides that the Commission on State Mandates shall not find a reimbursable mandate in a statute or executive order if the affected local agencies have the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program in the statute or executive order. In its April 1991 decision in *County of Fresno v. State of California*, 53 Cal 3d, 482, (1991), the State Supreme Court held that this Section is facially valid under Section 6 of Article XIII B of the California Constitution. The court reasoned that Article XIII B was not intended to "reach beyond taxation", i.e., the article requires reimbursement only for those expenses that are recoverable solely from tax revenues. Section 6253 of the Government Code authorizes the affected local entities to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. Therefore, although this bill may result in additional costs to local government, those costs are not reimbursable because the affected local entities are authorized to charge fees to cover those costs.



(3)

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)

Form DF-43

AUTHOR

AMENDMENT DATE

BILL NUMBER

K. Shelley, et al.

July 6, 2000

AB 2799

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)						Fund Code
	LA	(Dollars in Thousands)						
	CO	PROP						
	RV	98	FC	2000-2001	FC	2001-2002	FC	2002-2003
9901/Var Depts	SO	No		----- See Fiscal Summary -----				0001

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DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: July 6, 2000
POSITION: No position

BILL NUMBER: AB 2799
AUTHOR: K. Shelley, et al.

BILL SUMMARY: Public Records: Disclosure

This bill would revise various provisions in the Public Records Act (PRA) related to electronic copies of information.

FISCAL SUMMARY

The PRA provides that any person may receive a copy of any identifiable public record upon payment of fees covering direct costs of duplication or a statutory fee if applicable. This bill would provide that in regards to the payment of fees for records released in an electronic format, the requester of information would bear the "direct cost" of programming and computer services necessary to produce a record not otherwise readily produced, as specified. Therefore, any additional costs to the state would be paid by the requester.

COMMENTS

This bill would revise various provisions in the PRA related to electronic copies of information. Because the requester of such information would be responsible for the costs, we have no fiscal concerns.

The PRA provides that any person may receive a copy of any identifiable public record from any state or local agency upon payment of fees covering direct costs of duplication or a statutory fee if applicable. The act provides that it should 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. The PRA 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 the disclosure of the record.

This bill would:

- Provide that nothing in the PRA should be construed to permit an agency to delay or obstruct the inspection or copying of public records.
- 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 not

Analyst/Principal (0263) J. Lombard	Date 8/10/2000	Program Budget Manager S. Calvin Smith	Date 8-10-00
<i>J. Lombard</i>		<i>J.W. Mills</i>	
Department Deputy Director			Date

Governor's Office:	By:	Date:	Position Noted _____
			Position Approved _____
			Position Disapproved _____

BILL ANALYSIS

Form DE-43 (Rev 03/95)



BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)

Form DF-43

AUTHOR

AMENDMENT DATE

BILL NUMBER

K. Shelley, et al.

July 6, 2000

AB 2799

otherwise exempt from disclosure that is in an electronic format to make that information available in an electronic format when requested by any person.

- Require the agency to make the information available in any electronic format in which it holds the information, but would not require release of a record in the electronic form in which security or integrity of the original record or any proprietary software that could be compromised.
- This bill would require a response to a written request for public records that includes a denial of the request in whole or in part to be in writing.

Because these requirements would apply to local agencies as well as state agencies, this bill would impose a state-mandated local program. However, this bill would provide that the requester of this information would 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. Any costs upon local governments that result from this bill would be paid by the requester of information, therefore, no reimbursement would be required.

In the period of technology that we are currently in more people want access to information in an electronic format. However, there is not current authority under which a person seeking electronically available records could obtain such records in that format. For example, if an agency makes a CD or disk of 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. According to the author, the expense of copying these records in paper format, especially when there are so many records, makes it inaccessible to the public.

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)							Fund Code
	LA	(Dollars in Thousands)							
	CO	PROP							
	RV	98	FC	2000-2001	FC	2001-2002	FC	2002-2003	
9901/Var Depts	SO	No		See Fiscal Summary					0001

LEGISLATIVE INTENT SERVICE (800) 666-1917



DEPARTMENT OF FINANCE ENROLLED BILL REPORT

AMENDMENT DATE: April 27, 1999
RECOMMENDATION: Veto

BILL NUMBER: SB 1065
AUTHOR: D. Bowen

ASSEMBLY: 68/6
SENATE: 31/7

BILL SUMMARY

PUBLIC RECORDS: ELECTRONIC FORMAT

This bill would modify the California Public Records Act to require state and local agencies that have identifiable public information in electronic form to make that information available to the public in electronic form. Existing law allows the agency to provide the electronic data in the form determined by the agency. The proposed amendment would require the agency to make the information available in any electronic format in which it holds the information or in a form that has been used by the agency for its own use or for other agencies. Agencies are not required to reconstruct records in an electronic form that is no longer available in the agency and agencies cannot restrict the information availability to only electronic form. Consistent with current law, agencies can charge for the direct costs of duplicating the records or applicable statutory fees.

FISCAL SUMMARY

The cost implications of this bill cannot be determined.

COMMENTS

The Department of Finance recommends that this bill be vetoed since it may result in some unfunded costs to the agencies because the bill is unclear on what expenses are considered "direct costs for duplication of electronic records." If programming expenses for selecting, sorting, manipulating, and masking records are not considered within the definition or not funded through any applicable statutory fees, agencies may be burdened with this additional effort without reimbursement. The Department of Motor Vehicles also anticipates additional workload because electronic data may be easier for the public to use and may result in new types of requests. While not providing a specific breakdown of the new workload, the Department of Motor Vehicles estimates one-time costs of \$166,300 and annual costs of \$39,600 in order to comply with the provisions of this legislation.

Analyst/Principal (0992) D. Leibrock	Date	Program Budget Manager Robert J. Straight	Date
---	------	--	------

Department Director	Date
---------------------	------

LEGISLATIVE INTENT SERVICE (800) 666-1917



BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)

Form DF-43

AUTHOR

AMENDMENT DATE

BILL NUMBER

D. Bowen

April 27, 1999

SB 1065

ANALYSIS

A. Programmatic Analysis

This bill could provide greater access to information maintained by the various agencies by providing the information in a form that may be more economical and convenient to requesters.

B. Fiscal Analysis

The fiscal impact of this bill is unknown at this time. The bill in its present form is ambiguous as to whether the programming expenses incurred by the agencies in selecting, sorting, manipulating, and masking the data are part of the direct costs associated with duplicating electronic records, which can be reimbursable costs. Without clarification, agencies may incur minor to substantial non-reimbursable expenses to comply with this bill.

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)							Fund Code
	LA	(Dollars in Thousands)							
	CO	PROP	FC	1999-2000	FC	2000-2001	FC	2001-2002	
	RV	98	FC	1999-2000	FC	2000-2001	FC	2001-2002	Code
9990/Var Depts	SO	No		----- See Fiscal Analysis -----					0001

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LEGISLATIVE INTENT SERVICE



STATE AND CONSUMER SERVICES AGENCY

BILL ANALYSIS

DEPARTMENT General Services	AUTHOR Shelley	BILL NUMBER AB 2799 0263
SPONSOR California Newspaper Publishers Association	RELATED BILLS See legislative history	AMENDED DATE April 27, 2000
SUBJECT Public records: disclosure		

BILL SUMMARY:

Assembly Bill 2799 would make various changes to the California Public Records Act (Act) by providing that agencies having public records available in electronic format make that information available in an electronic format when requested.

LEGISLATIVE HISTORY:

Assembly Bill 1099 (Shelley, 1999) was similar to AB 2799 and required state agencies to provide computerized data in a format chosen by the requester if the agency uses that format in the course of its normal business. The bill was ultimately gutted and used for other legislation.

Senate Bill 48 (Sher, 1999) would provide an administrative appeals process for persons who are denied access to public records. The appeals process would be handled by the Attorney General's office. This bill was vetoed by Governor Davis (veto message attached).

Senate Bill 1065 (Bowen, 1999) was identical to this bill and was vetoed by Governor Davis (veto message attached).

Senate Bill 143 (Kopp, Chapter 620, Statutes of 1998) made numerous changes to the Act including the establishment of a comprehensive index of public records that are exempt from disclosure under current law and contained in various other codes. (An early version of the bill deleted the language that allows an agency to determine the form in which computer data is to be provided; the language was reinstated at the request of the DGS).

Assembly Bill 179 (Bowen, 1997) would have required state agencies to disclose computerized data in a format chosen by the requestor unless determined unreasonable to do so. This bill was vetoed by Governor Wilson (veto message attached).

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DEPARTMENTS THAT MAY BE AFFECTED

STATE MANDATE		GOVERNOR'S APPOINTMENT		GOVERNOR'S OFFICE USE
DEPARTMENT DIRECTOR POSITION		AGENCY SECRETARY POSITION		
<input type="checkbox"/> S	<input checked="" type="checkbox"/> O	<input type="checkbox"/> S	<input checked="" type="checkbox"/> O	Position Approved: _____
<input type="checkbox"/> SIA	<input type="checkbox"/> OUA	<input type="checkbox"/> SIA	<input type="checkbox"/> OUA	Position Disapproved: _____
<input type="checkbox"/> N	<input type="checkbox"/> NP	<input type="checkbox"/> N	<input type="checkbox"/> NP	Position Noted: _____
<input type="checkbox"/> NIA		<input type="checkbox"/> NIA		
<input type="checkbox"/> DEFER To		<input type="checkbox"/> DEFER To		By: _____ Date: _____
DEPARTMENT DIRECTOR <i>Chiff Allen</i>		AGENCY SECRETARY ORIGINAL SIGNED BY HAPPY CHASTAIN		
Date: <i>5/16/00</i>				

JUN 6 - 2000

DEPUTY SECRETARY
LEGISLATION

Senate Bill 74 (Kopp, 1997) was similar to AB 179 and would have required state agencies to disclose computerized data in a format chosen by the requestor unless determined unreasonable to do so. This bill was vetoed by Governor Wilson (veto message attached).

Senate Bill 323 (Kopp, 1996) was similar to AB 179 and SB 74 in that it contained language relative to the disclosure of electronic data – this language was ultimately deleted from the bill.

Assembly Bill 2989 (Bowen, 1996) was the "Paper Reduction Act of 1996" and, among other things, required that reports required by law shall be submitted on paper and electronically sent to the State Librarian. This bill failed passage in the Assembly Governmental Organization Committee.

Assembly Bill 142 (Bowen, 1995) made changes to the Act relative to the availability of records contained in electronic format and established conditions under which "vital records" could be disclosed to the public. This bill was never heard and died in the Assembly Governmental Organization Committee.

DEPARTMENT SERVICE AND PROGRAM HISTORY:

The Department of General Services (DGS) incorporates six operating divisions composed of 23 offices that provide a broad range of business services to government. The DGS' functions include: procurement and contracting for goods and services; real estate and design services for state buildings; telecommunications; fleet management; information services; printing; architectural services; energy efficiency; legal services and building maintenance.

The State Board of Control (Board) Victims of Crime (VOC) Program reimburses victims for specified net out-of-pocket losses incurred as a result of a crime. Reimbursable expenses include medical expenses, mental health counseling, funeral/burial costs, and wage or support losses not otherwise covered by insurance or other sources. The VOC Program's revenue source, the Restitution Fund (Fund), receives its revenue primarily from state penalties assessed on court-ordered fines. The Board's Government Claims program processes, approves, and pays claims against the state in accordance with Government Code Section 980 et seq.

SPECIFIC FINDINGS:

1. Under existing law, the California Public Records Act provides that upon request and payment of duplication fees, state and local agencies must make non-exempt records available to the public. Among other things, the Act provides that "Computer data shall be provided in a form determined by the agency" (Government Code Section 6253; previously Section 6256, 1968).

AB 2799 would repeal that language and create a new section of law relative to the accessibility of electronic records.

2. Specifically, AB 2799 would provide that agencies having public records available in electronic format make that information available in electronic format when requested and, when applicable, comply with the following:



- a. make the information available in any electronic format in which it holds the information;
- b. provide a copy of an electronic record in the format requested if that format is one already used by the agency to create copies for itself or other agencies;
- c. duplication costs would include the costs associated with duplicating electronic records;
- d. an agency would not be required to reconstruct a report in an electronic format if it is no longer available in that format;
- e. an agency would not be permitted to make information available only in an electronic format;
- f. statutorily restricted Department of Motor Vehicle records would not be accessible.

CONCERNS:

The Act dictates that state and local agency records deemed eligible for public disclosure shall be provided to a requester generally within ten days of the request and that "Computer data shall be provided in a form determined by the agency".

Assembly Bill 2799 would instead mandate that electronic records eligible for disclosure be provided in a format determined by the requester. This mandate has been proposed six times in the last four years. It has been vetoed three times and amended out of three other bills before they reached the Governor's desk. Each time, opposition from state agencies contributed to this provision's demise.

Requiring that electronic records be provided in a format determined by the requester would burden the DGS, and presumably other state and local agencies, with the responsibility of compiling and sorting the information to fit the requester's specifications. These responsibilities are especially onerous when records must be painstakingly filtered to strike out information exempt from disclosure requirements or not pertinent to a given individual request.

Further, this measure would require an agency to make information available in any electronic format in which it holds that information (if the format is one that has been used by the agency for its own business or for making copies for another agency). This is overly broad and a requester may claim access to information the Act never intended to make publicly available, such as the identities and treatment information of crime victim applicants to the VOC. This information could be in the form of unfiltered spreadsheets or databases that the requester argues constitute a format used by a state agency for its own business. Without safeguards against such claims, this bill could subject the VOC Program and the Government Claims Program to increased litigation to resolve ambiguity in the Act.

REGULATIONS:

Existing law permits agencies to adopt requirements for themselves if those requirements provide for greater, faster, or more efficient access to records than is required by statute.



LEGISLATIVELY MANDATED REPORTS: N/A

COMMISSIONS AND BOARDS: N/A

FISCAL IMPACT:

Existing law provides that an agency may only recover the direct costs of duplicating a record. AB 2799 provides that these direct costs "... shall include costs associated with duplicating electronic records." This would seemingly not cover the cost of staff who must review and pull the information being requested in order to comply with the requester's choice of formats.

NATIONAL INQUIRY: N/A

PRO AND CON ARGUMENTS:

Arguments in Support of the Bill:

The business of government should be open and accessible to the public. Today, the vast majority of records created by state agencies are in an electronic format and easier to retrieve and reproduce. The public should have access to these records when available.

Arguments in Opposition to the Bill:

Under existing law, state agencies may determine what format computer data is to be provided. While fulfilling requests for public information electronically is a worthy policy for state agencies to pursue, it is not good policy to eliminate an agency's discretion in determining the most appropriate format to provide that information.

PROPOSERS/OPPONENTS:

Sponsor:

California Newspaper Publishers Association

Support:

First Amendment Coalition

Opposition:

California Municipal Utilities Association
California State Sheriffs Association
San Bernardino Sheriffs Department
California Association of Clerks and Election Officials



RECOMMENDATION: OPPOSE

All state agencies should be allowed to maintain discretion in determining the format of electronic records disclosed under the Act. This discretion is already circumscribed by a clear statutory mandate that state agencies shall not inhibit access to public information guaranteed by the Act. To that end, AB 2799 will not improve existing law, but rather, will make existing law ambiguous. Therefore, the Department of General Services recommends an **OPPOSE** position on AB 2799.

Karen Neuwald
Assistant Director—Legislation
Legislation
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Sherry Williams
Legislative Analyst
327-2268

Happy Chastain
Deputy Secretary—
Legislation, SCSA
653-3111

(SWork:ols.A2779.ana)



BILL NUMBER: SB 48
VETOED DATE: 10/09/1999

October 9, 1999

To Members of the California State Senate:

I am returning Senate Bill No. 48 without my signature.

This bill would authorize the Attorney General to issue an opinion on the validity of a State or local agency's denial of a request for information under the California Public Records Act.

I am signing Assembly Bill No. 427 which clarifies that no state agency, commissioner, or officer, shall employ legal counsel other than the Attorney General, or one of his assistants or deputies, in any matter in which they are interested, or a party to, as a result of office or official duties.

Therefore, under SB 48, should the Attorney General issue an opinion adverse to a state agency or department which ultimately leads to litigation, the Attorney General may not be able to represent an agency that it has already opined against.

SB 48 creates an Attorney General appeals process that will lead to inherent conflicts of interest between the Attorney General and his major clients, the state agencies and departments. Consequently, this bill could result in uneven legal representation and increased use of costly outside counsel by the agency or department.

Finally, the costs to comply with this bill would be borne by the General Fund and would likely be significant. Therefore, I am vetoing this bill.

Sincerely,

GRAY DAVIS

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BILL NUMBER: SB 1065
VETOED DATE: 10/10/1999

To the Members of the Senate:

I am returning Senate Bill 1065 without my signature.

This is well-intentioned legislation. However, many of the state's computer systems do not yet have the capacity to implement the provisions of this bill.

As such, this bill does not keep faith with previous legislation I have signed to protect the confidentiality of citizens whose personal information is maintained by state departments including the Employment Development Department, the Department of Motor Vehicles, the Department of Health Services, and the California Highway Patrol.

I believe 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.

Cordially,

GRAY DAVIS

LEGISLATIVE INTENT SERVICE (800) 666-1917



BILL NUMBER: AB 179
VETOED DATE: 10/12/1997

To the Members of the California Assembly:

I am returning Assembly Bill No. 179 without my signature.

This bill would amend the California Public Records Act to require state agencies to provide "a copy of an electronic record in the form requested, unless, in light of surrounding circumstances, it is not reasonable to do so...." It does not change the public's right of access to government documents, but only restricts the agency's discretion as to the form of the document made available.

Government agencies receive hundreds of Public Records Act requests every month. They are most often not from ordinary citizens, but from political candidates or special interest groups searching for information. Government employees spend thousands of hours each year responding to the requests-segregating the requested documents from exempt documents, such as those which invade other citizens' personal privacy. Taxpayers pay for the time expended searching for and segregating these records. However, state agencies are presently permitted to determine the form in which computer data is provided.

This bill creates a new inflexible mandate by requiring the agency to provide the electronic data in the form requested, unless it is "unreasonable" to do so, without ever defining the breadth of that exemption, thereby leaving it open to litigation. A request that an electronic record be provided in a particular form may require additional expense, burden, and time to segregate the public data from the exempt data, but the bill provides no guidance whether or to what extent that additional burden makes it "unreasonable."

Agencies should make available to the public all documents to which public access is granted. But we need not add costs and rigidity to these obligations by specifying the form in which it will be done.

Cordially,

PETE WILSON

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BILL NUMBER: SB 74
VETOED DATE: 10/12/1997

To the Members of the California Senate:

I am returning Senate Bill No. 74 without my signature.

This bill would amend the California Public Records Act to require state agencies to provide "a copy of an electronic record in the form requested, unless, in light of surrounding circumstances, it is not reasonable to do so...." It does not change the public's right of access to government documents, but only restricts the agency's discretion as to the form of the document made available.

Government agencies receive hundreds of Public Records Act requests every month. They are most often not from ordinary citizens, but from political candidates or special interest groups searching for information. Government employees spend thousands of hours each year responding to the requests-segregating the requested documents from exempt documents, such as those which invade other citizens' personal privacy. Taxpayers pay for the time expended searching for and segregating these records. However, state agencies are presently permitted to determine the form in which computer data is provided.

This bill creates a new inflexible mandate by requiring the agency to provide the electronic data in the form requested, unless it is "unreasonable" to do so, without ever defining the breadth of that exemption, thereby leaving it open to litigation. A request that an electronic record be provided in a particular form may require additional expense, burden, and time to segregate the public data from the exempt data, but the bill provides no guidance-whether or to what extent that additional burden makes it "unreasonable."

Agencies should make available to the public all documents to which public access is granted. But we need not add costs and rigidity to these obligations by specifying the form in which it will be done.

Cordially,

PETE WILSON

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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

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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Page 3

- 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

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- f) 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

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AB 2799 (Shelley)
Page 4

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

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- 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

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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.

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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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AB 2799 (Shelley)
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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

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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

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AB 2799 (Shelley)
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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

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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.

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

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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DEPARTMENT OF CONSUMER AFFAIRS
FISCAL ANALYSIS OF LEGISLATION

DISTRIBUTED 0263
7/12/00

DATE: JULY 06, 2000 DATE ASSIGNED: 06-22-00
 Prepared By: Nancy E. Campbell Bill Number: AB 2799
 Phone number: 323-7237 Author: Shelley
 Approved by: Pamela S. Work Date Approved: 7-11-00
 FISCAL ANALYSIS AS AMENDED: 06-22-00 Short Title: Public Records: Disclosure

OFFICE OF INFORMATION SERVICES: Fiscal impact? YES NO If "Yes, attach OIS fiscal
 OIS Reviewer: Conrad Lara DATE: _____ Analysis and assumptions.

ANALYSIS AND FISCAL ASSUMPTIONS:

See Attached

SUMMARY OF FISCAL IMPACT:	
<input checked="" type="checkbox"/>	Insignificant fiscal impact (under \$10,000).
<input type="checkbox"/>	No Fiscal Impact
<input type="checkbox"/>	Minor fiscal impact. Can be absorbed within existing resources.
<input type="checkbox"/>	Ongoing cost of:
<input type="checkbox"/>	See below for fiscal impact.

	<u>2000/01</u>	<u>2001/02</u>	<u>Ongoing</u>
EXPENDITURES	\$ _____	\$ _____	\$ _____
OIS COSTS	_____	_____	_____
REVENUE	\$ _____	\$ _____	\$ _____

PROGRAM CONTACT: _____ Phone number: _____
 PROGRAM CONCURS: YES NO _____ (If no, note differences as appropriate.)

LEGISLATIVE INTENT SERVICE (800) 666-1917

Existing Law

Under the existing law a "public record" includes any writing containing information relating to the conduct of the public's business, which is prepared, owned, used, or retained by any state or local agency. All public records are subject to inspection, by any person, at any time during normal business hours, except as specified in the Public Records Act (PRA). The law states that if a public agency denies the access to a public record, the agency that denies the record is required to justify the reason. The agency must clarify how the record is exempt from the provisions of the PRA, or convey the circumstances of how the public interest is served best, by not making the record public, clearly outweighs the public's interest of disclosing the record. The law also gives the court special authority to make a record public, when a public official's decision not to disclose a public record, is not justified.

Summary of AB 2799

AB 2799, if approved, would require public agencies that keep public records in an electronic format; to make that information available, to the public in that format when requested. Agencies will be required to provide copies of records, upon request and payment of fees, that cover the direct costs of duplication, or a statutory fee if applicable. If an agency delays or obstructs the inspection or copying of public records, a notification of the denial, of the request must include the names and titles, or positions of each person responsible for the denial. The agency must also justify in writing, the reason that the record is being withheld and demonstrate how the record is exempt, under express provisions of this chapter, or explain how the public interest served by not disclosing the record, clearly outweighs the public interest served by disclosure of the record.

ASSUMPTIONS

- If approved SB 2799 will become effective on January 1, 2001.
- SB 2799 will 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 the agency must follow these guidelines.
 - Information must be available in any electronic format in which it holds the information.
 - A copy of an electronic record must be available in the format requested, if the requested format is one that has been used by the agency for its own use.
 - An agency will not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- The person requesting the public record will pay for the cost associated with the duplication of the records.
- This bill provides for a reverse balancing test which will grant the courts and state agencies the authority to disclose any public record if the agency or superior court determines that, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.



DEPARTMENT OF CONSUMER AFFAIRS
Fiscal Analysis of Legislation
AB 2799 (Shelley) Amended 06/22/2000

- The Department of Consumer Affairs (DCA) Central Records Unit stores public records for the Bureaus and currently provides copies of public records in the form of CD-ROM, diskette, and hard copies.
- The Boards currently provide copies of public records in the form of diskette or hardcopies.
- DCA charges fees to offset the cost of providing the copies.

Fiscal Impacts

Bureaus store public records in DCA's Central Records Unit (CRU). The CRU provides copies of public records in CD-ROM and diskette format and are accessible electronically, there are only a few records, which are only available in hard copy format.

Boards that store public records in an electronic format are able to provide a copy of the record in the same electronic format in which it is stored, and therefore could comply with the provisions of AB 2799.

Existing law authorizes state agencies to charge the requestor, the direct cost for processing the request which includes time spent locating the record, segregation of the record, and cost of materials such as diskettes, etc.

AB 2799 would have a minimal and absorbable fiscal impact.



Status: Senate Revenue and Taxation Committee

AB 2001 (Longville)

As Amended June 29, 2000

Under the Government Code, this bill would create the California Spaceport Development Zone Act of 2000. The Trade and Commerce Agency would be required to designate spaceport development zones (SP) for the operation of launch sites or reentry sites that meet specified criteria.

Under the PITL and the B&CTL, this bill would allow qualified taxpayers in an SP zone to claim a sales or use tax credit, a hiring credit, an employee wage credit, and a business expense deduction. It also would permit a taxpayer to carry forward 100% of their net operating losses (NOLs) for a period of 20 years.

The SP hiring credit and the sales and use tax credit would be permitted to reduce regular tax below tentative minimum tax.

This bill would be effective January 1, 2001, and operative for taxable or income years beginning on or after that date.

The amendment deleted the bill's prior language and substituted the above provisions.

Board Position: Pending

Status: Senate Revenue and Taxation Committee

AB 2799 (Shelley)

As Amended July 6, 2000

Under the Government Code, this bill would make the following changes regarding the disclosure of public records:

- An agency would be required to make any identifiable public record that is in an electronic format available in the electronic format in which it holds the information. However, an agency would not be required to reconstruct a record that is no longer held in an electronic format.
- An agency would be precluded from delaying the inspection or copying of public records.
- An agency's determination to withhold a public record must be made in writing.
- An agency or the superior court would be permitted to disclose or order to be disclosed a public record exempt from disclosure, if the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.

This bill would be effective January 1, 2001.



The amendment provided that an agency may inform a requester that the information requested is available in electronic format even though the information was requested in other than an electronic format. The amendment also specified that the bill should not be construed to permit public access to confidential records held by any agency other than the Department of Motor Vehicles.

Board Position: Pending

Status: Senate Second Reading File

SB 843 (Polanco)

As Amended July 3, 2000

This bill would establish specific policies for state agencies to follow to improve the management of their information technology systems, including using technology to focus directly on agencies' strategic missions and the delivery of service to the public through effective use of information technology.

The bill would specify the Director's (state chief information officer) oversight function in evaluating major capital investments for information technology, reporting on agency program performance benefits resulting from major capital investments, and encouraging the development and use of the best practices in the acquisition of information technology. The Director could take any authorized action including an action involving the budgetary process or appropriations management process to enforce accountability of state agencies.

By May 1, 2001, the Department of Finance, the Department of General Services, and the Department of Information Technology would be required to develop and propose to the Governor and the Legislature a financing mechanism and plan for information technology acquisition.

This bill would be effective January 1, 2001.

The amendment removed the bill's language that would have renamed the Department of Information Technology to the Information Technology Agency and made related changes. The amendment made other changes related to the role of the Director.

Board Position: Support. On March 7, 2000, the Franchise Tax Board voted to take a support position on this bill as amended January 10, 2000.

Status: Assembly Consumer Protection, Government Efficiency and Economic Development Committee



SUPPLEMENTAL ANALYSIS GP:kaf

Business, Transportation & Housing Agency

DEPARTMENT CORPORATIONS	AUTHOR Shelley	BILL NO. AB 2799
SPONSOR California Newspaper Publishers Association	RELATED BILLS AB 142 (Bowen - 1995); AB 2989 (Bowen - 1996); AB 179 (Bowen - 1997); SB 74 (Kopp - 1997); AB 1099 (Shelley - 1999); SB 1065 (Bowen - 1999)	AMENDED DATE April 27, 2000, May 23, 2000, June 22, 2000, and July 6, 2000
SUBJECT: Public Records: Electronic Format: Disclosure.		

SUMMARY

Amends the California Public Records Act to (1) require any state or local agency that has identifiable, non-exempt public records in an electronic format to make that information available in electronic format, unless otherwise prohibited by law and except as specified, (2) specify the costs the requester would bear for obtaining copies of records in an electronic format, (3) authorize an agency to inform a requester that the information is available in electronic format when the request is for non-electronic information and the information is also in electronic format, (4) add another unusual circumstance that would permit an extension of time for an agency to respond to a request for public records, and (5) require a response to a written request for public records that includes a denial, in whole or in part, to be in writing.

ANALYSIS

Based on the amendments of April 27, 2000, May 23, 2000, June 22, 2000, and July 6, 2000, the Department of Corporations ("DOC") changes its recommended position from Oppose to NEUTRAL, SEEK AMENDMENTS on AB 2799.

The April 27, 2000, amendments delete the provision that would have authorized an agency or the superior court to disclose or order to be disclosed any record made exempt by express provisions the Public Records Act ("PRA") 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 May 23, 2000, amendments do the following:

- Remove the requirement that the justification for withholding any record be "in writing"; and

DEPARTMENTS THAT MAY BE AFFECTED: All State Agencies		
STATE MANDATE _____	GOVERNOR'S APPOINTMENT _____	LEGISLATIVE APPOINTMENT _____
DEPARTMENT POSITION: S _____ SA _____ N _____ <input checked="" type="checkbox"/> NA	AGENCY POSITION: S _____ SA _____ N _____ NA _____	GOVERNOR'S OFFICE USE Position Approved _____ Position Disapproved _____ Position Noted _____
_____ O _____ OUA _____ NP _____ NAR _____ DEFER	_____ O _____ OUA _____ NP _____ NAR _____ DEFER	
DEPARTMENT WILLIAM KENEFICK Acting Commissioner of Corporations & Assistant Commissioner, Office of Policy	DATE 7-26-00	AGENCY DATE BY: DATE: LH: 980 DF - 32

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LEGISLATIVE INTENT SERVICE



- Provide that a response to a written request for inspection or copies of public records that includes a denial, in whole or in part, shall be in writing.

The June 22, 2000, amendments do the following:

- Add another "unusual circumstance" that allows for the extension of time to respond to a public records request;
- Revise the provision that requires an agency to make available in electronic format an identifiable public record that is in electronic format, to clarify that the public record be one not exempt from disclosure pursuant to the PRA;
- Revise the costs a requester is to bear for obtaining copies of records in an electronic format;
- Provide that nothing in the section is to be construed to require the public agency to release an electronic record in electronic format 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; and
- Make some minor changes.

The July 6, 2000, amendments do the following:

- Provide that 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
- Provide that nothing in the section shall be construed to permit public access to records held by any agency (rather than just held by the Department of Motor Vehicles) to which access is otherwise restricted by statute.

These amendments resolve all, except one, of the concerns the DOC has with the bill as explained in the previous legislative analysis. The DOC is still concerned that this bill has not adequately addressed the issue of segregation. Existing law under the PRA requires any reasonably segregable portion of a record to be available for inspection by any person requesting the record after deletion of the portions that are exempted by law. The physical nature of electronic records may complicate the "reasonable segregation" requirement of the PRA, create confusion, and result in the accidental public disclosure of exempt information. In order to address this potential problem and to clarify that the general public record provision contained in Government Code Section 6253 which provides that upon request, an exact copy shall be



provided unless impracticable to do so, also applies to the new electronic records section, the DOC suggests that similar language be included in the new section. Specifically, the DOC's proposed amendment would exclude a public agency from having to provide an electronic record in electronic format if it would be impracticable to do so due to the need to segregate portions of the record that are exempted by law.

The DOC's proposed amendment is attached in Legislative Counsel format.

SUPPORT AND OPPOSITION

In addition to the sponsor, the Orange County Register supports this bill.

The County of Orange is opposed to the bill because 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.

Contact: GERARDO PARTIDA
Title: Senior Corporations Counsel
Phone No.: (916) 322-3675



AMENDMENTS TO ASSEMBLY BILL 2799
AS AMENDED IN THE SENATE ON
JULY 6, 2000

AMENDMENT 1

On page 4, of the printed bill as amended in the Senate on July 6, 2000, line 34, strike-out
"law," and insert:

law or unless impracticable to do so due to the need to segregate portions of the record
that are exempted by law,

oOo

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LEGISLATIVE INTENT SERVICE





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.



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.

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Analysis prepared by: Laurie D. Watson

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7-19
324-1890
7/18/00
7-21-00
07/10/00
Joe
by TWB

Contact:

Margaret S. Shedd 322-2376

Handwritten signatures and dates: MS 7/21/00, TWB 7/18/00

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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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FAX TRANSMITTAL COVER

NUMBER OF PAGES - 4	DATE: June 1, 2000
ORIGINAL: <input type="checkbox"/> To follow by Regular Mail <input checked="" type="checkbox"/> Will Not Follow	
TO: Senate Rev & Tax Committee Assembly Rev & Tax Committee Assembly Rep. Caucus – Richard Mersereau A R & T VC. -- Julie Mougeotte Assm. Approp. -- Steve Shea Dept of Finance -- Connie Squires Senate Approp. -- Anne Maitland Assemblymember Kevin Shelley	FROM: Legislative Division*
FIRM/ADDRESS:	ADDRESS: 450 N Street, Sacramento, CA
TELEPHONE NUMBER: ()	TELEPHONE NUMBER: (916) 445-6566
FAX NUMBER	FAX NUMBER: ()

- The attached document does not contain any confidential information
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- The attached document contains confidential information and is subject to attorney/client privilege.*

COMMENTS:

Draft copy of AB 2799 amended 4/27/00

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DRAFT



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

Date Amended:	04/27/00	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, personal information may be disclosed pursuant to the Public Records Act, or PRA (commencing with Section 6250 of the Government Code), which 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 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. **Portions of this bill codify existing Board practices.** The Board already provides denials of public records requests in writing.
3. **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.



Assembly Bill 2799 (Shelley)

DRAFT

Page 3

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	324-1890	05/16/00
Contact:	Margaret S. Shedd	322-2376	

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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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SUMMARY ANALYSIS OF AMENDED BILL

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

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NO ANALYSIS REQUIRED

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Franchise Tax Board

Author: Shelley Analyst: Roger Lackey Bill Number: AB 2799

Related Bills: See Legislative History Telephone: 845-3627 Amended Date: 05-23-2000

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 _____
- MINOR AMENDMENT - No change in approved position of Pending. 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 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.

The May 23, 2000, amendment changed the requirement that a state agency justify in writing withholding a requested record. The new language clarifies that a written response is required only for a written request and regardless of whether the request is denied in whole or in part.

Except for the discussion above, the department's analysis of AB 2799 as amended April 27, 2000, still applies.

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Board Position:	Franchise Tax Board Staff	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

Signature
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06/02/00 12:17 PM

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.

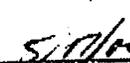
COMMENTS:

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 remainder of the department's analysis of the bill as introduced February 28, 2000, still applies.

Board Position:	Franchise Tax Board Staff	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
		

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ANALYSIS OF ORIGINAL BILL

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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:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director *✓*

Date

[Signature]

4/4/00

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LEGISLATIVE INTENT SERVICE (800) 666-1917

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.

LEGISLATIVE INTENT SERVICE (800) 666-1917

DEPARTMENT OF CONSUMER AFFAIRS
FISCAL ANALYSIS OF LEGISLATION

DISTRIBUTED
5/10/00

DATE: APRIL 28, 2000 DATE ASSIGNED: 04-27-00
 Prepared By: Nancy E. Campbell Bill Number: AB 2799
 Phone number: 323-7237 Author: Shelley
 Approved by: Pamela S. Work Date Approved: 5-10-00
 FISCAL ANALYSIS AS AMENDED: 04-27-00 Short Title: Public Records: Disclosure

OFFICE OF INFORMATION SERVICES: Fiscal Impact? YES NO If "Yes, attach OIS fiscal
 OIS Reviewer: Conrad Lara DATE: _____ Analysis and assumptions.

ANALYSIS AND FISCAL ASSUMPTIONS:

See Attached

SUMMARY OF FISCAL IMPACT:	
<input checked="" type="checkbox"/>	Insignificant fiscal impact (under \$10,000).
<input type="checkbox"/>	No Fiscal Impact
<input type="checkbox"/>	Minor fiscal impact. Can be absorbed within existing resources.
<input type="checkbox"/>	Ongoing cost of:
<input type="checkbox"/>	See below for fiscal impact.

	<u>2000/01</u>	<u>2001/02</u>	<u>Ongoing</u>
EXPENDITURES	\$ _____	\$ _____	\$ _____
OIS COSTS	_____	_____	_____
REVENUE	\$ _____	\$ _____	\$ _____

PROGRAM CONTACT: _____ Phone number: _____
 PROGRAM CONCURS: YES NO (If no, note differences as appropriate.)

LEGISLATIVE INTENT SERVICE (800) 666-1917

Existing Law

Under the existing law a "public record" includes any writing containing information relating to the conduct of the public's business, which is prepared, owned, used, or retained by any state or local agency. All public records are subject to inspection, by any person, at any time during normal business hours, except as specified in the Public Records Act (PRA). The law states that if a public agency denies the access to a public record, the agency that denies the record is required to justify the reason. The agency must clarify how the record is exempt from the provisions of the PRA, or convey the circumstances of how the public interest is served best, by not making the record public, clearly outweighs the public's interest of disclosing the record. The law also gives the court special authority to make a record public, when a public official's decision not to disclose a public record, is not justified.

Summary of AB 2799

AB 2799, if approved, would require public agencies that keep public records in an electronic format, to make that information available, to the public in that format when requested. Agencies will be required to provide copies of records, upon request and payment of fees, that cover the direct costs of duplication, or a statutory fee if applicable. If an agency delays or obstructs the inspection or copying of public records, a notification of the denial, of the request must include the names and titles, or positions of each person responsible for the denial. The agency must also justify in writing, the reason that the record is being withheld and demonstrate how the record is exempt, under express provisions of this chapter, or explain how the public interest served by not disclosing the record, clearly outweighs the public interest served by disclosure of the record.

ASSUMPTIONS

- If approved SB 2799 will become effective on January 1, 2001.
- SB 2799 will 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 the agency must follow these guidelines.
 - Information must be available in any electronic format in which it holds the information.
 - A copy of an electronic record must be available in the format requested, if the requested format is one that has been used by the agency for its own use.
 - An agency will not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- The person requesting the public record will pay for the cost associated with the duplication of the records.
- This bill provides for a reverse balancing test which will grant the courts and state agencies the authority to disclose any public record if the agency or superior court determines that, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.

Fiscal Impacts

Insignificant fiscal impact





**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.

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.



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 *LF 6-14-00*
324-1890
TWB 6-12 06/05/00

 Contact: Margaret S. Shields *MS 6/5/00* *322-2376*
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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.

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

VPB
 Analysis prepared by: *Laurie D. Watson*
 Contact: *Margaret S. Sheld* 322-2376
6/13/00 *6/5/00* *324-1890* *6-14-00* *TWB* *6-12* *06/05/00* *JSE*
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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.

Analyst Name: Roger Lackey
Phone No. 845-3627

STATE AND CONSUMER SERVICES AGENCY

BILL ANALYSIS

Department	Franchise Tax Board	Author	Shelley	Bill Number	AB 2799
Sponsor		Related Bills	AB1099 99/00 SB1065 99/00	Amendment Date	4/27/00
Subject	Public Record Disclosure/Make Available in Electronic Format if Available & When Requested				

(See Attached)

LEGISLATIVE INTENT SERVICE (800) 666-1917

DEPARTMENTS THAT MAY BE AFFECTED:

___ STATE MANDATE ___ GOVERNOR'S APPOINTMENT

Board Position: ___ S ___ O ___ SA ___ OUA ___ N ___ NP ___ NA ___ NAR ___ PENDING	Agency Secretary Position: ___ S ___ O ___ SA ___ OUA ___ N ___ NP ___ NA ___ NAR DEFER TO <u>DGS</u>	GOVERNOR'S OFFICE USE Position Approved ___ Position Disapproved ___ Position Noted ___
Franchise Tax Board Staff Date <i>Roger Lackey</i> 5/1/00	Agency Secretary Date ORIGINAL SIGNED BY HAPPY CHASTAIN JUN 5 - 2000	By: _____ Date

DEPUTY SECRETARY

Analyst Name: Darrine Distefano
 Phone No. 845-6458

247

STATE AND CONSUMER SERVICES AGENCY

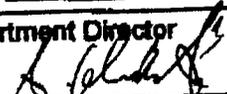
BILL ANALYSIS

Department Franchise Tax Board	Author Shelley	Bill Number AB 2799
Sponsor	Related Bills AB1099 99/00 SB1065 99/00	Introduction Date 2/28/00
Subject Public Record Disclosure/Make Available In Electronic Format If Available & When Requested		

(See Attached)

LEGISLATIVE INTENT SERVICE (800) 666-1917

DEPARTMENTS THAT MAY BE AFFECTED:

<input type="checkbox"/> STATE MANDATE		<input type="checkbox"/> GOVERNOR'S APPOINTMENT	
Board Position: <input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR <input checked="" type="checkbox"/> PENDING	Agency Secretary Position: <input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR ORIGINAL SIGNATURE BY DEPUTY SECRETARY	GOVERNOR'S OFFICE USE Position Approved <input type="checkbox"/> Position Disapproved <input type="checkbox"/> Position Noted <input type="checkbox"/> By: _____ Date _____	
Department Director 	Date 4/4/00	Agency Secretary WAT	Date 1 2000

DEPUTY SECRETARY
 LEGISLATION

ANALYSIS OF ORIGINAL BILL

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"/> NP <input type="checkbox"/> NAR <input type="checkbox"/> PENDING	<input type="checkbox"/> NA <input type="checkbox"/> O <input type="checkbox"/> OUA

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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.



NO ANALYSIS REQUIRED

Franchise Tax Board

Author: Shelley Analyst: Roger Lackey Bill Number: AB 2799
 Related Bills: See Legislative History Telephone: 845-3627 Amended Date: 05-23-2000
 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 _____
- MINOR AMENDMENT - No change in approved position of Pending. 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 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.

The May 23, 2000, amendment changed the requirement that a state agency justify in writing withholding a requested record. The new language clarifies that a written response is required only for a written request and regardless of whether the request is denied in whole or in part.

Except for the discussion above, the department's analysis of AB 2799 as amended April 27, 2000, still applies.

<p>Board Position</p> <p> <input type="checkbox"/> S <input type="checkbox"/> NA <input type="checkbox"/> SA <input type="checkbox"/> O <input type="checkbox"/> N <input type="checkbox"/> OUA </p> <p style="text-align: right;"> <input type="checkbox"/> NP <input type="checkbox"/> NAR <input type="checkbox"/> PENDING </p>	<p>Franchise Tax Board Staff Date</p> <p style="text-align: right;"> </p>
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LEGISLATIVE INTENT SERVICE (800) 666-1917

W. J. ...

NO ANALYSIS REQUIRED BUSINESS, TRANSPORTATION AND HOUSING AGENCY

DEPARTMENT 	BILL NUMBER AB 2799
SUBJECT Public records: disclosure	AMENDED DATE 6/22/00

- Analysis not required of this bill (not within scope of responsibility).
- Technical Bill (no program or fiscal changes to existing program).
- Bill as amended no longer within scope of responsibility or program of the department and should be reviewed for reassignment to another department.
- Technical Amendment (no change in previously submitted analysis required).
- Minor Amendment. Previously submitted analysis still valid. Previously approved position is _____
- Minor Amendment. No change in recommended position of **NEUTRAL**. See comments below.

Comments:

AB 2799 would require the department, upon request, to provide public record information in any electronic format in which it holds the information and would also require state agencies to justify in writing that a requested record is exempt from the Act or that the withholding of the record is in the best interest of the public.

The latest amendment would add §6253.9 to the Government Code clarifying that a public agency may charge the requester for producing a copy of a record, including the cost to construct a record as well as the cost of programming and computer services.

Since existing law already authorizes the department to charge a fee that is sufficient to pay actual administrative costs of producing a copy of a record (§1811 of the California Vehicle Code), the latest amendment has no new impact on the department's operations.

The department's previously recommended position of NEUTRAL remains valid.

Prepared by: Mervyn Perera
 Title: Manager III
 Phone number: 657-6518

DEPARTMENT <i>Bill Cather</i>	DATE <i>6-28-00</i>	AGENCY	DATE
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NO ANALYSIS REQUIRED BUSINESS, TRANSPORTATION AND HOUSING AGENCY

DEPARTMENT DAV	BILL NUMBER AB 2799
SUBJECT Public records: disclosure	AMENDED DATE 5/23/00

- Analysis not required of this bill (not within scope of responsibility).
- Technical Bill (no program or fiscal changes to existing program).
- Bill as amended no longer within scope of responsibility or program of the department and should be reviewed for reassignment to another department.
- Technical Amendment (no change in previously submitted analysis required).
- Minor Amendment. Previously submitted analysis still valid. Previously approved position is _____
- Minor Amendment. No change in recommended position of **NEUTRAL**. See comments below.

Comments:

AB 2799 would require the department, upon request, to provide public record information in any electronic format in which it holds the information and would also require state agencies to justify in writing that a requested record is exempt from the Act or that the withholding of the record is in the best interest of the public.

The latest amendment is a technical amendment which clarifies that the department is required to provide a written justification only when a request is received in writing.

The latest amendment has no new impact on the department's operations. The department's previously recommended position of **NEUTRAL** remains valid.

Prepared by: Mervyn Perera
 Title: Manager III
 Phone number: 657-6518

DEPARTMENT <i>Bill Cather</i>	DATE <i>6-15-00</i>	AGENCY	DATE
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DEPARTMENT CORPORATIONS	AUTHOR Shelley	BILL NO. AB 2799
SPONSOR California Newspaper Publishers Association	RELATED BILLS AB 142 (Bowen - 1995); AB 2989 (Bowen - 1996); AB 179 (Bowen - 1997); SB 74 (Kopp - 1997); AB 1099 (Shelley - 1999); SB 1065 (Bowen - 1999)	DATE INTRODUCED February 28, 2000
SUBJECT: Public Records: Electronic Format: Disclosure.		

SUMMARY

Amends the California Public Records Act to (1) require any state or local agency that has identifiable public records in an electronic format to make that information available in electronic format, unless otherwise prohibited by law, (2) require an agency that withholds a public record to justify its withholding in writing, and (3) authorize an agency or the superior court to disclose or order to be disclosed any record made exempt by express provisions of the act 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.

ANALYSIS

A. Policy:

Under existing law, the California Public Records Act ("PRA") provides, among other things, that any person may receive a copy of an identifiable, "non-exempt" public record from a state or local agency, upon request and payment of any statutorily mandated fee and any reasonable fees necessary to cover the direct costs of duplication. A "non-exempt" public record is a public

VOTE: SENATE FLOOR AYE ___ NO ___ POLICY, COMTE AYE ___ NO ___		VOTE: ASSEMBLY FLOOR AYE ___ NO ___ POLICY, COMTE AYE ___ NO ___	
DEPARTMENTS THAT MAY BE AFFECTED: All State Agencies			
STATE MANDATE _____		GOVERNOR'S APPOINTMENT _____	
LEGISLATIVE APPOINTMENT _____			
DEPARTMENT POSITION: ___ S ___ SA <input checked="" type="checkbox"/> O ___ N ___ NA ___ OUA ___ NP ___ NAR ___ DEFER		AGENCY POSITION: ___ S ___ SA ___ N ___ NA ___ O ___ OUA ___ NP ___ NAR ___ DEFER	
GOVERNOR'S OFFICE USE Position Approved _____ Position Disapproved _____ Position Noted _____			
DEPARTMENT WILLIAM KENEFICK Acting Commissioner of Corporations & Assistant Commissioner, Office of Policy		DATE 4-24-00	
AGENCY		DATE	
BY:		DATE:	

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record that is not exempt from disclosure by an express provision of law. Further, the PRA requires that if portions of the records are exempt from disclosure, any portions of such records that can be reasonably segregated are to be similarly provided, upon request, after the exempted portions have been deleted. The PRA also requires that, upon request, an exact copy of the non-exempt public record shall be provided unless impracticable to do so, that computer data is to be provided in a form determined by the agency, and that nothing in the PRA shall be construed to permit an agency to obstruct the inspection or copying of public records.

AB 2799 would delete the requirement that computer data be provided in a form determined by the agency and, instead, provide that, unless otherwise prohibited by law, any agency that has identifiable public records in electronic format shall make that information available in electronic format when requested by any person and, when applicable, shall make the information available in any electronic format in which it holds the information and 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.

In addition, AB 2799 would provide that (1) direct costs shall include costs associated with duplicating electronic records, (2) nothing in the bill shall be construed to require a public agency to reconstruct a report in electronic format if it no longer has the report in electronic format, (3) nothing in the bill shall be construed to permit an agency to make information available only in an electronic format, (4) nothing in the bill shall be construed to permit public access to the Department of Motor Vehicles' records which access is otherwise restricted by statute, and (5) nothing in the PRA shall be construed to permit an agency to delay or obstruct the inspection or copying of public records.

Existing law under the PRA also requires an agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the PRA 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.

AB 2799 would require the justification for withholding any record to be in writing and would authorize an agency or the superior court to disclose or order to be disclosed any record made exempt by express provisions of the PRA 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 purpose of this bill is to ensure quicker, more useful access to public records.

B. Fiscal:

A non-fiscal, preliminary review indicates that this bill may result in costs to, or have a fiscal impact on, the Department of Corporations ("DOC"). As a result, the DOC will prepare and submit a supplemental fiscal analysis in the near future.

ECONOMIC IMPACT

This bill could make it easier for members of the public to obtain public records from public agencies and, in some situations, may make it less expensive to do so. At the same time, this bill



could discourage individuals and businesses from pursuing professional or other business opportunities that require the filing of confidential information, such as personal, proprietary, or financial information, with public agencies because such information may become subject to public disclosure under the new balancing test set forth in the bill even though the PRA specifically exempts this information from public disclosure.

HISTORY

The California Newspaper Publishers Association is the sponsor of this bill.

According to the author's office, 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. Thus, the author's office claims that an agency can effectively frustrate a public record's request by providing the requested records in a form different from the public's request.

The author's office also states that 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. The author's office claims that by delaying the process, the public often gives up and never acquires the record.

Furthermore, according to the author's office, current law allows 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 author's office claims that 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 records request. Thus, the public should have the same right as the government, which would provide rather than deny access, when the public interest demands it.

Related bills include the following:

AB 142 (Bowen – 1995): Would have required that, unless otherwise prohibited by law, any agency in possession of public records in an electronic format shall, upon request, make that information available in an electronic format. AB 142 died in committee.

AB 2989 (Bowen – 1996): Would have enacted the Paper Reduction Act of 1996 to require that all public records which exist in an electronic format be available electronically. AB 2989 failed in committee.

AB 179 (Bowen – 1997): Would have amended the PRA to, among other things, require agencies to provide a copy of an electronic record in the form requested, unless, in light of surrounding circumstances, it is not reasonable to do so, provided that the requested form is one which is used by the agency. AB 179 was vetoed by former Governor Wilson and the Governor stated as follows in his veto message:



could discourage individuals and businesses from pursuing professional or other business opportunities that require the filing of confidential information, such as personal, proprietary, or financial information, with public agencies because such information may become subject to public disclosure under the new balancing test set forth in the bill even though the PRA specifically exempts this information from public disclosure.

HISTORY

The California Newspaper Publishers Association is the sponsor of this bill.

According to the author's office, 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. Thus, the author's office claims that an agency can effectively frustrate a public record's request by providing the requested records in a form different from the public's request.

The author's office also states that 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. The author's office claims that by delaying the process, the public often gives up and never acquires the record.

Furthermore, according to the author's office, current law allows 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 author's office claims that 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 records request. Thus, the public should have the same right as the government, which would provide rather than deny access, when the public interest demands it.

Related bills include the following:

AB 142 (Bowen – 1995): Would have required that, unless otherwise prohibited by law, any agency in possession of public records in an electronic format shall, upon request, make that information available in an electronic format. AB 142 died in committee.

AB 2989 (Bowen – 1996): Would have enacted the Paper Reduction Act of 1996 to require that all public records which exist in an electronic format be available electronically. AB 2989 failed in committee.

AB 179 (Bowen – 1997): Would have amended the PRA to, among other things, require agencies to provide a copy of an electronic record in the form requested, unless, in light of surrounding circumstances, it is not reasonable to do so, provided that the requested form is one which is used by the agency. AB 179 was vetoed by former Governor Wilson and the Governor stated as follows in his veto message:



“Government agencies receive hundreds of Public Records Act requests every month. They are most often not from ordinary citizens, but from political candidates or special interest groups searching for information. Government employees spend thousands of hours each year responding to the requests segregating the requested documents from exempt documents, such as those which invade other citizens’ personal privacy. Taxpayers pay for the time expended searching for and segregating these records. However, state agencies are presently permitted to determine the form in which computer data is provided.

This bill creates a new inflexible mandate by requiring the agency to provide the electronic data in the form requested, unless it is ‘unreasonable’ to do so, without ever defining the breadth of that exemption, thereby leaving it open to litigation. A request that an electronic record be provided in a particular form may require additional expense, burden, and time to segregate the public data from the exempt data, but the bill provides no guidance whether or to what extent that additional burden makes it ‘unreasonable’.

Agencies should make available to the public all documents to which public access is granted. But we need not add costs and rigidity to these obligations by specifying the form in which it will be done.”

SB 74 (Kopp – 1997): Contained similar provisions to AB 179 (Bowen – 1997) and was vetoed by former Governor Wilson for the exact same reasons as AB 179.

AB 1099 (Shelley – 1999): Would have amended the PRA to (1) provide that a copy of computerized data shall be provided in any form that is requested from among any of the forms used by the agency for the conduct of its business or for the making of copies for its own use or the use of any other agency and (2) prohibit a state or local agency from purchasing, leasing, creating, or otherwise acquiring any electronic data processing system for the storage, manipulation, or retrieval of public records if it impairs public examination or electronic copying of public records. AB 1099 was eventually amended to deal with a totally different subject matter.

SB 1065 (Bowen – 1999): Would have amended the PRA to require any state or local agency that has identifiable public records in an electronic format to make that information available in electronic format, unless otherwise prohibited by law. SB 1065 was vetoed by Governor Davis for the reason that many of the state’s computer systems do not yet have the capacity to implement the provisions of the bill.

WHAT OTHER STATES ARE DOING

The DOC is researching what other states are doing in this area and will submit a supplemental analysis when the information is obtained.



ARGUMENTS PRO AND CON

A. Arguments in Support of the Bill:

From the perspective of the general public, this bill allows for the economic and convenient public disclosure of identifiable, non-exempt electronic public records in electronic format. Copying a public record that is in electronic format to the same format (e.g., from CD to CD or disk to disk) should be easier, faster, and less expensive to do than copying from electronic format to paper or from paper to paper.

Clarifies that nothing in the PRA shall be construed to allow an agency to delay the inspection or copying of public records.

Allows persons wishing to view or inspect information to prove that the public interest served by releasing the record clearly outweighs the public interest served by not disclosing the information.

B. Arguments in Opposition to the Bill:

With respect to electronic records, this bill does not allow for the recovery of staff time and equipment to duplicate the data, only for the recovery of direct costs. Thus, this bill could be very costly or burdensome to agencies that have records in electronic format, but no or inadequate means of duplicating and segregating non-exempt public records.

The physical nature of electronic records may complicate the "reasonable segregation" requirement of the PRA, create confusion, and result in the accidental public disclosure of exempt information. Such an inadvertent disclosure may have an impact on the legal interests of all concerned parties, resulting in legal actions and associated costs.

This bill will significantly increase litigation for state and local agencies by allowing members of the public to challenge in court, based on the new balancing test, an agency's denial of a request for a public record that is expressly made exempt by the PRA, such as consumer complaints, agency preliminary drafts or notes, interagency or intra-agency communications, investigation records, and examination records. Thus, this bill could be very costly for state and local agencies.

This bill could have a chilling effect on the ability of state agencies and local law enforcement agencies to effectively and efficiently administer and enforce their respective laws because the bill may discourage consumers and others from filing complaints or other confidential information with or from cooperating with such agencies out of concern or fear that such information would no longer be guaranteed to be protected from public disclosure under state law.



SUPPORT AND OPPOSITION

In addition to the sponsor, the First Amendment Coalition is in support of this bill.

In opposition to this bill are the Association of California Insurance Companies and the Personal Insurance Federation of California. The opponents argue that the bill subjects confidential records to a vague balancing test and that the test undermines key provisions of the PRA which protects proprietary information of financial institutions and insurance companies filed with state agencies.

The California State Association of Counties ("CSAC") has expressed concerns with the bill. They are 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 new 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 records of local law enforcement agencies.

RECOMMENDATION

Insofar as the Department of Corporations is concerned, a position of OPPOSE is recommended on AB 2799 because this bill creates an inflexible mandate on state agencies to provide electronic data in the form requested, which can require additional expense, burden, and time on state agencies to comply with a request for public records under the PRA, will significantly increase litigation for state agencies, and will have the chilling effect of discouraging consumers and others from filing complaints or other personal or private information with, or in cooperating with investigations of, state agencies or local law enforcement agencies, thereby hampering the ability of such agencies to effectively and efficiently administer and enforce the laws within their respective jurisdictions.

Contact: GERARDO PARTIDA
Title: Senior Corporations Counsel
Phone No. (916) 322-3675



LEGISLATIVE ANALYSIS

Business, Transportation & Housing Agency

DEPARTMENT 	AUTHOR Shelley	BILL NO. AB 2799
SPONSOR Author	RELATED BILLS SB 48 Sher 99/00 R/S SB 1065 Bowen 99/00 R/S	AMENDED DATE Original 2/28/00
SUBJECT Public records: disclosure		

THIS BILL ANALYSIS ONLY ADDRESSES THOSE PROVISIONS IMPACTING THE DEPARTMENT OF MOTOR VEHICLES (DMV).

SUMMARY: AB 2799 would require the department, upon request, to provide public record information in any electronic format in which it holds the information and would also require state agencies to justify in writing that a requested record is exempt from the Act or that the withholding of the record is in the best interest of the public.

DETAILED ANALYSIS: The California Vehicle Code contains provisions regarding information to be collected and to whom it may be disseminated which are specific to DMV. These provisions are based on the Information Practices Act, the Public Records Act and the federal Drivers Privacy Protection Act.

The department currently provides record information in an electronic format (magnetic tape or on-line direct access) to large volume requesters but only provides a paper (hard copy) document for one-time requests from the public.

AB 2799 deletes an existing statutory provision which allows state or local agencies to provide computer data in a form determined by the agency. Instead, it would require any state agency to provide public record information held in an electronic format to be disseminated in an electronic format when requested. It would also require state agencies to justify in writing that a requested record is exempt from the Act or that the withholding of the record is in the best interest of the public.

COST ANALYSIS: Since the department already has a system in place for providing information through electronic means through headquarters, this bill appears to have no significant impact on the department's operations.

ECONOMIC IMPACT: There will be no discernible economic impact on California residents or businesses if the provisions of this bill are enacted.

VOTE: SENATE FLOOR Aye _____ No _____ Policy Comte. Aye _____ No _____		VOTE: ASSEMBLY FLOOR Aye _____ No _____ Policy Comte. Aye _____ No _____	
DEPARTMENTS THAT MAY BE AFFECTED:			
Department of Information Technology, all state departments			
STATE MANDATE _____		GOVERNOR'S APPOINTMENT _____	LEGISLATIVE APPOINTMENT _____
DEPARTMENT POSITION _____ S _____ O _____ SA _____ OUA <u>X</u> _____ N _____ NP _____ NA _____ NAR _____ _____ DEFER		AGENCY POSITION _____ S _____ O _____ SA _____ OUA _____ N _____ NP _____ NA _____ NAR _____ _____ DEFER	
		GOVERNOR'S OFFICE USE Position Approved _____ Position Disapproved _____ Position Noted _____	
DEPARTMENT	DATE	AGENCY	DATE
<i>Edwards for Steven Gourley</i>			

LEGISLATIVE INTENT SERVICE (800) 666-1917

LEGISLATIVE HISTORY: AB 2799 is sponsored by the author.

Related Legislation: SB 48, Sher (1999) would have added provisions to the Public Records Act to allow for an appeal process through the Attorney General's Office after the denial of a record request; would have established monetary fines if it is found the denial was unjustified; and would have required state agencies to demonstrate in writing that a requested record is exempt from the Act or that the withholding of the record is in the best interest of the public. This bill was vetoed by the Governor on October 9, 1999.

AB 179, Bowen (97/98 RS), contained provisions similar to SB 2799. The bill was VETOED by Governor Wilson due to its restricting an agency's discretion as to the form of the document made available.

SB 74, Kopp (97/98 RS) would have made changes to the Public Records Act to require state agencies to provide a copy of an electronic record in the form requested, unless it was not reasonable to do so. This bill was VETOED by Governor Wilson for the same reason as AB 179, above.

AB 4, Bates (95/96 RS), among other things, required the Office of Information Technology in the Department of Finance to work with specified entities to develop and implement a plan to make computerized public information retained by the state accessible to the public in computer readable form, as specified, and prohibit agencies from charging fees for accessing the information. This bill died in the Assembly Committee on Consumer Protection. The department's approved position was OPPOSE.

AB 142, Bowen (95/96 RS), would have required an agency to provide any identifiable public record, as specified, in an electronic format, at the actual cost of providing the information. This bill dies in the Assembly Committee on Government Organization. The department's approved position was OPPOSE.

SB 1814, Leonard (95/96 RS), among other things, would have allowed a state agency to enter into contracts with private entities to provide public records to those entities, provided the agency supplies the public with electronic access to the same public records. This bill died in the Senate Committee on Government Organization.

AB-1624, Bowen (Ch. 1235, Stats. 1993) required the Legislative Counsel to make specified information available to the public in electronic form via the largest, nonprofit, cooperative, computer network in one or more formats, and by one or more means in order to provide the greatest feasible access to the general public; and prohibited the Legislative Counsel from imposing a fee or other charge as a condition of accessing the information on the computer network.

AB 2451, Bates (93/94 RS), sought to require the Office of Information Technology to work with state, federal and local government agencies, and members of the public to develop and implement a specified plan for free statewide computer-assisted access to computerized government information that is subject to disclosure. This bill died in the Assembly Unfinished Business file.

ARGUMENTS FOR:

- AB 2799 may provide the public with greater access to information contained on the department's records.
- Once a system is in place, providing electronic records should be cheaper.

There is no known support for this legislation.

ARGUMENTS AGAINST:

- AB 2799 restricts an agency's discretion as to the form of the document made available.
- The costs associated with reprogramming may exceed the savings created by ensuring that a one-time requester may obtain record information in an electronic format.

- The bill raises concerns about data base security as it could result in data being merged into other unknown data bases and result in the development of fraudulent DMV records and documentation.
- To ensure that the receiver of the information receives an authentic copy of what is contained on the department's database, the information must be in a form that cannot be manipulated.
- While some state departments may have the flexibility to meet the requirements of this bill with a minor expenditure, many smaller departments maybe financially burdened by the bill provisions.

There is no known opposition to this legislation.

WHAT THE OTHER STATES ARE DOING: Most states offer the same electronic services that California DMV currently provides, that is, magnetic tape and on-line services.

RECOMMENDED POSITION: The department's recommended position is **NEUTRAL**.

The Department of Motor Vehicles collects and maintains a great deal of information on the citizens of California. The majority of this information is public in nature and statutes have been passed to identify and protect confidential information. This bill would add some minor administrative requirements but make no substantive change to policy or procedures.

For further information, please contact:

Mervyn Perera
Legislative Office
657-6518

(800) 666-1917

LEGISLATIVE INTENT SERVICE



NO ANALYSIS REQUIRED BUSINESS, TRANSPORTATION AND HOUSING AGENCY

DEPARTMENT 	BILL NUMBER AB 2799
SUBJECT Public records: disclosure	AMENDED DATE 4/27/00

- Analysis not required of this bill (not within scope of responsibility).
- Technical Bill (no program or fiscal changes to existing program).
- Bill as amended no longer within scope of responsibility or program of the department and should be reviewed for reassignment to another department.
- Technical Amendment (no change in previously submitted analysis required).
- Minor Amendment. Previously submitted analysis still valid. Previously approved position is _____
- Minor Amendment. No change in recommended position of **NEUTRAL**. See comments below.

Comments:

AB 2799 would require the department, upon request, to provide public record information in any electronic format in which it holds the information and would also require state agencies to justify in writing that a requested record is exempt from the Act or that the withholding of the record is in the best interest of the public.

The latest amendment deletes a previous bill provision which would have allowed the superior court to disclose a record made exempt under the express provisions of this act if the superior court determines that disclosing the record is in the best interest of the public.

The latest amendment has no new impact on the department's operations. The department's previously recommended position of **NEUTRAL** remains valid.

Prepared by: Mervyn Perera
 Title: Manager III
 Phone number: 657-6518

DEPARTMENT <i>Bill Cather</i>	DATE 5-19-00	AGENCY	DATE
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DP



10/1/2000 2/13

SUMMARY ANALYSIS OF AMENDED BILL

DEPARTMENT Consumer Affairs	AUTHOR Shelley	BILL NUMBER AB 2799
SPONSOR CA Newspaper Publishers Association	RELATED BILLS SB 2027	AMENDED DATE 6/22/00
ANALYST Rena M. Kimball	TELEPHONE 322-1203	
SUBJECT Public Records: Disclosure		

DEPARTMENT'S AMENDMENTS ACCEPTED. Amendments reflect suggestions of analysis for the _____ version.

AMENDMENTS HAVE A FISCAL IMPACT. A new fiscal analysis is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the analysis for the 5/23/00 version.

MORE AMENDMENTS NECESSARY - See comments below.

DEPARTMENT RECOMMENDS POSITION BE CHANGED TO _____

REMAINDER OF ANALYSIS FOR _____ VERSION STILL APPLIES.

OTHER - See comments below.

SUMMARY: This bill revises the Public Records Act to require public agencies to provide records, held in an electronic format, to the public in an electronic format. A public agency would also be required to justify in writing, the withholding of a public record.

The bill, as amended June 22nd, makes the following changes:

- Includes in the definition of unusual circumstances the need to compile data, write programming language or a computer program or construct a computer program to extract data.
- Specifies that the cost of duplication is limited to the direct cost of producing a copy in an electronic format.
- Provides that the requester would bear the cost of duplication, including cost to construct a record, and any programming and computer services when the record is produced at regularly scheduled intervals, or the request would require data compilation, extraction, or programming to produce the record.
- Exempts records that if released would jeopardize or compromise the security or integrity of the original records of any proprietary software in which it is maintained.

These changes do not remove the Department of Consumer Affairs (DCA) concerns. The bill continues to take away an agency's flexibility in determining the best and most economical method of providing records and creates a liability exposure for DCA agencies.

The DCA continues to **OPPOSE AB 2799.**

DEPARTMENTS THAT MAY BE AFFECTED All departments		
STATE MANDATE <input checked="" type="checkbox"/>		GOVERNOR'S APPOINTMENT <input type="checkbox"/>
DEPARTMENT DIRECTOR POSITION <input type="checkbox"/> S <input checked="" type="checkbox"/> O <input type="checkbox"/> SIA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NIA <input type="checkbox"/> NAR <input type="checkbox"/> DEFER	AGENCY SECRETARY POSITION <input type="checkbox"/> S <input checked="" type="checkbox"/> O <input type="checkbox"/> SIA <input type="checkbox"/> OUA <input type="checkbox"/> ORIGINAL SIGNED BY <input type="checkbox"/> HAPPY CHASTAIN <input type="checkbox"/> DEFER	GOVERNOR'S OFFICE USE POSITION APPRVD. <input type="checkbox"/> POSITION DISAPP. <input type="checkbox"/> POSITION NOTED <input type="checkbox"/> By: _____ Date _____
DEPARTMENT DIRECTOR <i>Kathleen Hamilton</i>	DATE <i>10/1/00</i>	AGENCY SECRETARY <i>JUL 25 2000</i> DEPUTY SECRETARY

LEGISLATIVE INTENT SERVICE (800) 666-1917

DEPARTMENT OF CONSUMER AFFAIRS
FISCAL ANALYSIS OF LEGISLATION

DISTRIBUTED
7/2/00

DATE: JULY 06, 2000 DATE ASSIGNED: 06-22-00
 Prepared By: Nancy E. Campbell Bill Number: AB 2799
 Phone number: 323-7237 Author: Shelley
 Approved by: Parade S. ... Date Approved: 7-11-00
 FISCAL ANALYSIS AS AMENDED: 06-22-00 Short Title: Public Records: Disclosure

OFFICE OF INFORMATION SERVICES: Fiscal impact? YES NO If "Yes, attach OIS fiscal
 OIS Reviewer: Conrad Lara DATE: _____ Analysis and assumptions.

ANALYSIS AND FISCAL ASSUMPTIONS:

See Attached

SUMMARY OF FISCAL IMPACT:	
<input checked="" type="checkbox"/>	Insignificant fiscal impact (under \$10,000).
<input type="checkbox"/>	No Fiscal Impact
<input type="checkbox"/>	Minor fiscal impact. Can be absorbed within existing resources.
<input type="checkbox"/>	Ongoing cost of:
<input type="checkbox"/>	See below for fiscal impact.

	<u>2000/01</u>	<u>2001/02</u>	<u>Ongoing</u>
EXPENDITURES	\$ _____	\$ _____	\$ _____
OIS COSTS	_____	_____	_____
REVENUE	\$ _____	\$ _____	\$ _____

PROGRAM CONTACT: _____ Phone number: _____

PROGRAM CONCURS: YES NO (If no, note differences as appropriate.)

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Existing Law

Under the existing law a "public record" includes any writing containing information relating to the conduct of the public's business, which is prepared, owned, used, or retained by any state or local agency. All public records are subject to inspection, by any person, at any time during normal business hours, except as specified in the Public Records Act (PRA). The law states that if a public agency denies the access to a public record, the agency that denies the record is required to justify the reason. The agency must clarify how the record is exempt from the provisions of the PRA, or convey the circumstances of how the public interest is served best, by not making the record public, clearly outweighs the public's interest of disclosing the record. The law also gives the court special authority to make a record public, when a public official's decision not to disclose a public record, is not justified.

Summary of AB 2799

AB 2799, if approved, would require public agencies that keep public records in an electronic format; to make that information available, to the public in that format when requested. Agencies will be required to provide copies of records, upon request and payment of fees, that cover the direct costs of duplication, or a statutory fee if applicable. If an agency delays or obstructs the inspection or copying of public records, a notification of the denial, of the request must include the names and titles, or positions of each person responsible for the denial. The agency must also justify in writing, the reason that the record is being withheld and demonstrate how the record is exempt, under express provisions of this chapter, or explain how the public interest served by not disclosing the record, clearly outweighs the public interest served by disclosure of the record.

ASSUMPTIONS

- If approved SB 2799 will become effective on January 1, 2001.
- SB 2799 will 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 the agency must follow these guidelines.
 - Information must be available in any electronic format in which it holds the information.
 - A copy of an electronic record must be available in the format requested, if the requested format is one that has been used by the agency for its own use.
 - An agency will not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- The person requesting the public record will pay for the cost associated with the duplication of the records.
- This bill provides for a reverse balancing test which will grant the courts and state agencies the authority to disclose any public record if the agency or superior court determines that, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.



- The Department of Consumer Affairs (DCA) Central Records Unit stores public records for the Bureaus and currently provides copies of public records in the form of CD-ROM, diskette, and hard copies.
- The Boards currently provide copies of public records in the form of diskette or hardcopies.
- DCA charges fees to offset the cost of providing the copies.

Fiscal Impacts

Bureaus store public records in DCA's Central Records Unit (CRU). The CRU provides copies of public records in CD-ROM and diskette format and are accessible electronically, there are only a few records, which are only available in hard copy format.

Boards that store public records in an electronic format are able to provide a copy of the record in the same electronic format in which it is stored, and therefore could comply with the provisions of AB 2799.

Existing law authorizes state agencies to charge the requestor, the direct cost for processing the request which includes time spent locating the record, segregation of the record, and cost of materials such as diskettes, etc.

AB 2799 would have a minimal and absorbable fiscal impact.



Bowen 2000

DEPARTMENT Consumer Affairs	AUTHOR Shelley	BILL NUMBER AB 2799
SPONSOR CA Newspaper Publishers Association	RELATED BILLS SB 2027	AMENDED DATE 5/23/00
SUBJECT Public Records: Disclosure		

BILL SUMMARY: This bill revises the Public Records Act to require public agencies to provide records held in an electronic format to the public in an electronic format. A public agency would also be required to justify, in writing, the withholding of a public record.

LEGISLATIVE HISTORY:

- SB 2027 (Sher) Pending in Assembly
- AB 1099 (Shelley, Chapter 843, Statutes of 1999)
- SB 48 (Sher, 1999, Vetoed)
- SB 1065 (Bowen, 1999, Vetoed)
- AB 179 (Bowen, 1997, Vetoed)
- SB 74 (Kopp, 1997, Vetoed)
- AB 142 (Bowen, 1996, died)
- SB 323 (Kopp, 1996, Vetoed)

DEPARTMENT SERVICE AND PROGRAM HISTORY:

Historically, there have been many attempts to compel public agencies to provide copies of public records held in an electronic format in any format requested. State agencies have been reluctant to provide copies in any format requested because records are stored in huge data bases and redacting the disclosable information from the non-disclosable is time consuming and susceptible to the inadvertent release of confidential information, which could lead to a lawsuit.

SB 2027 is similar to SB 48 and establishes an appeal process within the Attorney General's office for a public agency's denial of a public record, allows a court to impose a penalty up to \$100 per day for each day the court determines the agency's action resulted in the denial of plaintiff's right to inspect records, and authorizes state agencies to employ outside counsel in certain circumstances. This bill passed out of Senate Appropriations (8 - 3) on May 25th and is pending in the Assembly.

AB 1099 (1999), as introduced, would have required agencies to provide copies of records in any form requested as long as the record was stored in the requested format. This bill was later amended to contain different subject matter.

DEPARTMENTS THAT MAY BE AFFECTED ALL		GOVERNOR'S APPOINTMENT <input type="checkbox"/>	
STATE MANDATE <input checked="" type="checkbox"/>		GOVERNOR'S OFFICE USE	
DEPARTMENT DIRECTOR POSITION <input type="checkbox"/> S <input checked="" type="checkbox"/> O <input type="checkbox"/> SIA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NIA <input type="checkbox"/> NAR <input type="checkbox"/> DEFER	AGENCY SECRETARY POSITION <input type="checkbox"/> S <input checked="" type="checkbox"/> O <input type="checkbox"/> SIA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NIA <input type="checkbox"/> NAR <input type="checkbox"/> DEFER	POSITION APPRVD. <input type="checkbox"/> POSITION DISAPP. <input type="checkbox"/> POSITION NOTED <input type="checkbox"/> By: _____ Date: _____	
DEPARTMENT DIRECTOR <i>Cathee Sand</i>	DATE <i>6/13/00</i>	AGENCY SECRETARY <i>HAPPY CHASTAIN</i>	DATE. <i>JUN 20 2000</i>

ORIGINAL SIGNED BY
HAPPY CHASTAIN

JUN 20 2000
DEPUTY SECRETARY
LEGISLATION

LEGISLATIVE INTENT SERVICE (800) 666-1917

SB 48 (1999) would have established a simplified procedure for an appeal to the Attorney General when a state agency denied a request for a public record. This bill was vetoed by Governor Davis who stated it would create a conflict of interest between the Attorney General and his major clients, which are state agencies. (See attached veto message)

SB 1065 (1999) would have required state agencies to provide public records in an electronic format when requested. This bill was vetoed by Governor Davis stating that not all state computer systems have the capacity to implement the provisions of the bill. The Governor mandated that the State's technology resources be directed toward making its computer systems year-2000 compliant. (See attached veto message)

AB 179 (1997) would have required state agencies to provide copies of electronic records in the format requested, unless unreasonable to do so, among other things. The bill was vetoed by former Governor Wilson on the basis that it created an inflexible mandate by requiring agencies to provide electronic records in any format requested and ignored the burdens on state agencies.

SB 74 (1997), among other things, would have required state agencies to provide copies of records stored in an electronic format in the form requested, unless unreasonable to do. The bill specified that records requested by members of the public for personal use were to be charged a fee that represented the direct costs of duplication or the prescribed statutory fee. For records requested for commercial purposes, the fee was to be the actual costs of search, retrieval, review, segregation, and duplication. This bill was vetoed by former Governor Wilson on the basis that:

- it created an inflexible mandate on state agencies to furnish records in the form requested without defining "unreasonable," leaving the interpretation open to litigation;
- it would create additional expense, burden and time to segregate the public data from the exempt data; and
- records should be readily accessible without adding costs and rigidity by mandating state agencies to provide copies in any form requested.

AB 142 (1996) would have required public agencies holding information in an electronic format to make that information available in an electronic format upon request. The bill failed passage.

SB 323 (1996) would have required public agencies to justify in writing by citing the statute or public interest served in denying a public record. The bill was vetoed by former Governor Wilson on the basis that it imposed an additional and unreasonable burden on state agencies and the costs to comply did not justify the expense.



According to the sponsor, the California Newspaper Publishers Association, this bill is intended to ensure quicker, more useful access to public records. The bill seeks to provide reasonable guidelines for public access to electronically held records. One of the common complaints against the public records process is that requesters often receive volumes of paper records and they must search through the material to find the particular record they actually wanted.

SPECIFIC FINDINGS:

Existing law, the Public Records Act (PRA):

- Defines public record to include any writing containing information relating to the conduct of the public's business,
- Requires public records to be open for inspection during office hours and specifies that every person has the right to inspect a public record, unless a record is specifically exempted,
- Requires public agencies to make an exact copy of a public record for any person upon payment of specified fees, and
- Authorizes computer data to be provided in a form determined by the agency.

This bill as amended May 23rd:

- Deletes an agency's discretion to provide computer data in a format of it's choosing, and instead specifies that the data must be in electronic format.
- Requires information stored in an electronic format to be made available in an electronic format upon request as follows:
 1. Requires agencies to make the information available in any electronic format in which the information is held,
 2. Requires agencies to provide copies in the format requested if the agency uses that format to create copies for its own use or for other agencies,
 3. Specifies that public agencies are not required to reconstruct a report in an electronic format if the report no longer exists in that format,
 4. Prohibits state agencies from making information available only in an electronic format, and
 5. Prohibits public access to specified records held by the Department of Motor Vehicles.
- Requires public agencies to justify the withholding of a public record in writing.

The April 27th amendments removed a controversial provision that would have authorized court and state agencies to release records exempted by the PRA if it was determined that the public interest served by disclosure outweighed the public interest served by nondisclosure.



Concerns

Like other state agencies, the Department of Consumer Affairs (DCA), with its 33 boards and bureaus, has some serious concerns. These continue to be the same concerns expressed in SB 1065 in 1999.

The provisions of this bill take away a state agency's authority to determine the form in which it provides copies of computerized data. While all boards and bureaus within DCA make every effort to furnish requested records in the format requested, the provisions in this bill suggest that a requester's interest in obtaining copies of public records in a format requested is to be weighted more than the agency's interests in managing its workload.

The Central Records Unit (Unit) within the DCA stores departmental files on microfilm. The Unit indicates that it currently has the capability to provide all of the microfilm records, with the exception of some complaint records, on a CD-ROM and in other electronic formats. The Unit does provide records in any electronic format that is requested however, the boards, especially the small boards may, by necessity, continue to use older equipment to store records and may not have the capability to segregate disclosable information from the non-disclosable information. In those cases, redacting the information could be time-consuming and divert staff resources that may be needed elsewhere. There is also a concern (as has recently happened with one board) that a requester will use burdensome record requests to intimidate, retaliate, and harass an agency by diverting agency resources with requests when there is a disciplinary dispute.

REGULATIONS: N/A

LEGISLATIVELY-MANDATED REPORTS: N/A

COMMISSIONS AND BOARDS: N/A

FISCAL IMPACT: Insignificant – DCA generally has the capability to comply with the provisions of this bill. However, the smaller boards may expend considerable resources in complying with the bill.

NATIONAL INQUIRY:

Federal: The Freedom of Information Act and the Electronic Freedom of Information Act Amendments of 1996 allow public access to federal agency records.

Other States:

Florida: Provides for inspection of public records by any person at reasonable times and under reasonable conditions. Various fees are specified in statute. When a fee is not specified, the fee is the actual cost of duplication, including cost of material and supplies. When the nature or volume of records requested would require extensive use of technology resources or extensive clerical or supervisory assistance, a surcharge may be assessed based on the cost of personnel time spent retrieving the

06/11/00



information. **Records held in an electronic format are not singled out for different treatment.** Denials must be in writing, citing the particular law on which the denial is based.

New York: Authorizes each agency to promulgate rules and regulations pertaining to the availability of public records including the times the records would be available, fees and the contact person in control of the records. The assumption is that each state agency may determine the format in which the records are provided.

Pennsylvania: Specifies that public records are to be accessible for inspection and copying by any person during regular business hours. Each state agency is required to promulgate and post rules and regulations that include: fee schedule, duration of time allowed for inspection and copying, and conduct and handling of records in the area where records are stored. **Copies of records shall be provided in the most economical means available at the agency holding the records.**

Michigan: Provides access to public records by any person, except individuals incarcerated in state and local facilities, at reasonable times. Agencies may impose fees for actual costs, including labor and all associated costs. **The public agency is mandated to use the most economical means available for making copies of public records.**

Texas: Public information is available during normal office hours to any person, except incarcerated individuals. **Copies of public records must be provided in the requested medium unless the agency does not have the technological ability to provide a copy in the requested medium.** Fees for the duplication of public records include all costs related to reproducing the information such as, materials, labor and overhead.

PROponents/OPponents:

Support: California Newspaper Publishers Association (sponsor)
California First Amendment Coalition

Opposition: California Municipal Utilities Association
California State Sheriff's Office
California Association of Clerks and Elections Officials
Los Angeles County Board of Supervisors
San Bernardino Sheriff's Office

The author indicates that amendments are in progress in an attempt to remove opposition concerns.

PRO/CON ARGUMENTS:

Pro: Proponents argue that this bill would provide reasonable guidelines for public access to public records held electronically and would substantially increase the



availability of the records as well as reduce the cost and inconvenience associated with handling large volumes of paper.

Con: Opponents argue that requirements to provide public records in any available electronic format deletes agency authority to manage workload and the flexibility to determine the best and most economical method of providing the requested record. Additionally, the bill does not specifically authorize a fee to cover the cost of preparing electronic records for requestors. Responding to requests for large volumes of records from special interest groups and others can divert thousands of hours of staff time and use of other resources from their core responsibilities. They should be authorized to recover costs based on the personnel time spent retrieving the information, materials used, and other costs associated with duplication, as do several other states.

The sponsor states the one of the justifications for this bill is to lessen the burden on the requestor to search through volumes of paper records to retrieve the information they were seeking. This change in law would effectively place the majority of the burden of research on the governmental agency, using public resources at public expense.

RECOMMENDATION:

The Department of Consumer Affairs recommends an **OPPOSE** position on AB 2799. The provisions of this bill: 1) delete agency authority to determine the best and most economical method of providing public records, 2) could inadvertently create grounds for litigation, and 3) place additional fiscal burdens on public agencies with no authority to recover those costs.

CONTACT PERSONS:

Prepared by: Rena M. Kimball, Analyst

Phone: 322-1203

Sailaja Cherukuri, Deputy Director

Phone: 327-5196



DEPARTMENT OF CONSUMER AFFAIRS
FISCAL ANALYSIS OF LEGISLATION

DISTRIBUTED

5/10/00

DATE: APRIL 28, 2000 DATE ASSIGNED: 04-27-00
 Prepared By: Nancy E. Campbell Bill Number: AB 2799
 Phone number: 323-7237 Author: Shelley
 Approved by: Barbara S. W... Date Approved: 5-10-00
 FISCAL ANALYSIS AS AMENDED: 04-27-00 Short Title: Public Records: Disclosure

OFFICE OF INFORMATION SERVICES: Fiscal impact? YES NO If "Yes, attach OIS fiscal
 OIS Reviewer: Conrad Lara DATE: _____ Analysis and assumptions.

ANALYSIS AND FISCAL ASSUMPTIONS:

See Attached

SUMMARY OF FISCAL IMPACT:	
<input checked="" type="checkbox"/>	Insignificant fiscal impact (under \$10,000).
<input type="checkbox"/>	No Fiscal Impact
<input type="checkbox"/>	Minor fiscal impact. Can be absorbed within existing resources.
<input type="checkbox"/>	Ongoing cost of:
<input type="checkbox"/>	See below for fiscal impact.

	<u>2000/01</u>	<u>2001/02</u>	<u>Ongoing</u>
EXPENDITURES	\$ _____	\$ _____	\$ _____
OIS COSTS	_____	_____	_____
REVENUE	\$ _____	\$ _____	\$ _____

PROGRAM CONTACT: _____ Phone number: _____
 PROGRAM CONCURS: YES NO (If no, note differences as appropriate.)

Existing Law

Under the existing law a "public record" includes any writing containing information relating to the conduct of the public's business, which is prepared, owned, used, or retained by any state or local agency. All public records are subject to inspection, by any person, at any time during normal business hours, except as specified in the Public Records Act (PRA). The law states that if a public agency denies the access to a public record, the agency that denies the record is required to justify the reason. The agency must clarify how the record is exempt from the provisions of the PRA, or convey the circumstances of how the public interest is served best, by not making the record public, clearly outweighs the public's interest of disclosing the record. The law also gives the court special authority to make a record public, when a public official's decision not to disclose a public record, is not justified.

Summary of AB 2799

AB 2799, if approved, would require public agencies that keep public records in an electronic format, to make that information available, to the public in that format when requested. Agencies will be required to provide copies of records, upon request and payment of fees, that cover the direct costs of duplication, or a statutory fee if applicable. If an agency delays or obstructs the inspection or copying of public records, a notification of the denial, of the request must include the names and titles, or positions of each person responsible for the denial. The agency must also justify in writing, the reason that the record is being withheld and demonstrate how the record is exempt, under express provisions of this chapter, or explain how the public interest served by not disclosing the record, clearly outweighs the public interest served by disclosure of the record.

ASSUMPTIONS

- If approved SB 2799 will become effective on January 1, 2001.
- SB 2799 will 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 the agency must follow these guidelines.
 - Information must be available in any electronic format in which it holds the information.
 - A copy of an electronic record must be available in the format requested, if the requested format is one that has been used by the agency for its own use.
 - An agency will not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- The person requesting the public record will pay for the cost associated with the duplication of the records.
- This bill provides for a reverse balancing test which will grant the courts and state agencies the authority to disclose any public record if the agency or superior court determines that, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.

Fiscal Impacts

Insignificant fiscal impact



CITY OF CALIFORNIA 2003

NO ANALYSIS REQUIRED BUSINESS, TRANSPORTATION AND HOUSING AGENCY

DEPARTMENT DMV	BILL NUMBER AB 2799
SUBJECT Public records: disclosure	AMENDED DATE 7/6/00

- Analysis not required of this bill (not within scope of responsibility).
- Technical Bill (no program or fiscal changes to existing program).
- Bill as amended no longer within scope of responsibility or program of the department and should be reviewed for reassignment to another department.
- Technical Amendment (no change in previously submitted analysis required).
- Minor Amendment. Previously submitted analysis still valid. Previously approved position is _____
- Minor Amendment. No change in recommended position of **NEUTRAL**. See comments below.

Comments

AB 2799 would require the department, upon request, to provide public record information in any electronic format in which it holds the information. This bill would also require state agencies to justify in writing that a requested record is exempt from the Public Records Act or that the withholding of the record is in the best interest of the public.

The latest amendment makes minor, non-substantive changes and has no new impact on the department's operations. The department's previously recommended position of **NEUTRAL** remains valid.

Prepared by: Mervyn Perera
 Title: Manager III
 Phone number: 657-6518

DEPARTMENT <i>Bill Cathy</i>	DATE 7-2-00	AGENCY	DATE
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DC

w. j. m. 26
 Analyst Name: Roger Lackey
 Phone No. 845-3627

STATE AND CONSUMER SERVICES AGENCY

BILL ANALYSIS

Department Franchise Tax Board	Author Shelley	Bill Number AB 2799
Sponsor	Related Bills AB1099 99/00 SB1065 99/00	Amendment Date 06/22/2000
Subject	Public Record Disclosure/Make Available In Electronic Format If Available & When Requested	

(See Attached)

LEGISLATIVE INTENT SERVICE (800) 666-1917

DEPARTMENTS THAT MAY BE AFFECTED:

STATE MANDATE
 GOVERNOR'S APPOINTMENT

Board Position: <input checked="" type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR <input type="checkbox"/> PENDING	Agency Secretary Position: <input type="checkbox"/> S <input checked="" type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR <input type="checkbox"/> DEFER TO	GOVERNOR'S OFFICE USE Position Approved <input type="checkbox"/> Position Disapproved <input type="checkbox"/> Position Noted <input type="checkbox"/> By: _____ Date _____
Legislative Director _____ Date 7/7/00	Agency Secretary _____ Date JUL 25 2000	

DEPUTY SECRETARY
LEGISLATION

LH: 1034 DF - 86

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Shelley Analyst: Roger Lackey Bill Number: AB 2799

Related Bills: See Prior Analysis Telephone: 845-3627 Amended Date: 06-22-2000

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 May 23, 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 June 22, 2000, amendments would provide that "unusual circumstances" under which an agency may delay providing a record would include the need to compile data, to write program language or a computer program, or to construct a computer report to extract data.

The amendments also would provide that a public agency would not have to make records that are exempt from disclosure available in an electronic format. In addition, the amendments would define what would constitute the cost of duplication. The amendments also would provide that a public agency could refuse to disclose an electronic record if it feels that disclosure would jeopardize or compromise the security or integrity of the original record.

As a result of the amendment, an implementation consideration has arisen and is included below.

Except for the discussion above, the department's analysis of the bill as amended May 23, 2000, still applies.

Board Position

S
 SA
 N

NA
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 OUA

NP
 NAR
 PENDING

Legislative Director

Date

[Signature] 7/2000

WINWORDAB 17

IMPLEMENTATION CONSIDERATION

The terms "compile data" and "construct a record" are unclear. These terms could be interpreted to require a state agency to create a new public record to satisfy a request. The California Public Records Act requires state agencies to provide copies of **existing** public records not to create new public records upon request. The bill should clarify the meaning of these terms.

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.



DEPARTMENT OF CONSUMER AFFAIRS
FISCAL ANALYSIS OF LEGISLATION

DISTRIBUTED

7/12/00

DATE: JULY 06, 2000 DATE ASSIGNED: 06-22-00
 Prepared By: Nancy E. Campbell Bill Number: AB 2799
 Phone number: 323-7237 Author: Shelley
 Approved by: Parvula S. N. S. Date Approved: 7-11-00
 FISCAL ANALYSIS AS AMENDED: 06-22-00 Short Title: Public Records: Disclosure

OFFICE OF INFORMATION SERVICES: Fiscal impact? YES NO If "Yes, attach OIS fiscal
 OIS Reviewer: Conrad Lara DATE: _____ Analysis and assumptions.

ANALYSIS AND FISCAL ASSUMPTIONS:

See Attached

SUMMARY OF FISCAL IMPACT:	
<input checked="" type="checkbox"/>	Insignificant fiscal impact (under \$10,000).
<input type="checkbox"/>	No Fiscal Impact
<input type="checkbox"/>	Minor fiscal impact. Can be absorbed within existing resources.
<input type="checkbox"/>	Ongoing cost of:
<input type="checkbox"/>	See below for fiscal impact.

	<u>2000/01</u>	<u>2001/02</u>	<u>Ongoing</u>
EXPENDITURES	\$ _____	\$ _____	\$ _____
OIS COSTS	_____	_____	_____
REVENUE	\$ _____	\$ _____	\$ _____

PROGRAM CONTACT: _____ Phone number: _____

PROGRAM CONCURS: YES NO _____ (If no, note differences as appropriate.)

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LEGISLATIVE INTENT SERVICE



Existing Law

Under the existing law a "public record" includes any writing containing information relating to the conduct of the public's business, which is prepared, owned, used, or retained by any state or local agency. All public records are subject to inspection, by any person, at any time during normal business hours, except as specified in the Public Records Act (PRA). The law states that if a public agency denies the access to a public record, the agency that denies the record is required to justify the reason. The agency must clarify how the record is exempt from the provisions of the PRA, or convey the circumstances of how the public interest is served best, by not making the record public, clearly outweighs the public's interest of disclosing the record. The law also gives the court special authority to make a record public, when a public official's decision not to disclose a public record, is not justified.

Summary of AB 2799

AB 2799, if approved, would require public agencies that keep public records in an electronic format; to make that information available, to the public in that format when requested. Agencies will be required to provide copies of records, upon request and payment of fees, that cover the direct costs of duplication, or a statutory fee if applicable. If an agency delays or obstructs the inspection or copying of public records, a notification of the denial, of the request must include the names and titles, or positions of each person responsible for the denial. The agency must also justify in writing, the reason that the record is being withheld and demonstrate how the record is exempt, under express provisions of this chapter, or explain how the public interest served by not disclosing the record, clearly outweighs the public interest served by disclosure of the record.

ASSUMPTIONS

- If approved SB 2799 will become effective on January 1, 2001.
- SB 2799 will 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 the agency must follow these guidelines.
 - Information must be available in any electronic format in which it holds the information.
 - A copy of an electronic record must be available in the format requested, if the requested format is one that has been used by the agency for its own use.
 - An agency will not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- The person requesting the public record will pay for the cost associated with the duplication of the records.
- This bill provides for a reverse balancing test which will grant the courts and state agencies the authority to disclose any public record if the agency or superior court determines that, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.



- The Department of Consumer Affairs (DCA) Central Records Unit stores public records for the Bureaus and currently provides copies of public records in the form of CD-ROM, diskette, and hard copies.
- The Boards currently provide copies of public records in the form of diskette or hardcopies.
- DCA charges fees to offset the cost of providing the copies.

Fiscal Impacts

Bureaus store public records in DCA's Central Records Unit (CRU). The CRU provides copies of public records in CD-ROM and diskette format and are accessible electronically, there are only a few records, which are only available in hard copy format.

Boards that store public records in an electronic format are able to provide a copy of the record in the same electronic format in which it is stored, and therefore could comply with the provisions of AB 2799.

Existing law authorizes state agencies to charge the requestor, the direct cost for processing the request which includes time spent locating the record, segregation of the record, and cost of materials such as diskettes, etc.

AB 2799 would have a minimal and absorbable fiscal impact.



SUMMARY OF AB 2799 (SHELLEY)

AB 2799 amends the California Public Records Act to (1) require any public agency that has identifiable, non-exempt public records in an electronic format to make that information available in electronic format, unless otherwise prohibited by law and except as specified, (2) prohibit a public agency to delay the inspection or copying of public records, (3) add another unusual circumstance that would permit an extension of time to respond to a public records request, and (4) require a written response to a written request for public records that includes a denial, in whole or in part. The Department of Corporations recommends SIGN on AB 2799 because the bill provides reasonable guidelines for public access to electronically held public records which should help increase the availability of public records and reduce the cost and inconvenience associated with large volumes of paper documents. Furthermore, the bill will assist the public in having their requests for public records responded to in a more timely fashion and in writing if the request is in writing and there is a denial.

2000 SEP -8 PM 9:32
DEPARTMENT OF FINANCE
COR/DJD

(800) 666-1917

LEGISLATIVE INTENT SERVICE



DEPARTMENT CORPORATIONS	AUTHOR Shelley	BILL NO. AB 2799
SPONSOR California Newspaper Publishers Association	RELATED BILLS AB 142 (Bowen - 1995); AB 2989 (Bowen - 1996); AB 179 (Bowen - 1997); SB 74 (Kopp - 1997); AB 1099 (Shelley - 1999); SB 1065 (Bowen - 1999); SB 2027 (Sher - 2000).	DATE LAST AMENDED July 6, 2000
SUBJECT: Public Records: Electronic Format: Disclosure.		

SUMMARY

Amends the California Public Records Act to (1) require any state or local agency ("public agency") that has identifiable, non-exempt public records in an electronic format to make that information available in electronic format, unless otherwise prohibited by law and except as specified, (2) specify the costs the requester would bear for obtaining copies of records in an electronic format, (3) authorize a public agency to inform a requester that the information is available in electronic format when the request is for non-electronic information and the information is also in electronic format, (4) prohibit a public agency to delay the inspection or copying of public records, (5) add another unusual circumstance that would permit an extension of time for a public agency to respond to a request for public records, and (6) require a response to a written request for public records that includes a denial, in whole or in part, to be in writing.

ANALYSIS

Under existing law, the California Public Records Act ("PRA") provides, among other things, that any person may receive a copy of an identifiable, "non-exempt" public record from a public agency, upon request and payment of any statutorily mandated fee and any reasonable fees necessary to cover the direct costs of duplication. A "non-exempt" public record is a public record that is not exempt from disclosure by an express provision of law. Further, the PRA requires that if portions of the records are exempt from disclosure, any portions of such records that can be reasonably segregated are to be similarly provided, upon request, after the exempted portions have been deleted. The PRA also requires that, upon request, an exact copy of the non-exempt public record shall be provided unless impracticable to do so, that computer data is to be provided in a form determined by the public agency, that nothing in the PRA shall be construed to permit a public agency to obstruct the inspection or copying of public records, and that a

VOTE: SENATE FLOOR AYE <u>34</u> NO <u>0</u>		VOTE: ASSEMBLY FLOOR AYE <u>72</u> NO <u>2</u>	
POLICY COMTE AYE <u>5</u> NO <u>0</u>		POLICY COMTE AYE <u>12</u> NO <u>2</u>	
RECOMMENDATION: SIGN			
DEPARTMENT WILLIAM KENEFICK Acting Commissioner of Corporations & Assistant Commissioner, Office of Policy	DATE 8-31-00	AGENCY	DATE BY DATE

LEGISLATIVE INTENT SERVICE (800) 666-1917

public agency respond to a request for records within 10 days from receipt of the request or within 14 days in unusual circumstances, as specified.

AB 2799 would delete the requirement that computer data be provided in a form determined by the public agency and, instead, provide that, unless otherwise prohibited by law, any public agency that has identifiable, non-exempt public records in electronic format shall make that information available in electronic format when requested by any person and, when applicable, shall make the information available in any electronic format in which it holds the information and the requested format is one that has been used by the public agency to create copies for its own use or for provision to other public agencies.

In addition, AB 2799 would provide that (1) the cost of duplication shall be limited to the direct cost of producing a copy of a record in electronic format, except that it is also to include the cost to construct a record and the cost of programming and computer services under certain circumstances, (2) nothing in the bill shall be construed to require a public agency to reconstruct a record in electronic format if it no longer has the record in electronic format, (3) if the request is for information in other than electronic format, and the information also is in electronic format, the public agency may inform the requester that the information is available in electronic format, (4) nothing in the bill is to be construed to permit a public agency to make information available only in an electronic format, (5) nothing in the bill is to be construed to require the public agency to release an electronic record in electronic format 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, and (6) nothing in the bill shall be construed to permit public access to records held by any public agency to which access is otherwise restricted by statute.

Furthermore, AB 2799 would provide that nothing in the PRA shall be construed to permit a public agency to delay or obstruct the inspection or copying of public records and would add another unusual circumstance that would permit a public agency to extend the normal time to respond to a request for public records.

Existing law under the PRA also requires a public agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the PRA 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.

AB 2799 would require a response to a written request for inspection or copies of public records that includes a denial, in whole or in part, to be in writing.

The purpose of this bill is to ensure quicker, more useful access to public records.

COST

It is estimated that this bill will result in minor and absorbable costs to the Department of Corporations.



ECONOMIC IMPACT

This bill could make it easier and faster for members of the public to obtain public records from public agencies and, in some situations, may make it less expensive to do so, especially with respect to those public records that can be obtained in electronic format.

LEGISLATIVE HISTORY

The vote history can be found on the front page of the Enrolled Bill Report.

The California Newspaper Publishers Association is the sponsor of this bill.

According to the author's office, under current law, when a person makes a request for data contained in computer format, the public agency has the discretion to determine in which form the information should be provided. Thus, the author's office claims that a public agency can effectively frustrate a public record's request by providing the requested records in a form different from the public's request.

The author's office also states that it is very important that a public 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 public 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. The author's office claims that by delaying the process, the public often gives up and never acquires the record.

Related bills include the following:

AB 142 (Bowen – 1995): Would have required that, unless otherwise prohibited by law, any public agency in possession of public records in an electronic format shall, upon request, make that information available in an electronic format. AB 142 died in committee.

AB 2989 (Bowen – 1996): Would have enacted the Paper Reduction Act of 1996 to require that all public records which exist in an electronic format be available electronically. AB 2989 failed in committee.

AB 179 (Bowen – 1997): Would have amended the PRA to, among other things, require public agencies to provide a copy of an electronic record in the form requested, unless, in light of surrounding circumstances, it is not reasonable to do so, provided that the requested form is one which is used by the public agency. AB 179 was vetoed by former Governor Wilson and the Governor stated as follows in his veto message:



“Government agencies receive hundreds of Public Records Act requests every month. They are most often not from ordinary citizens, but from political candidates or special interest groups searching for information. Government employees spend thousands of hours each year responding to the requests segregating the requested documents from exempt documents, such as those which invade other citizens' personal privacy. Taxpayers pay for the time expended searching for and segregating these records. However, state agencies are presently permitted to determine the form in which computer data is provided.

This bill creates a new inflexible mandate by requiring the agency to provide the electronic data in the form requested, unless it is 'unreasonable' to do so, without ever defining the breadth of that exemption, thereby leaving it open to litigation. A request that an electronic record be provided in a particular form may require additional expense, burden, and time to segregate the public data from the exempt data, but the bill provides no guidance whether or to what extent that additional burden makes it 'unreasonable'.

Agencies should make available to the public all documents to which public access is granted. But we need not add costs and rigidity to these obligations by specifying the form in which it will be done.”

SB 74 (Kopp – 1997): Contained similar provisions to AB 179 (Bowen – 1997) and was vetoed by former Governor Wilson for the exact same reasons as AB 179.

AB 1099 (Shelley – 1999): Would have amended the PRA to (1) provide that a copy of computerized data shall be provided in any form that is requested from among any of the forms used by the public agency for the conduct of its business or for the making of copies for its own use or the use of any other public agency and (2) prohibit a public agency from purchasing, leasing, creating, or otherwise acquiring any electronic data processing system for the storage, manipulation, or retrieval of public records if it impairs public examination or electronic copying of public records. AB 1099 was eventually amended to deal with a totally different subject matter.

SB 1065 (Bowen – 1999): Would have amended the PRA to require any public agency that has identifiable public records in an electronic format to make that information available in electronic format, unless otherwise prohibited by law. SB 1065 was vetoed by Governor Davis for the reason that many of the state's computer systems do not yet have the capacity to implement the provisions of the bill.

SB 2027 (Sher – 2000): Would amend the PRA to allow persons to appeal to the Attorney General any public agency's denial of a request to inspect public records. It is noted that both AB 2799 and SB 2027 make the exact same changes to Government Code Section 6255, thereby not creating a chaptering-out problem with respect to this code section.



WHAT OTHER STATES ARE DOING

According to the author's office, there are 34 other states that have rules pertaining to electronic records access that are similar to AB 2799. The remaining 16 states, including California, have no guidelines or rules specifically addressing if electronic public records can be accessed and how.

ARGUMENTS PRO & CON

A. Arguments in Support of the Bill:

This bill would provide reasonable guidelines for public access to electronically held records. With the advent of the electronic age, more and more people want to be able to access information in an electronic format.

From the perspective of the general public, this bill allows for the economic and convenient public disclosure of identifiable, non-exempt electronic public records in electronic format. Copying a public record that is in electronic format to the same format (e.g., from CD to CD or disk to disk) should be easier, faster, and less expensive to do than copying from electronic format to paper or from paper to paper, especially when the records are voluminous.

Clarifies that nothing in the PRA shall be construed to allow a public agency to delay the inspection or copying of public records.

Allows a person whose written request for public records has been denied to receive the public agency's response in writing.

Allows public agencies another special circumstance under which they may extend the normal time to respond to a request for records.

In addition to the sponsor, the Orange County Register, the State Franchise Tax Board, and the 1st Amendment Coalition support this bill.

B. Arguments in Opposition to the Bill:

This bill could be costly or burdensome to public agencies that have records in electronic format, but no or inadequate means of duplicating and segregating non-exempt public records.

The physical nature of electronic records may complicate the "reasonable segregation" requirement of the PRA, create confusion, and result in the accidental public disclosure of exempt information. Such an inadvertent disclosure may have an impact on the legal interests of all concerned parties, resulting in legal actions and associated costs.

The County of Orange is opposed to the bill because 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.

RECOMMENDATION

Insofar as the Department of Corporations is concerned, a SIGN is recommended on AB 2799 because this bill provides reasonable guidelines for public access to electronically held public records which should help increase the availability of public records and reduce the cost and inconvenience associated with large volumes of paper documents. Furthermore, the bill will assist the public in having their requests for public records responded to in a more timely fashion and in writing if the request is in writing and there is a denial.

Contact: GERARDO PARTIDA
Title: Senior Corporations Counsel
Phone No.: (916) 322-3675

Other Contact Persons:

William Kenefick
Acting Commissioner
(916) 322-3633

Brian A. Thompson
Acting Chief Deputy
(213) 576-7509



Analyst Name: Roger Lackey
 Phone No. 845-362263

STATE AND CONSUMER SERVICES AGENCY

BILL ANALYSIS

Department Franchise Tax Board	Author Shelley	Bill Number AB 2799
Sponsor	Related Bills AB1099 99/00 SB1065 99/00	Amended 07/06/2000
Subject	Public Record Disclosure/Make Available In Electronic Form Available & When Requested	

(See Attached)

LEGISLATIVE INTENT SERVICE (800) 666-1917

DEPARTMENTS THAT MAY BE AFFECTED:

STATE MANDATE GOVERNOR'S APPOINTMENT

Board Position: <input checked="" type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR <input type="checkbox"/> PENDING	Agency Secretary Position: <input type="checkbox"/> S <input checked="" type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR <input type="checkbox"/> DEFER TO	GOVERNOR'S OFFICE USE Position Approved <input type="checkbox"/> Position Disapproved <input type="checkbox"/> Position Noted <input type="checkbox"/>
Legislative Director <i>[Signature]</i> Date <i>7/25/00</i>	Agency Secretary <i>[Signature]</i> Date <i>AUG 16 2000</i>	ORIGINAL SIGNED BY HAPPY CHASTAIN By: _____ Date _____

DEPUTY SECRETARY
LEGISLATION

LH: 1047 DF - 99

SUMMARY ANALYSIS OF AMENDED BILL

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

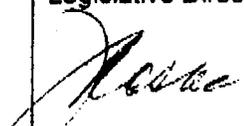
The July 6, 2000, amendment added language that would provide that if a request is for information in other than in an electronic format and that requested information is also available in an electronic format, a state agency may inform the requester of the information's availability in electronic format.

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:	Legislative Director	Date
<input checked="" type="checkbox"/> S		7/25/00
<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 type="checkbox"/> PENDING		

Q:\WINWORD\AB 27

LEGISLATIVE INTENT SERVICE (800) 666-1917



AB 2799 (Shelley): Public records: disclosure (Amended: 07/07/2000)
Action: 08/25/2000 Senate amendments concurred in. To enrollment.

Location:

Calendar:

<u>Office</u>	<u>Sub-Offices</u>	<u>Position</u>	<u>Agency</u>	<u>Assigned To</u>	<u>Letters</u>
ALL DEPTS	FTB;DFEH;SPB;D CA;DGS	(1)DFEH-FaxNar-3 /23/0 (2)FTB-Pending-4/ 4/0 A-Defer to DGS-5/1/0 (3)DGS-O-5/16/0 A-O-6/6/0 (4)FTB-Pending-5/ 17/0 A-Defer to DGS-6/6/0 (5)FTB-Pending-6/ 5/0 A-O-6/11/0 (6)DCA-O-6/13/0 A-O-6/20/0 (7)SPBB-N-6/13/0 (8)DCA-O-7/6/0 A-O-7/25/0 (9)FTB-S-7/7/0 A-O-7/25/0 (10)FTB-S-7/25/0 A-O-8/16/0 (11)SPB-N-7/24/00 (12)SPB-EBR (Sign)-8/30/0 (13)FTB-EBR (Sign)-8/30/0 (14)DCA-EBR (Vcto)-8/30/0 <u>Governor's</u>		DISTEFANO FTB-LACKEY DCA-KIMBALL SPB-BALMAIN	PIFC-O-4/6/0 PIFC-N-5/2/0

History:



08/25/00 Senate amendments concurred in. To enrollment.
08/25/00 In Assembly. Concurrence in Senate amendments pending. Assembly Rule 77 suspended.
08/25/00 Read third time, passed, and to Assembly. (Ayes 33. Noes 0.)
08/18/00 From committee: Be placed on second reading file pursuant to Senate Rule 28.8. Read second time. To
07/06/00 third reading.
07/05/00 Read second time, amended, and re-referred to Com. on APPR.
06/22/00 From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 5. Noes 0.).
06/22/00 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time,
06/08/00 amended, and re-referred to Com. on JUD.
05/25/00 Read second time, amended, and re-referred to Com. on APPR.
05/25/00 Referred to Com. on JUD.
05/24/00 In Senate. Read first time. To Com. on RLS. for assignment.
05/23/00 Read third time, passed, and to Senate. (Ayes 70. Noes 4. Page 6573.)
05/22/00 Read second time. To third reading.
05/08/00 Read second time and amended. Ordered returned to second reading.
05/02/00 From committee: Amend, and do pass as amended. (Ayes 17. Noes 2.) (May 17).
04/27/00 From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 12. Noes 2.) (May 8).
04/27/00 Re-referred to Com. on G.O.
04/24/00 Joint Rule 61 (b)(5) suspended.
04/10/00 From committee chair, with author's amendments: Amend, and re-refer to Com. on G.O. Read second time
03/16/00 and amended.
02/29/00 In committee: Set second hearing. Failed passage. Reconsideration granted.
02/28/00 In committee: Set, first hearing. Hearing canceled at the request of author.
Referred to Com. on G.O.
From printer. May be heard in committee March 30.
Joint Rule 54 suspended. Assembly Rule 49(a) suspended. Read first time. To print.



ENROLLED BILL REPORT

Analyst: Roger Lackey
Work Phone: 845-3627

AGENCY State and Consumer Services	BILL NUMBER AB 2799
DEPARTMENT, BOARD, OR COMMISSION Franchise Tax Board	AUTHOR Shelley

(SEE ATTACHED)

LEGISLATIVE INTENT SERVICE (800) 666-1917



VOTE		ASSEMBLY <u>Policy, 12-2, Fiscal, 17-2, Floor, 72-2</u>	SENATE <u>Policy, 5-0, Floor, 34-0</u>
RECOMMENDATION		<input checked="" type="checkbox"/> SIGN <input checked="" type="checkbox"/> VETO	<input type="checkbox"/> NO RECOMMENDATION <input type="checkbox"/> DEFER TO:
Johnnie Lou Rosas, FTB Contact Person (916) 845-4333 (Office) (916) 985-2825 (Home)		Happy Chastain, Deputy Secretary, Legislation (916) 653-3111 (Office) (916) 676-2768 (Pager) (916) 443-1366 (Home) (916) 806-8134 (Cellular)	
EXECUTIVE OFFICER	DATE	AGENCY SECRETARY	DATE
		AILEEN ADAMS, Secretary	SEP 6 - 2003

LH: 1051 SCSA-3

ENROLLED BILL REPORT

Department, Board Or Commission	AUTHOR	Bill Number
Franchise Tax Board	Shelley	AB 2799

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 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.

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), AB 179 (97/98), and AB 142 (95/96) were similar to this bill. SB 1065 was vetoed because many of the state's computer systems did not yet have the capacity to implement the bill while facing the Y2K issue and it did not sufficiently protect the confidentiality of personal information. AB 179 was vetoed because it created an inflexible mandate by requiring the agency to provide the electronic data in the form requested, unless it was "unreasonable" to do so, without defining the breadth of that exemption. AB 142 failed passage in the Assembly Committee of Governmental Organization.

IMPACT ASSESSMENT

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.

VOTE		ASSEMBLY	Policy, 12-2, Fiscal, 17-2, Floor, 72-2	SENATE	Policy, 5-0, Floor, 34-0
RECOMMENDATION					
✓ SIGN		VETO		NO RECOMMENDATION	
Johnnie Lou Rosas, FTB Contact Person (916) 845-4333 (Office) (916) 985-2825 (Home)		Executive Officer		Date 8/20/00	
				LH: 1052SCSA-4	

LEGISLATIVE INTENT SERVICE (800) 666-1917

This bill would provide that a written response is required only for a written request regardless of whether the request is denied in whole or in part.

This bill would provide that "unusual circumstances" under which an agency may delay providing a record would include the need to compile data, to write program language or a computer program, or to construct a computer report to extract data.

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 also would provide that a public agency would not have to make records that are exempt from disclosure available in an electronic format.

This bill would provide that a public agency could refuse to disclose an electronic record if it feels that disclosure would jeopardize or compromise the security or integrity of the original record or any proprietary software in which it is maintained.

This bill would provide that direct costs of duplication would be limited to the direct costs of duplicating the electronic record. However, the requester would be required to bear the costs of producing a copy of the record. These costs would include the cost of programming and computer services necessary to produce a copy of the record produced only at otherwise regularly scheduled intervals or when the request would require data compilation, extraction, or programming to produce the record.

This bill would delete the existing provision authorizing an agency to determine the format in which computer data are provided.

Implementation Considerations

The terms "compile data" and "construct a record" are unclear. These terms could be interpreted to require a state agency actually to create a new public record to satisfy a request. The California Public Records Act requires state agencies to provide copies of existing public records, not to create new public records upon request. In order to implement this bill, the department will interpret that it will not be necessary to create a new public record.

Fiscal Impact on State Budget

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 Estimate

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



RECOMMENDATION

Sign.

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



DEPARTMENT STATE PERSONNEL BOARD	AUTHOR Shelley	BILL NUMBER AB 2799
SPONSOR California Newspaper Publishers Association	RELATED BILLS SB 2027; SB 2067	
SUBJECT Public Records: disclosure		

BILL SUMMARY:

This bill would require public agencies to make public records that are in electronic format available in an electronic format when requested to do so. The bill would require disclosure of records in any electronic format in which the agency holds the information, or in the requested format if it is one used by the agency to create copies for its own use or for provision to other agencies, and would eliminate the authority of the agency to select the electronic format in which it will provide records. The bill could be construed as requiring agencies to create new records for disclosure, despite language in existing law limiting disclosure to "identifiable" public records. The bill would further require public agencies to justify withholding of public records from disclosure by providing written justification, as specified. The bill would also expand the definition of conditions under which an agency would be able to demonstrate "unusual circumstances" justifying an extension of time to respond to a public records request, and would specify the costs that may be charged to requesters for electronic public records.

LEGISLATIVE HISTORY:

SB 2027, concerning remedies for violation of the California Public Records Act, and SB 2067, concerning standards for recording and certifying electronic records, are currently enrolled.

PROGRAM HISTORY:

Pursuant to the California Public Records Act (PRA), the State Personnel Board (SPB) receives and responds to numerous requests for public records.

SPECIFIC FINDINGS:

- Existing law requires state and local agencies, including the SPB, to make identifiable public records, as defined in the PRA (Gov. Code, § 6253), available for inspection and/or copying upon request by any person. Under existing law, as interpreted by the courts, agencies are not required to create new records for disclosure to the public, but need only provide records that already exist. Although this bill retains the requirement that a public records request must reasonably describe an identifiable record or records, it also contains several provisions that could be construed as requiring agencies to not only produce existing, identifiable records but also to create new records from data stored in their databases. For example, the bill provides that an agency may justify extending the time to comply with a request based upon "the need to compile data, to

VOTE: Assembly Floor: Aye <u>72</u> No <u>2</u> Policy Committee: Aye <u>12</u> No <u>2</u> Fiscal Committee: Aye <u>17</u> No <u>2</u>		VOTE: Senate Floor: Aye <u>34</u> No <u>0</u> Policy Committee: Aye <u>5</u> No <u>0</u> Fiscal Committee: Aye <u> </u> No <u> </u>	
RECOMMENDATION TO GOVERNOR: SIGN <u>X</u> VETO <u>X</u>		DEFER TO OTHER AGENCY:	
DEPARTMENT DIRECTOR: <i>Wade D. ...</i> DATE: <u>8/30/00</u>		AGENCY SECRETARY: _____ DATE: _____ ORIGINAL SIGNED BY SEP 6 2000	

AILEEN ADAMS, Secretary

LH: 1055SCSA-7

LEGISLATIVE INTENT SERVICE (800) 666-1917

write programming language or a computer program, or to construct a computer report to extract data." Additionally, the bill provides that "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 the "request would require data compilation, extraction, or programming to produce the record."

It is unclear what type of computer programming and computer services may be required of agencies in order to comply with these provisions. Although the bill states that the agency shall make the information available in any electronic format in which it holds the information or in the format requested if it is one that has been used by the agency to create copies for its own use or for provision to other agencies, the language also appears to suggest that agencies may be required to do more than simply retrieve existing, identifiable records, but may be required to perform programming, calculations, or other operations in order to provide customized information upon request. The bill does, however, provide that persons requesting electronic records must pay the cost of producing a copy of such records, including the cost to construct a record and the cost of programming and computer services necessary to produce a copy of the record, where the request would require either the production of a record at other than its regularly scheduled intervals, or where the request would require data compilation, extraction, or programming to produce the record. Thus, so long as agencies are permitted to recover the cost of producing electronic records, the financial impact appears to be minimal.

2. Existing law provides that computer data shall be provided in a form determined by the agency. This bill would eliminate the authorization of an agency to determine the form in which computer data is to be provided and, instead, require agencies to make electronic information available in any electronic format in which it holds the information or 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. It is unclear how an agency that has never copied electronic records for itself or others would be required to comply with this provision. For example, it is unclear whether the agency would be required to provide entire electronic data files or to copy such records to a floppy disc or compact disc. As amended, however, this bill does not require agencies to release electronic records in the form held by the agency if the release would jeopardize or compromise the security or integrity of the original record or proprietary software in which it is maintained.
3. Existing law gives a public agency ten days within which to notify the requester whether it will disclose the records requested; an agency may extend that date in writing to up to 14 days under "unusual circumstances." This bill would include among the grounds for such an extension the need to compile data, to write programming language or a computer program, or to construct a computer report to extract data. The 14-day period was originally established in order to afford agencies to obtain and examine primarily paper records. The vast array of available electronic records greatly expands the amount and type of information that may be available to the public. Depending on the nature of the information sought, even 14 days may be insufficient to enable the SPB to comply with a request that would require it to perform extensive computer programming to extract the data requested.

4. This bill also provides that it is not to be construed as permitting an agency to make information available only in electronic format, but does not specifically prohibit an agency from doing so. The bill would also authorize agencies to inform a requester that public records are available in an electronic format.
5. Existing law authorizes a civil action to compel disclosure of records improperly withheld by an agency. This bill would require the agency to provide a written response when it denies, in whole or in part, a written request for inspection or copying of public records. The bill would also clarify that no agency is required to provide public access to records to which access is otherwise restricted by statute.

REGULATIONS:

This bill would not require the SPB to adopt any regulations.

LEGISLATIVELY-MANDATED REPORTS:

This bill would not require any legislatively mandated reports.

COMMISSIONS AND BOARDS:

This bill would not require the creation of any new commission or board.

FISCAL IMPACT:

So long as the SPB were able to obtain reimbursement for its costs in complying with requests for public records in electronic format, this bill would not substantially increase the cost to the SPB of responding to PRA requests.

NATIONAL INQUIRY:

The U.S. Freedom of Information Act (FOIA) (5 U.S.C. § 552) has been amended to cover electronic records.

PRO AND CON ARGUMENTS:

Arguments In Support of the Bill:

- Would increase public access to electronic public records.
- Would increase public access to all public records.
- Would provide statutory authority for agencies to charge for their costs in producing public records in electronic format.
- Would provide additional protection to public agencies against having to disclose records that are protected by statute.

Arguments in Opposition to the Bill:

- Would require more work from agencies to provide written response to PRA requests.
- Agencies may be unable to comply with short time frame for responding to requests for electronic public records.
- Could increase litigation over PRA requests.
- Bill is unclear whether agencies would be prohibited from maintaining records in electronic format only.
- Bill is unclear whether and how an agency would be required to provide information



contained in electronic data files or databases where it has never copied such records.

PROPONENTS/OPPONENTS:

Support: Likely supporters: Media organizations, public interest organizations.

Opposition: Possible Opponents: Some public entities may object to the increased regulation of their obligations to make records available to the public and to provide written response when denying public records requests.

RECOMMENDATION:

The State Personnel Board recommends that the Governor **SIGN AB 2799.**

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Analyst Name: Travis Pitts
Phone No.: (916) 323-1071

STATE AND CONSUMER SERVICES AGENCY

NO ENROLLED BILL REPORT REQUIRED

DEPARTMENT
Building Standards Commission

AUTHOR
Assemblymember Shelley

BILL NUMBER
AB 2799

Technical bill - No program or fiscal changes to existing program. No analysis required.
No recommendation on signature.

Bill as enrolled no longer within scope of responsibility or program of this Commission.

Comments:

LEGISLATIVE INTENT SERVICE (800) 666-1917



RECOMMENDATION

None

EXECUTIVE DIRECTOR

Travis Pitts

DATE

8/29/00

AGENCY SECRETARY

ORIGINAL SIGNED BY

MARCO CHASTAIN

DATE

SEP 6 2000

DEPUTY SECRETARY
LEGISLATION

NEBR 11/01

LH: 1059 SCSA-11

DEPARTMENT General Services	AUTHOR Shelley	BILL NUMBER AB 2799 (7/6/00)
SPONSOR California Newspaper Publishers Association	RELATED BILLS See Legislative History	
SUBJECT Public records: disclosure		

BILL SUMMARY:

This bill would make various changes to the California Public Records Act (Act) by providing that agencies having public records available in electronic format make that information available in an electronic format when requested.

LEGISLATIVE HISTORY:

Assembly Bill 1099 (Shelley, 1999) was similar to AB 2799 and required state agencies to provide computerized data in a format chosen by the requester if the agency uses that format in the course of its normal business. The bill was ultimately gutted and used for other legislation.

Senate Bill 48 (Sher, 1999) would provide an administrative appeals process for persons who are denied access to public records. The appeals process would be handled by the Attorney General's office. This bill was vetoed by Governor Davis (veto message attached).

Senate Bill 1065 (Bowen, 1999) was nearly identical to this bill and was vetoed by Governor Davis (veto message attached).

Senate Bill 143 (Kopp, Chapter 620, Statutes of 1998) made numerous changes to the Act including the establishment of a comprehensive index of public records that are exempt from disclosure under current law and contained in various other codes. (An early version of the bill deleted the language that allows an agency to determine the form in which computer data is to be provided; the language was reinstated at the request of the Department of General Services (DGS).

Assembly Bill 179 (Bowen, 1997) would have required state agencies to disclose computerized data in a format chosen by the requestor unless determined unreasonable to do so. This bill was vetoed by Governor Wilson (veto message attached).

Senate Bill 74 (Kopp, 1997) was similar to AB 179 and would have required state agencies to disclose computerized data in a format chosen by the requestor unless determined unreasonable to do so. This bill was vetoed by Governor Wilson (veto message attached).

Senate Bill 323 (Kopp, 1996) was similar to AB 179 and SB 74 in that it contained language relative to the disclosure of electronic data. This language was ultimately deleted from the bill.

VOTE: Assembly Floor: Aye <u>72</u> No <u>2</u> Policy Committee: Aye <u>12</u> No <u>2</u> Fiscal Committee: Aye <u>17</u> No <u>2</u>	VOTE: Senate Floor: Aye <u>34</u> No <u>0</u> Policy Committee: Aye <u>5</u> No <u>0</u> Fiscal Committee: Aye <u> </u> No <u>28.8</u>
RECOMMENDATION TO GOVERNOR: SIGN <u> </u> VETO <u>XX</u> DEPARTMENT DIRECTOR: <u>Bary Keene by KHM 9-1-00</u> DATE:	DEFER TO OTHER AGENCY SECRETARY: <u> </u> ORIGINAL SIGNED BY: <u> </u> DATE: <u>SEP 5 2000</u>

AILEEN ADAMS, Secretary

LEGISLATIVE INTENT SERVICE (800) 666-1917

Assembly Bill 2989 (Bowen, 1996) was the "Paper Reduction Act of 1996" and, among other things, required that reports required by law shall be submitted on paper and electronically sent to the State Librarian. This bill failed passage in the Assembly Governmental Organization Committee.

Assembly Bill 142 (Bowen, 1995) made changes to the Act relative to the availability of records contained in electronic format and established conditions under which "vital records" could be disclosed to the public. This bill was never heard and died in the Assembly Governmental Organization Committee.

DEPARTMENT SERVICE AND PROGRAM HISTORY:

The DGS incorporates six operating divisions composed of 23 offices that provide a broad range of business services to government. The DGS' functions include: procurement and contracting for goods and services; real estate and design services for state buildings; telecommunications; fleet management; information services; printing; architectural services; energy efficiency; legal services and building maintenance.

SPECIFIC FINDINGS:

Under existing law, the California Public Records Act provides that upon request and payment of duplication fees, state and local agencies must make non-exempt records available to the public. Among other things, the Act currently provides that "Computer data shall be provided in a form determined by the agency" (Government Code Section 6253). AB 2799 would delete that language, thereby taking away state agencies' ability to determine what form the data shall be provided.

Specifically, AB 2799 would provide that agencies having public records available in electronic format make that information available in electronic format when requested and, when applicable, comply with the following:

- a. The agency shall make the information available in any electronic format in which it holds the information;
- b. The agency shall provide a copy of an electronic record in the format requested if that format is one already used by the agency to create copies for itself or other agencies.

In addition, 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 under specified conditions.

Nothing in the bill shall be construed to:

- require a public agency to reconstruct a report in an electronic format if it is no longer available in that format;
- permit an agency to make information available only in an electronic format;



- 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; or
- permit public access to records held by any agency to which access is otherwise restricted by statute.

In addition, the state agencies shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of law 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.

These provisions do not improve and clarify exiting law relative to public records access but simply make existing provisions ambiguous.

DGS' CONCERNS:

The Act dictates that state and local agency records deemed eligible for public disclosure shall be provided to a requester generally within ten days of the request and that "computer data shall be provided in a form determined by the agency". By deleting this language from current law presumes that a mandate would be placed on state agencies that electronic records eligible for disclosure be provided in a format determined by the requester. This mandate has been proposed six times in the last four years. It has been vetoed three times and amended out of three other bills before they reached the Governor's desk. Each time, opposition from state agencies, contributed to this provision's demise.

Requiring that electronic records be provided in a format determined by the requester would burden the DGS, and presumably other state and local agencies, with the responsibility of compiling and sorting the information to fit the requester's specifications. These responsibilities are especially onerous when records must be painstakingly filtered to strike out information exempt from disclosure requirements or not pertinent to a given individual request.

Further, this measure would require an agency to make information available in any electronic format in which it holds that information. This information could be in the form of unfiltered spreadsheets or databases that the requester argues constitutes a format used by a state agency for its own business. This is overly-broad and a requester may claim access to information the Act never intended to make publicly available.

REGULATIONS: Existing law permits agencies to adopt requirements for themselves if those requirements provide for greater, faster, or more efficient access to records than is required by statute.

LEGISLATIVELY MANDATED REPORTS: N/A

COMMISSIONS AND BOARDS: N/A



FISCAL IMPACT:

Existing law provides that an agency may only recover the direct costs of duplicating a record. AB 2799 provides that "The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format." This would, seemingly, not cover the cost of staff who must review and pull the information being requested in order to comply with the requester's choice of formats.

NATIONAL INQUIRY: The United States adopted its first Freedom of Information Act in 1966, and all 50 state governments had similar laws by 1984. In fact, at the federal level, the Clinton Administration promised that its reinvention of the federal government would include efforts to improve compliance with the Freedom of Information law.

Canada's federal government adopted the Access to Information Act in 1982, and 11 of its 12 provinces and territories later passed comparable statutes.

PRO AND CON ARGUMENTS:

Arguments in Support of the Bill:

The business of government should be open and accessible to the public. Today, the vast majority of records created by state agencies are in an electronic format and easier to retrieve and reproduce. The public should have access to these records when available.

Arguments in Opposition to the Bill:

- Under existing law, state agencies may determine what format computer data is to be provided. While fulfilling requests for public information electronically is a worthy policy for state agencies to pursue, it is not good policy to eliminate an agency's discretion in determining the most appropriate format to provide that information.

- This measure would require an agency to make information available in any electronic format in which it holds that information. This information could be in the form of unfiltered spreadsheets or databases that the requester argues constitutes a format used by a state agency for its own business. This is overly-broad and a requester may claim access to information the Act never intended to make publicly available.

- In light of increased concerns regarding privacy rights there should be greater sensitivity to the release of electronic documents.

PROPONENTS/OPPONENTS:

Sponsor: California Newspaper Publishers Association

Support:
California First Amendment Coalition
Franchise Tax Board



Orange County Register

Opposition:
County of Orange

SIGNIFICANT VOTE COUNT:

This measure failed passage in its first policy committee (Assembly Governmental Organization Committee) but reconsideration was granted. This measure has received a total of 6 no votes, all of which occurred in the Assembly; all of the votes, except Mr. Floyd's, were cast by Republicans. We are, however, unaware of the reasons for the "No" votes.

RECOMMENDATION: VETO

This bill would make various changes to the California Public Records Act (Act) by providing that agencies having public records available in electronic format make that information available in an electronic format when requested.

All state agencies should be allowed to maintain discretion in determining the format of electronic records disclosed under the Act. This discretion is already circumscribed by a clear statutory mandate that state agencies shall not inhibit access to public information guaranteed by the Act. To that end, AB 2799 will not improve existing law, but rather, make existing law ambiguous.

In light of increased concerns regarding privacy rights there should be greater sensitivity to the release of electronic documents.

Therefore, the Department of General Services recommends a VETO on AB 2799.

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LEGISLATIVE INTENT SERVICE (800) 666-1917



VETO MESSAGE
Assembly Bill 2799, As Amended July 6, 2000

I am returning Assembly Bill 2799 without my signature.

This bill would amend the California Public Records Act to require that state agencies that have public records available in electronic format make that information available in an electronic format when requested.

Under existing law, state agencies may determine what format computer data is to be provided. While fulfilling requests for public information electronically is a worthy policy for state agencies to pursue, it is not good policy to eliminate an agency's discretion in determining the most appropriate format to provide that information. Additionally, in light of increased concerns regarding privacy rights, there should be greater sensitivity to the release of electronic documents

All state agencies should be allowed to maintain discretion in determining the format of electronic records disclosed under the Act. This existing discretion is already circumscribed by a clear mandate elsewhere in statute that state agencies shall not inhibit access to public information guaranteed by the Act. To that end, I believe AB 2799 will not improve existing law, but will simply make existing provisions ambiguous.



BILL NUMBER: SB 48
VETOED DATE: 10/09/1999

October 9, 1999

To Members of the California State Senate:

I am returning Senate Bill No. 48 without my signature.

This bill would authorize the Attorney General to issue an opinion on the validity of a State or local agency's denial of a request for information under the California Public Records Act.

I am signing Assembly Bill No. 427 which clarifies that no state agency, commissioner, or officer, shall employ legal counsel other than the Attorney General, or one of his assistants or deputies, in any matter in which they are interested, or a party to, as a result of office or official duties.

Therefore, under SB 48, should the Attorney General issue an opinion adverse to a state agency or department which ultimately leads to litigation, the Attorney General may not be able to represent an agency that it has already opined against.

SB 48 creates an Attorney General appeals process that will lead to inherent conflicts of interest between the Attorney General and his major clients, the state agencies and departments. Consequently, this bill could result in uneven legal representation and increased use of costly outside counsel by the agency or department.

Finally, the costs to comply with this bill would be borne by the General Fund and would likely be significant. Therefore, I am vetoing this bill.

Sincerely,

GRAY DAVIS

(800) 666-1917

LEGISLATIVE INTENT SERVICE



BILL NUMBER: SB 1065
VETOED DATE: 10/10/1999

To the Members of the Senate:

I am returning Senate Bill 1065 without my signature.

This is well-intentioned legislation. However, many of the state's computer systems do not yet have the capacity to implement the provisions of this bill.

As such, this bill does not keep faith with previous legislation I have signed to protect the confidentiality of citizens whose personal information is maintained by state departments including the Employment Development Department, the Department of Motor Vehicles, the Department of Health Services, and the California Highway Patrol.

I believe 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.

Cordially,

GRAY DAVIS



BILL NUMBER: AB 179
VETOED DATE: 10/12/1997

To the Members of the California Assembly:

I am returning Assembly Bill No. 179 without my signature.

This bill would amend the California Public Records Act to require state agencies to provide "a copy of an electronic record in the form requested, unless, in light of surrounding circumstances, it is not reasonable to do so...." It does not change the public's right of access to government documents, but only restricts the agency's discretion as to the form of the document made available.

Government agencies receive hundreds of Public Records Act requests every month. They are most often not from ordinary citizens, but from political candidates or special interest groups searching for information. Government employees spend thousands of hours each year responding to the requests-segregating the requested documents from exempt documents, such as those which invade other citizens' personal privacy. Taxpayers pay for the time expended searching for and segregating these records. However, state agencies are presently permitted to determine the form in which computer data is provided.

This bill creates a new inflexible mandate by requiring the agency to provide the electronic data in the form requested, unless it is "unreasonable" to do so, without ever defining the breadth of that exemption, thereby leaving it open to litigation. A request that an electronic record be provided in a particular form may require additional expense, burden, and time to segregate the public data from the exempt data, but the bill provides no guidance whether or to what extent that additional burden makes it "unreasonable."

Agencies should make available to the public all documents to which public access is granted. But we need not add costs and rigidity to these obligations by specifying the form in which it will be done.

Cordially,

PETE WILSON



BILL NUMBER: SB 74
VETOED DATE: 10/12/1997

To the Members of the California Senate:

I am returning Senate Bill No. 74 without my signature.

This bill would amend the California Public Records Act to require state agencies to provide "a copy of an electronic record in the form requested, unless, in light of surrounding circumstances, it is not reasonable to do so...." It does not change the public's right of access to government documents, but only restricts the agency's discretion as to the form of the document made available.

Government agencies receive hundreds of Public Records Act requests every month. They are most often not from ordinary citizens, but from political candidates or special interest groups searching for information. Government employees spend thousands of hours each year responding to the requests-segregating the requested documents from exempt documents, such as those which invade other citizens' personal privacy. Taxpayers pay for the time expended searching for and segregating these records. However, state agencies are presently permitted to determine the form in which computer data is provided.

This bill creates a new inflexible mandate by requiring the agency to provide the electronic data in the form requested, unless it is "unreasonable" to do so, without ever defining the breadth of that exemption, thereby leaving it open to litigation. A request that an electronic record be provided in a particular form may require additional expense, burden, and time to segregate the public data from the exempt data, but the bill provides no guidance whether or to what extent that additional burden makes it "unreasonable."

Agencies should make available to the public all documents to which public access is granted. But we need not add costs and rigidity to these obligations by specifying the form in which it will be done.

Cordially,

PETE WILSON



DEPARTMENT Consumer Affairs	AUTHOR Shelley et al.	BILL NUMBER AB 2799
SPONSOR CA Newspaper Publishers Association	RELATED BILLS SB 2027 (Sher)	
SUBJECT Public Records: Disclosure		

BILL SUMMARY: This bill, sponsored by the California Newspaper Publishers Association, revises the Public Records Act to require governmental agencies to provide public records held in an electronic format to the public in an electronic format. The bill also requires public agencies to justify, in writing, the withholding of a public record. This bill is similar to a vetoed bill from 1999 (SB 1065, Bowen).

LEGISLATIVE HISTORY:

- SB 2027 (Sher) To Enrollment
- AB 1099 (Shelley, Chapter 843, Statutes of 1999)
- SB 48 (Sher, 1999, Vetoed)
- SB 1065 (Bowen, 1999, Vetoed)
- AB 179 (Bowen, 1997, Vetoed)
- SB 74 (Kopp, 1997, Vetoed)
- AB 142 (Bowen, 1996, died)
- SB 323 (Kopp, 1996, Vetoed)

Historically, there have been many attempts to compel public agencies to provide copies of public records in any format requested. State agencies have been reluctant to provide copies in any format requested because records are stored in huge data bases and redacting disclosable information from that which is non-disclosable is time consuming and susceptible to the inadvertent release of confidential information, which could lead to a lawsuit.

SB 2027, which is similar to last year's SB 48 would:

- establish an appeal process within the Attorney General's office for a public agency's denial of a public record;
- allow a court to impose a penalty up to \$100 per day for each day the court determines the agency's action resulted in the denial of plaintiff's right to inspect records; and
- authorize state agencies to employ outside counsel in certain circumstances.

SB 48 was vetoed by Governor Davis who stated it would create a conflict of interest between the Attorney General and his major clients, which are state agencies. (See attached veto message)

AB 1099 (1999), as introduced, would have required agencies to provide copies of records in any form requested as long as the record was stored in the requested format. This bill was later amended to contain a different subject matter.

VOTE: Assembly Floor: Aye <u>70</u> No <u>4</u> Concurrence Aye <u>72</u> No <u>2</u> Policy Committee: Aye <u>12</u> No <u>2</u> Fiscal Committee: Aye <u>17</u> No <u>2</u>		VOTE: Senate Floor: Aye <u>34</u> No <u>0</u> Policy Committee: Aye <u>5</u> No <u>0</u> Fiscal Committee: Aye <u>28.8</u> No <u> </u>	
RECOMMENDATION TO GOVERNOR: SIGN <u> </u> VETO <u>X</u>		DEFER TO OTHER AGENCY ORIGINAL SIGNED BY	
DEPARTMENT DIRECTOR <i>Aileen Adams</i> DATE: <i>8/30/00</i>		AGENCY SECRETARY <i>Aileen Adams</i> SEP 5 - 2000 DATE:	

SB 1065 (1999) would have required state agencies to provide public records in an electronic format when requested. This bill was vetoed by Governor Davis stating that not all state computer systems have the capacity to implement the provisions of the bill. The Governor also mandated that the State's technology resources be directed toward making its computer systems year-2000 compliant. (See attached veto message)

AB 179 (1997) would have required state agencies to provide copies of electronic records in the format requested, unless unreasonable to do so, among other things. The bill was vetoed by former Governor Wilson on the basis that it created an inflexible mandate by requiring agencies to provide electronic records in any format requested and ignored the burdens on state agencies. (See attached veto message)

SB 74 (1997), among other things, would have required state agencies to provide copies of records stored in an electronic format in the form requested, unless unreasonable to do. The bill specified that records requested by members of the public for personal use were to be charged a fee that represented the direct costs of duplication or the prescribed statutory fee. For records requested for commercial purposes, the fee was to be the actual costs of search, retrieval, review, segregation, and duplication. This bill was vetoed by former Governor Wilson on the basis that:

- it created an inflexible mandate on state agencies to furnish records in the form requested without defining "unreasonable," leaving the interpretation open to litigation;
- it would create additional expense, burden and time to segregate the public data from the exempt data; and
- records should be readily accessible without adding costs and rigidity by mandating state agencies to provide copies in any form requested.

AB 142 (1996) would have required public agencies holding information in an electronic format to make that information available in an electronic format upon request. The bill failed passage.

SB 323 (1996) would have required public agencies to justify in writing by citing the statute or public interest served in denying a public record. The bill was vetoed by former Governor Wilson on the basis that it imposed an additional and unreasonable burden on state agencies and the costs to comply did not justify the expense.

According to the sponsor, AB 2799 is intended to ensure quicker, more useful access to public records. The bill seeks to provide reasonable guidelines for public access to electronically held records. One of the common complaints against the public record process is that requesters often receive volumes of paper records and they must search through the material to find the particular record they actually wanted.

SPECIFIC FINDINGS:

Existing law, the Public Records Act (PRA):

- Defines public record to include any writing containing information relating to the conduct of the public's business,
- Requires public records to be open for inspection during regular business hours and specifies that every person has the right to inspect a public record, unless a record is specifically exempted,
- Requires public agencies to make an exact copy of a public record for any person upon request and the payment of specified fees,



- **Authorizes computer data to be provided in a form determined by the agency.**
- Permits agencies to delay providing records for up to 14 days because of unusual circumstances such as 1) the need to search for and collect the data from off-site, 2) the need to collect and examine large amounts of material in a single request, and 3) the need to consult other agencies having a substantial interest in the determination for release of the records.

This bill would:

- Delete an agency's authority to provide a public record in any format it deems to be the most appropriate.
- Add the *need to compile data, to write programming language, or to construct a computer report to extract data* to the definition of unusual circumstances that would permit an extension of time for providing a requested public document.
- Require an agency to make public information available in any electronic format upon request if 1) the agency holds the information in that format or 2) the agency has used that format to make copies for its own use or for another agency.
- Specify the cost of duplication is limited to the direct cost of producing the copy in an electronic format, which can include the cost to construct the record and the cost of programming and computer services necessary to produce the copy.
- Exempt an agency from releasing a record if the record is held in a format when the release would jeopardize or compromise the security of the record or of any proprietary software.
- Specify that an agency is not obligated to reconstruct a record in an electronic format if the agency no longer has the record in an electronic format.
- Prohibit an agency from making records available only in an electronic format.
- Require public agencies to justify the withholding of a public record in writing.

Concerns

The Department of Consumer Affairs (DCA), with its 33 boards and bureaus, has some strong concerns about this bill. The DCA has opposed any changes to the PRA that removes an agency's discretion to provide records in the format of its choice. This flexibility allows agencies that have not achieved the technical sophistication of redacting records easily to comply with the PRA by providing requested records in a format that is economical

The provisions of this bill take away a state agency's authority to determine the form in which it provides copies of computerized data. While all boards and bureaus within DCA make every effort to furnish requested records in the format requested, the provisions in this bill suggest that a requester's interest in obtaining copies of public records in a format requested outweighs an agency's interests in managing its workload.

The Central Records Unit (Unit) within the DCA stores departmental and non-board files on microfilm. The Unit indicates that it currently has the capability to provide all of the microfilm records, with the exception of some complaint records, on a CD-ROM and in other electronic formats. The Unit does provide records in any electronic format that is requested; however, DCA boards, especially the small boards may, by necessity, continue to use older equipment to store records and may not have the capability to segregate disclosable information from the non-disclosable information. In those cases, redacting the information could be time-consuming and divert staff resources that may be needed elsewhere. There is also a concern (as has recently happened with one board) that a requester will use burdensome record requests to intimidate, retaliate, and harass an agency by diverting agency resources with requests when there is a disciplinary dispute.



REGULATIONS: N/A**LEGISLATIVELY-MANDATED REPORTS:** N/A**COMMISSIONS AND BOARDS:** N/A

FISCAL IMPACT: See attached fiscal. DCA generally has the capability to comply with the provisions of this bill. However, the smaller boards may expend considerable resources in complying with the bill.

NATIONAL INQUIRY:

Federal: The Freedom of Information Act and the Electronic Freedom of Information Act Amendments of 1996 allow public access to federal agency records.

Other States:

All fifty states have public records laws patterned after the federal Freedom of Information Act, and most are very similar to California's Public Records Act. Of the thirty states surveyed, all strongly urged agencies to provide records in an electronic format upon request; however, **none of the states mandated agencies to provide the records in an electronic format.** In fact over ten of the states mandated that records be provided in the most economical and cost-efficient method. The majority of the states authorized each agency to develop rules and regulations regarding access to public records and all states provided for fees covering the cost of reproducing records. Two-thirds of the states required a denial of a record to be in writing. The time for an agency to respond to a request for a public record ranged from three days to 10 days in the states surveyed, with a majority of the statutes granting extensions for unusual circumstances.

Florida: Provides for inspection of public records by any person at reasonable times and under reasonable conditions. Various fees are specified in statute. When a fee is not specified, the fee is the actual cost of duplication, including cost of material and supplies. When the nature or volume of records requested would require extensive use of technology resources or extensive clerical or supervisory assistance, a surcharge may be assessed based on the cost of personnel time spent retrieving the information. **Records held in an electronic format are not singled out for different treatment.** Denials must be in writing, citing the particular law on which the denial is based.

New York: Authorizes each agency to promulgate rules and regulations pertaining to the availability of public records including the times the records would be available, fees and the contact person in control of the records. The assumption is that each state agency may determine the format in which the records are provided.

Pennsylvania: Specifies that public records are to be accessible for inspection and copying by any person during regular business hours. Each state agency is required to promulgate and post rules and regulations that include fee schedule, duration of time allowed for inspection and copying, and conduct and handling of records in the area where records are



stored. Copies of records shall be provided in the most economical means available to the agency holding the records.

Michigan: Provides access to public records by any person, except individuals incarcerated in state and local facilities, at reasonable times. Agencies may impose fees for actual costs, including labor and all associated costs. **Public agencies are mandated to use the most economical means available for making copies of public records.**

Texas: Public information is available during normal office hours to any person, except incarcerated individuals. **Copies of public records must be provided in the requested medium unless the agency does not have the technological ability to provide a copy in the requested medium.** Fees for the duplication of public records include all costs related to reproducing the information such as, materials, labor and overhead.

PROPOSERS/OPPONENTS:

Support: California Newspaper Publishers Association (sponsor)
California First Amendment Coalition
California Franchise Tax Board
Orange County Register

Opposition: County of Orange

PRO/CON ARGUMENTS:

Pro: Proponents argue that this bill would provide reasonable guidelines for public access to public records held in an electronic format and would substantially increase the availability of records as well as reduce the cost and inconvenience associated with handling large volumes of paper.

Con: Opponents argue that a mandate to provide public records in an electronic format deletes agency authority to manage workload and removes any flexibility to determine the most economical method of providing the requested record.

The sponsor states the one of the justifications for this bill is to lessen the burden on the requestor to search through volumes of paper records to retrieve the information they were seeking. However, this change in law would effectively place the majority of the burden of research on the governmental agency, using public resources at public expense. As previously stated, before in the analysis, the smaller boards in DCA may not have the technical capability of reproducing records as requested. Additionally, at least one board in DCA has experienced harassment through repeated and frivolous requests for records. In at least two states, statues specify that an agency may deny a request for a public record if the request places an unreasonable burden on the agency or if repeated requests are intended to disrupt other essential functions of the agency.



RECOMMENDATION:

The Department of Consumer Affairs recommends an **OPPOSE** position on AB 2799. This bill: 1) imposes an inflexible mandate on agencies, 2) deletes agency authority to determine the best and most economical method of providing public records, and 3) could inadvertently create grounds for litigation because of the inadvertent release of confidential information.

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VETO MESSAGE
Assembly Bill 2799, As Amended July 6, 2000

I am returning Assembly Bill 2799 without my signature.

This bill would require public agencies to provide electronic public records in the format requested. The bill also authorizes agencies to impose fees to cover the cost of producing the copies and requires a denial of a public record to be in writing.

This is well-intentioned legislation and state agencies are urged to provide public records electronically whenever possible. However, mandating public agencies to provide public records in an electronic format removes an agency's flexibility to determine which format is the most appropriate.

Furthermore, restricting an agency's discretion to determine whether public records should be provided in electronic or written form will unduly burden agencies and potentially reduce response time to requests. Many smaller public agencies do not have the technical capability to electronically redact non-disclosable information from public records.

Due to the costs and inflexibility of this mandate, I cannot sign AB 2799.

Sincerely,

GRAY DAVIS

LEGISLATIVE INTENT SERVICE (800) 666-1917



**DEPARTMENT OF CONSUMER AFFAIRS
FISCAL ANALYSIS OF LEGISLATION**

DISTRIBUTED
8/23/00

DATE: August 22, 2000 DATE ASSIGNED: JULY 06, 2000

Prepared By: Nancy E. Campbell Bill Number: AB 2799

Phone number: 323-7237 Author: Shelley

Approved by: Francis S. Wal Date Approved: 8-23-00

FISCAL ANALYSIS AS AMENDED: 07-06-00 Short Title: Public Records: Disclosure

OFFICE OF INFORMATION SERVICES: Fiscal impact? YES NO If "Yes, attach OIS fiscal
 OIS Reviewer: Conrad Lara DATE: _____ Analysis and assumptions.

ANALYSIS AND FISCAL ASSUMPTIONS:

See Attached Fiscal

LEGISLATIVE INTENT SERVICE (800) 666-1917

SUMMARY OF FISCAL IMPACT:	
<input checked="" type="checkbox"/>	Insignificant fiscal impact (under \$10,000).
<input type="checkbox"/>	No Fiscal Impact
<input type="checkbox"/>	Minor fiscal impact. Can be absorbed within existing resources.
<input type="checkbox"/>	Ongoing cost of:
<input type="checkbox"/>	See below for fiscal impact.

	<u>2000/01</u>	<u>2001/02</u>	<u>2002/03</u>	<u>Ongoing</u>
EXPENDITURES	\$ _____	\$ _____	\$ _____	\$ _____
OIS COSTS	_____	_____	_____	_____
REVENUE	\$ _____	_____	\$ _____	\$ _____

PROGRAM CONTACT: _____ Phone number: _____

PROGRAM CONCURS: YES NO (If no, note differences as appropriate.)

EXISTING LAW

Under the existing law a "public record" includes any writing containing information relating to the conduct of the public's business, which is prepared, owned, used, or retained by any state or local agency. All public records are subject to inspection, by any person, at any time during normal business hours, except as specified in the Public Records Act (PRA). The law states that if a public agency denies the access to a public record, the agency that denies the record is required to justify the reason. The agency must clarify how the record is exempt from the provisions of the PRA, or convey the circumstances of how the public interest is served best, by not making the record public, clearly outweighs the public's interest of disclosing the record. The law also gives the court special authority to make a record public, when a public official's decision not to disclose a public record, is not justified.

SUMMARY OF AB 2799

AB 2799, if approved, would require public agencies that keep public records in an electronic format; to make that information available, to the public in that format when requested. Agencies will be required to provide copies of records, upon request and payment of fees, that cover the direct costs of duplication, or a statutory fee if applicable. If an agency delays or obstructs the inspection or copying of public records, a notification of the denial, of the request must include the names and titles, or positions of each person responsible for the denial. The agency must also justify in writing, the reason that the record is being withheld and demonstrate how the record is exempt, under express provisions of this chapter, or explain how the public interest served by not disclosing the record, clearly outweighs the public interest served by disclosure of the record.

ASSUMPTIONS

If approved SB 2799 would:

- Become effective on January 1, 2001.
- 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 the agency must follow these guidelines.
 - Information must be available in any electronic format in which it holds the information.
 - A copy of an electronic record must be available in the format requested, if the requested format is one that has been used by the agency for its own use.
 - An agency will not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- Require the person requesting the public record to pay for the cost associated with the duplication of the record.

Continued on the next page.

LH: 1078CSA-30



ASSUMPTIONS (Continued)

- Extend the time to respond to a request of a public record, in some circumstances, for 14 days after the initial 10 days.
- Provides for a reverse balancing test which will grant the courts and state agencies the authority to disclose any public record if the agency or superior court determines that, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.

FISCAL IMPACT

Bureaus store public records in DCA's Central Records Unit (CRU). The CRU provides copies of public records in CD-ROM and diskette format and are accessible electronically, there are only a few records, which are only available in hard copy format.

Boards that store public records in an electronic format are able to provide a copy of the record in the same electronic format in which it is stored, and therefore could comply with the provisions of AB 2799.

Existing law authorizes state agencies to charge the requestor, the direct cost for processing the request which includes time spent locating the record, segregation of the record, and cost of materials such as diskettes, etc., the DCA charges fees to offset the cost of providing the copies.

AB 2799 would have a minimal and absorbable fiscal impact.



From: Happy Chastain
To: Ann Richardson
Date: Tue, Aug 8, 2000 1:24 PM
Subject: AB 2799

I have sent in analyses from several of my departments on this bill. Both DCA and DGS are opposed and so is Agency. This bill is very similar to SB 1065 which the Governor vetoed last year. This bill is headed to Senate Appro. and we should probably get out an oppose on the bill. Let me know. Happy

CC: Margaret Gaffney, Sylvia Thurman

LEGISLATIVE INTENT SERVICE (800) 666-1917

LEGISLATIVE INTENT SERVICE





ALLEN SUMNER
SENIOR ASSISTANT ATTORNEY GENERAL

AB 279a

HAPPY

Can we send this
out for analysis
by legal at DGS
and DCA. It looks
like problems for
State Agencies.

SB 1065
Verbed
1999
Allen

File



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

Post-It® Fax Note	7671	Date	4/6	# of pages	1
To	ALLEN SUMNER	From	J. FULLER		
Company	STATE CONSUMERS SERVICES	Co.	ACIC		
Phone #		Phone #			
Fax #		Fax #			

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: di
ACIC Position: Oppose

HAPPY
PLEASE FORWARD
THIS WITH THE
REQUEST FOR
ANALYSIS

Allen

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

LEGISLATIVE INTENT SERVICE (800) 552-1511

Analyst Name: Roger Lackey
 Phone No. 845-3627

BILL ANALYSIS

STATE AND CONSUMER SERVICES AGENCY		Author Shelley	Bill Number AB 2799
Department Franchise Tax Board	Sponsor	Related Bills AB1099 99/00 SB1065 99/00	Amended AB 2799 2000
Subject Public Record Disclosure/Make Available in Electronic Form Available & When Requested			

(See Attached)

LEGISLATIVE INTENT SERVICE (800) 666-1917

DEPARTMENTS THAT MAY BE AFFECTED:

<input type="checkbox"/> STATE MANDATE		<input type="checkbox"/> GOVERNOR'S APPOINTMENT	
Board Position: <input checked="" type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR <input type="checkbox"/> PENDING	Agency Secretary Position: <input type="checkbox"/> S <input checked="" type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR <input type="checkbox"/> DEFER TO	GOVERNOR'S OFFICE USE Position Approved <input type="checkbox"/> Position Disapproved <input type="checkbox"/> Position Noted <input type="checkbox"/>	
Legislative Director <i>[Signature]</i>	Date 7/25/00	Agency Secretary Date	By: HAPPY CHASTAIN Date AUG 16 2000

DEPUTY SECRETARY
LEGISLATION

SUMMARY ANALYSIS OF AMENDED BILL

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:	Legislative Director	Date
<input checked="" type="checkbox"/> S	<i>[Signature]</i>	7/25/00
<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 type="checkbox"/> PENDING		

Q:WINWORDAB 27

LEGISLATIVE INTENT SERVICE (800) 666-1917

AB 2799 (Shelley): Public records: disclosure (Amended: 07/06/2000)
 Action: 07/06/2000 SEN APPROPRIATIONS Read second time amended and re-referred to Com. on APPR.

Location: SEN APPROPRIATIONS

Calendar:

<u>Office</u>	<u>Sub-Offices</u>	<u>Position</u>	<u>Agency</u>	<u>Assigned To</u>	<u>Letters</u>
ALL DEPTS	FTB comp	(1)DFEH-FaxNar-3		DISTEFANO	PIFC-O-4/6/0
	DCA COMP	/23/0		FTB-LACKEY	PIFC-N-5/2/0
	DFEH comp	(2)FTB-Pending-4/		DCA-KIMBALL	
	DGS COMP	4/0		SPB-BALMAIN	
	SPB comp	A-Defer to			
		DGS-5/1/0			
		(3)DGS-O-5/16/0			
		A-O-6/6/0			
		(4)FTB-Pending-5/			
		17/0			
		A-Defer to			
	DGS-6/6/0				
	(5)FTB-Pending-6/				
	5/0				
	A-O-6/11/0				
	(6)DCA-O-6/13/0				
	(7)SPBB-N-6/13/0				
	(8)DCA-O-7/6/0				
	(9)FTB-S-7/7/0				
	(10)FTB-S-7/25/0				
	(11)SPB-N-7/24/00				
	<u>Governor's</u>				

History:

- 07/06/00 AM Read second time, amended, and re-referred to Com. on APPR.
- 07/03/00 From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 5. Noes 0.)
- 06/22/00 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.
- 06/22/00 Read second time, amended, and re-referred to Com. on APPR.
- 06/08/00 Referred to Com. on JUD.
- 05/25/00 In Senate. Read first time. To Com. on RLS. for assignment.
- 05/25/00 Read third time, passed, and to Senate. (Ayes 70. Noes 4. Page 6573.)
- 05/24/00 Read second time. To third reading.
- 05/23/00 Read second time and amended. Ordered returned to second reading.
- 05/22/00 From committee: Amend, and do pass as amended. (Ayes 17. Noes 2.) (May 17).
- 05/08/00 From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 12. Noes 2.) (May 8).
- 05/02/00 Re-referred to Com. on G.O.
- 04/27/00 Joint Rule 61 (b)(5) suspended.
- 04/24/00 From committee chair, with author's amendments: Amend, and re-refer to Com. on G.O. Read second time and amended.
- 04/10/00 In committee: Set second hearing. Failed passage. Reconsideration granted.
- 03/16/00 In committee: Set, first hearing. Hearing canceled at the request of author.
- 02/29/00 Referred to Com. on G.O.
- 02/28/00 From printer. May be heard in committee March 30.
- Joint Rule 54 suspended. Assembly Rule 49(a) suspended. Read first time. To print.

Sponsored by the CA Newspaper Publishers Assn to gain access to public records. Public agencies would be prohibited from delaying or obstructing access to info. Looks like our position.

LEGISLATIVE INTENT SERVICE (800) 666-1917

AB 2799 (Shelley): Public records: disclosure (Amended: 07/06/2000)
 Action: 07/06/2000 SEN APPROPRIATIONS Read second time amended and re-referred to Com. on APPR.

Location: SEN APPROPRIATIONS

Calendar:

<u>Office</u>	<u>Sub-Offices</u>	<u>Position</u>	<u>Agency</u>	<u>Assigned To</u>	<u>Letters</u>
ALL DEPTS	FTB comp	(1)DFEH-FaxNar-3		DISTEFANO	PIFC-O-4/6/0
	DCA COMP	/23/0		FTB-LACKEY	PIFC-N-5/2/0
	DFEH comp	(2)FTB-Pending-4/		DCA-KIMBALL	
	DGS COMP	4/0		SPB-BALMAIN	
	SPB comp	A-Defer to			
		DGS-5/1/0			
		(3)DGS-O-5/16/0			
		A-O-6/6/0			
		(4)FTB-Pending-5/			
		17/0			
		A-Defer to			
	DGS-6/6/0				
	(5)FTB-Pending-6/				
	5/0				
	A-O-6/11/0				
	(6)DCA-O-6/13/0				
	(7)SPBB-N-6/13/0				
	(8)DCA-O-7/6/0				
	(9)FTB-S-7/7/0				
	(10)FTB-S-7/25/0				
	(11)SPB-N-7/24/00				
	<u>Governor's</u>				

History:

07/06/00 Read second time, amended, and re-referred to Com. on APPR.
 07/05/00 From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 5. Noes 0.).
 06/22/00 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time,
 06/22/00 amended, and re-referred to Com. on JUD.
 06/08/00 Read second time, amended, and re-referred to Com. on APPR.
 05/25/00 Referred to Com. on JUD.
 05/25/00 In Senate. Read first time. To Com. on RLS. for assignment.
 05/24/00 Read third time, passed, and to Senate. (Ayes 70. Noes 4. Page 6573.)
 05/23/00 Read second time. To third reading.
 05/22/00 Read second time and amended. Ordered returned to second reading.
 05/08/00 From committee: Amend, and do pass as amended. (Ayes 17. Noes 2.) (May 17).
 05/02/00 From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 12. Noes 2.) (May 8).
 04/27/00 Re-referred to Com. on G.O.
 04/27/00 Joint Rule 61 (b)(5) suspended.
 04/24/00 From committee chair, with author's amendments: Amend, and re-refer to Com. on G.O. Read second time
 04/10/00 and amended.
 03/16/00 In committee: Set second hearing. Failed passage. Reconsideration granted.
 02/29/00 In committee: Set, first hearing. Hearing canceled at the request of author.
 02/28/00 Referred to Com. on G.O.
 From printer. May be heard in committee March 30.
 Joint Rule 54 suspended. Assembly Rule 49(a) suspended. Read first time. To print.

LEGISLATIVE INTENT SERVICE (800) 666-1917

DEPT. STATE PERSONNEL BOARD	AUTHOR Shelley	BILL NO. AB 2799
SPONSOR	RELATED BILLS	AMENDED DATE July 6, 2000
SUBJECT Public records: disclosure	CONTACT: Judy A. Balmain TELEPHONE: (916) 653-0453	

BILL SUMMARY:

This bill would require public agencies to make public records that are in electronic format available in an electronic format when requested to do so. The bill would require disclosure of records in any electronic format in which the agency holds the information, or in the requested format if it is one used by the agency to create copies for its own use or for provision to other agencies, and would eliminate the authority of the agency to select the electronic format in which it will provide records. The bill could be construed as requiring agencies to create new records for disclosure, despite language in existing law limiting disclosure to "identifiable" public records. The bill would further require public agencies to justify withholding of public records from disclosure by providing written justification, as specified. The bill would also expand the definition of conditions under which an agency would be able to demonstrate "unusual circumstances" justifying an extension of time to respond to a public records request, and would specify the costs that may be charged to requesters for electronic public records.

LEGISLATIVE HISTORY:

SB 2027, concerning remedies for violation of the California Public Records Act, is currently pending.

DEPARTMENT SERVICE AND PROGRAM HISTORY:

Pursuant to the California Public Records Act (PRA), the State Personnel Board (SPB) receives and responds to numerous requests for public records.

DEPARTMENTS THAT MAY BE AFFECTED

STATE MANDATE

GOVERNOR'S APPOINTMENT

Department Director Position ___ S ___ O ___ SIA ___ OUA <input checked="" type="checkbox"/> N ___ NP ___ NIA ___ NAR DEFER TO _____	Agency Secretary Position ___ S ___ O ___ SIA ___ OUA ___ N ___ NP ___ NIA ___ NAR DEFER TO _____	GOVERNOR'S OFFICE Position Apprvd. _____ Position Disapp. _____ Position Noted _____ By: _____ Date: _____
Department Director _____ Date _____ <i>Walter DeP...</i> 7-24-00	Agency Secretary _____ Date _____	
Board Approved Position: (Date) <u>6/20/00</u>		

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SPECIFIC FINDINGS:

1. Existing law requires state and local agencies, including the SPB, to make identifiable public records, as defined in the PRA (Gov. Code, § 6253), available for inspection and/or copying upon request by any person. Under existing law, as interpreted by the courts, agencies are not required to create new records for disclosure to the public, but need only provide records that already exist. Although this bill retains the requirement that a public records request must reasonably describe an identifiable record or records, it also contains several provisions that could be construed as requiring agencies to not only produce existing, identifiable records but also to create new records from data stored in their databases. For example, the bill provides that an agency may justify extending the time to comply with a request based upon "the need to compile data, to write programming language or a computer program, or to construct a computer report to extract data." (Page 4, lines 18-20.) Additionally, the bill provides that "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 the "request would require data compilation, extraction, or programming to produce the record." (Page 5, lines 10-13 and 20-21.)

It is unclear what type of computer programming and computer services may be required of agencies in order to comply with these provisions. Although the bill states that the agency shall make the information available in any electronic format in which it holds the information or in the format requested if it is one that has been used by the agency to create copies for its own use or for provision to other agencies, the language also appears to suggest that agencies may be required to do more than simply retrieve existing, identifiable records, but may be required to perform programming, calculations, or other operations in order to provide customized information upon request. The bill does, however, provide that persons requesting electronic records must pay the cost of producing a copy of such records, including the cost to construct a record and the cost of programming and computer services necessary to produce a copy of the record, where the request would require either the production of a record at other than its regularly scheduled intervals, or where the request would require data compilation, extraction, or programming to produce the record. Thus, so long as agencies are permitted to recover the cost of producing electronic records, the financial impact appears to be minimal.

2. Existing law provides that computer data shall be provided in a form determined by the agency. This bill would eliminate the authorization of an agency to determine the form in which computer data is to be provided and, instead, require agencies to make electronic information available in any electronic format in which it holds the information or 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. It is unclear how an agency that has never copied electronic records for itself or others would be required to comply with this provision. For example, it is unclear whether the agency would be required to provide entire electronic data files or to copy such records to a floppy disc or compact disc. As amended, however, this bill does not require agencies to release electronic records in the form held by the agency if the release would jeopardize or compromise the security or integrity of the original record or proprietary software in which it is maintained.

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3. Existing law gives a public agency ten days within which to notify the requester whether it will disclose the records requested; an agency may extend that date in writing to up to 14 days.
4. Under "unusual circumstances", this bill would include among the grounds for such an extension the need to compile data, to write programming language or a computer program, or to construct a computer report to extract data. The 14-day period was originally established in order to afford agencies to obtain and examine primarily paper records. The vast array of available electronic records greatly expands the amount and type of information that may be available to the public. Depending on the nature of the information sought, even 14 days may be insufficient to enable the SPB to comply with a request that would require it to perform extensive computer programming to extract the data requested.
5. This bill also provides that it is not to be construed as permitting an agency to make information available only in electronic format, but does not specifically prohibit an agency from doing so. The bill would also authorize agencies to inform a requester that public records are available in an electronic format.
6. Existing law authorizes a civil action to compel disclosure of records improperly withheld by an agency. This bill would require the agency to provide a written response when it denies, in whole or in part, a written request for inspection or copying of public records. The bill would also clarify that no agency is required to provide public access to records to which access is otherwise restricted by statute.

REGULATIONS:

This bill would not require the SPB to adopt any regulations.

COMMISSION AND BOARD:

This bill would not require the creation of any new commission or board.

FISCAL IMPACT:

So long as the SPB were able to obtain reimbursement for its costs in complying with requests for public records in electronic format, this bill would not substantially increase the cost to the SPB of responding to PRA requests.

NATIONAL INQUIRY:

The U.S. Freedom of Information Act (FOIA) (5 U.S.C. § 552) does not contain any specific language covering electronic records.

PROponents/OPponents:

Likely Proponents: Media organizations, public interest organizations.

Possible Opponents: Some public entities may object to the increased regulation of their obligations to make records available to the public and to provide written response when denying public records requests.

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PRO/CON ARGUMENTS:

Pro

- Would increase public access to electronic public records.
- Would increase public access to all public records.
- Would provide statutory authority for agencies to charge for their costs in producing public records in electronic format.
- Would provide additional protection to public agencies against having to disclose records that are protected by statute.

Con

- Would require more work from agencies to provide written response to PRA requests.
- Agencies may be unable to comply with short time frame for responding to requests for electronic public records.
- Could increase litigation over PRA requests.
- Bill is unclear whether agencies would be prohibited from maintaining records in electronic format only.
- Bill is unclear whether and how an agency would be required to provide information contained in electronic data files or databases where it has never copied such records.

RECOMMENDATION:

The State Personnel Board recommends a **NEUTRAL** position on **AB 2799**, because this bill applies generally to all public agencies.

Judy Balmain, Director of Legislation
State Personnel Board

Office: 653-0453

Happy Chastain, Deputy Secretary, Legislation
State and Consumer Services Agency

Office: 653-3111

LEGISLATIVE INTENT SERVICE (800) 666-1917

LEGISLATIVE INTENT SERVICE



AB 2799 (Shelley): Public records: disclosure (Amended: 07/07/2000)
 Action: 08/25/2000 Senate amendments concurred in. To enrollment.

Location:

Calendar:

<u>Office</u>	<u>Sub-Offices</u>	<u>Position</u>	<u>Agency</u>	<u>Assigned To</u>	<u>Letters</u>
ALL DEPTS	FTB,DFEH,SPB;D CA;DGS	(1)DFEH-FaxNar-3 /23/0 (2)FTB-Pending-4/ 4/0 A-Defer to DGS-5/1/0 (3)DGS-O-5/16/0 A-O-6/6/0 (4)FTB-Pending-5/ 17/0 A-Defer to DGS-6/6/0 (5)FTB-Pending-6/ 5/0 A-O-6/11/0 (6)DCA-O-6/13/0 A-O-6/20/0 (7)SPBB-N-6/13/0 (8)DCA-O-7/6/0 A-O-7/25/0 (9)FTB-S-7/7/0 A-O-7/25/0 (10)FTB-S-7/25/0 A-O-8/16/0 (11)SPB-N-7/24/00 (12)SPB-EBR (Sign)-8/30/0 (13)FTB-EBR (Sign)-8/30/0 (14)DCA-EBR (Veto)-8/30/0 (15)BSC-NEBR No Recommendation)- 8/29/0 (16)DGS-EBR (Veto)-9/1/0 <u>Governor's</u>		DISTEFANO FTB-LACKEY DCA-KIMBALL SPB-BALMAIN	PIFC-O-4/6/0 PIFC-N-5/2/0

History:

LEGISLATIVE INTENT SERVICE (800) 666-1917



08/25/00 Senate amendments concurred in. To enrollment.
08/25/00 In Assembly. Concurrence in Senate amendments pending. Assembly Rule 77 suspended.
08/25/00 Read third time, passed, and to Assembly. (Ayes 33. Noes 0.)
08/18/00 From committee: Be placed on second reading file pursuant to Senate Rule 28.8. Read second time. To
07/06/00 third reading.
07/05/00 Read second time, amended, and re-referred to Com. on APPR.
06/22/00 From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 5. Noes 0.).
06/22/00 From committee chair, with author's amendments: Amend, and re-refcr to committee. Read second time,
06/08/00 amended, and re-referred to Com. on JUD.
05/25/00 Read second time, amended, and re-referred to Com. on APPR.
05/25/00 Referred to Com. on JUD.
05/24/00 In Senate. Read first time. To Com. on RLS. for assignment.
05/23/00 Read third time, passed, and to Senate. (Ayes 70. Noes 4. Page 6573.)
05/22/00 Read second time. To third reading.
05/08/00 Read second time and amended. Ordered returned to second reading.
05/02/00 From committee: Amend, and do pass as amended. (Ayes 17. Noes 2.) (May 17).
04/27/00 From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 12. Noes 2.) (May 8).
04/27/00 Re-referred to Com. on G.O.
04/24/00 Joint Rule 61 (b)(5) suspended.
04/10/00 From committee chair, with author's amendments: Amend, and re-refcr to Com. on G.O. Read second time
03/16/00 and amended.
02/29/00 In committee: Set second hearing. Failed passage. Reconsideration granted.
02/28/00 In committee: Set, first hearing. Hearing canceled at the request of author.
Referred to Com. on G.O.
From printer. May be heard in committee March 30.
Joint Rule 54 suspended. Assembly Rule 49(a) suspended. Read first time. To print.



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

AB 2799	A
Assembly Member Shelley	B
As Amended <u>June 22, 2000</u>	
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

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)
Page 2

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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;

AB 2799 (Shelley)
Page 3

- 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)

Page 4

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,

LEGISLATIVE INTENT SERVICE (800) 666-1917



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

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

AB 2799 (Shelley)
Page 6

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.

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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

AB 2799 (Shelley)
Page 7

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

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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

AB 2799 (Shelley)
Page 8

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"

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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

AB 2799 (Shelley)
Page 9

disclosure." Proponent indicated, however, that the Register "is not so na?ve 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



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AB 2799 (Shelley)
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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.

9. Withdrawn opposition

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Page 10

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

Source: California Newspaper Publishers' Association (CNPA)

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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),

AB 2799 (Shelley)
Page 11

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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AB 2799 (Shelley): Public records: disclosure (Amended: 07/06/2000)
 Action: 07/06/2000 SEN APPROPRIATIONS Read second time amended and re-referred to Com. on APPR.

Location: SEN APPROPRIATIONS

Calendar:

<u>Office</u>	<u>Sub-Offices</u>	<u>Position</u>	<u>Agency</u>	<u>Assigned To</u>	<u>Letters</u>
ALL DEPTS	ALL DEPTS	(1)DFEH-FaxNar-3		DISTEFANO	PIFC-O-4/6/0
	PEND; FTB comp	/23/0		FTB-LACKEY	PIFC-N-5/2/0
		(2)FTB-Pending-4/		DCA-KIMBALL	
		4/0		SPB-BALMAIN	
		A-Defer to			
		DGS-5/1/0			
		(3)DGS-O-5/16/0			
		A-O-6/6/0			
		(4)FTB-Pending-5/			
		17/0			
		A-Defer to			
		DGS-6/6/0			
		(5)FTB-Pending-6/			
		5/0			
		A-O-6/11/0			
		(6)DCA-O-6/13/0			
		(7)SPBB-N-6/13/0			
		(8)DCA-O-7/6/0			
		(9)FTB-5/1/0/0			
		<u>Governor's</u>			

History:

07/06/00 Read second time, amended, and re-referred to Com. on APPR.
 07/05/00 From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 5. Noes 0.).
 06/22/00 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time,
 06/22/00 amended, and re-referred to Com. on JUD.
 06/08/00 Read second time, amended, and re-referred to Com. on APPR.
 05/25/00 Referred to Com. on JUD.
 05/25/00 In Senate. Read first time. To Com. on RLS. for assignment.
 05/24/00 Read third time, passed, and to Senate. (Ayes 70. Noes 4. Page 6573.)
 05/23/00 Read second time. To third reading.
 05/22/00 Read second time and amended. Ordered returned to second reading.
 05/08/00 From committee: Amend, and do pass as amended. (Ayes 17. Noes 2.) (May 17).
 05/02/00 From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 12. Noes 2.) (May 8).
 04/27/00 Re-referred to Com. on G.O.
 04/27/00 Joint Rule 61 (b)(5) suspended.
 04/24/00 From committee chair, with author's amendments: Amend, and re-refer to Com. on G.O. Read second time
 04/10/00 and amended.
 03/16/00 In committee: Set second hearing. Failed passage. Reconsideration granted.
 02/29/00 In committee: Set, first hearing. Hearing canceled at the request of author.
 02/28/00 Referred to Com. on G.O.
 From printer. May be heard in committee March 30.
 Joint Rule 54 suspended. Assembly Rule 49(a) suspended. Read first time. To print.

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Analyst Name: Roger Lackey
Phone No. 845-3627

STATE AND CONSUMER SERVICES AGENCY

BILL ANALYSIS

Department	Franchise Tax Board	Author	Shelley	Bill Number	AB 2799
Sponsor		Related Bills	AB1099 99/00 SB1065 99/00	Amendment Date	06/22/2000
Subject	Public Record Disclosure/Make Available In Electronic Format If Available & When Requested				

(See Attached)

LEGISLATIVE INTENT SERVICE (800) 666-1917



DEPARTMENTS THAT MAY BE AFFECTED:

STATE MANDATE

GOVERNOR'S APPOINTMENT

Board Position: <input checked="" type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR <input type="checkbox"/> PENDING	Agency Secretary Position: <input type="checkbox"/> S <input checked="" type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR <input type="checkbox"/> DEFER TO	GOVERNOR'S OFFICE USE Position Approved <input type="checkbox"/> Position Disapproved <input type="checkbox"/> Position Noted <input type="checkbox"/>
Legislative Director _____ Date <u>7/7/00</u>	Agency Secretary _____ Date <u>JUL 25 2000</u>	By: _____ Date _____

DEPUTY SECRETARY
LEGISLATION

LH: 1106 CSA-58

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Shelley Analyst: Roger Lackey Bill Number: AB 2799

Related Bills: See Prior Analysis Telephone: 845-3627 Amended Date: 06-22-2000

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 May 23, 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 June 22, 2000, amendments would provide that "unusual circumstances" under which an agency may delay providing a record would include the need to compile data, to write program language or a computer program, or to construct a computer report to extract data.

The amendments also would provide that a public agency would not have to make records that are exempt from disclosure available in an electronic format. In addition, the amendments would define what would constitute the cost of duplication. The amendments also would provide that a public agency could refuse to disclose an electronic record if it feels that disclosure would jeopardize or compromise the security or integrity of the original record.

As a result of the amendment, an implementation consideration has arisen and is included below.

Except for the discussion above, the department's analysis of the bill as amended May 23, 2000, still applies.

Board Position:

S
 SA
 N

NA
 O
 OUA

NP
 NAR
 PENDING

Legislative Director

Date

[Signature] 7/7/00

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IMPLEMENTATION CONSIDERATION

The terms "compile data" and "construct a record" are unclear. These terms could be interpreted to require a state agency to create a new public record to satisfy a request. The California Public Records Act requires state agencies to provide copies of **existing** public records not to create new public records upon request. The bill should clarify the meaning of these terms.

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.

AB 2799 (Shelley): Public records: disclosure (Amended: 07/06/2000)
 Action: 07/06/2000 SEN JUDICIARY Read second time amended and re-referred to Com. on APPR.

Location: SEN JUDICIARY

Calendar:

<u>Office</u>	<u>Sub-Offices</u>	<u>Position</u>	<u>Agency</u>	<u>Assigned To</u>	<u>Letters</u>
ALL DEPTS	ALL DEPTS PEND; FTB comp	(1)DFEH-FaxNar-3/23/0 (2)FTB-Pending-4/4/0 A-Defer to DGS-5/1/0 (3)DGS-O-5/16/0 A-O-6/6/0 (4)FTB-Pending-5/17/0 A-Defer to DGS-6/6/0 (5)FTB-Pending-6/5/0 A-O-6/11/0 (6)DCA-O-6/13/0 (7)SPBB-N-6/13/0 (8)DCA-O-7/6/0 <u>Governor's</u>		DISTEFANO FTB-LACKEY DCA-KIMBALL SPB-BALMAIN	PIFC-O-4/6/0 PIFC-N-5/2/0

History:

07/06/00 Read second time, amended, and re-referred to Com. on APPR.
 07/05/00 From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 5. Nocs 0.)
 06/22/00 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time,
 06/22/00 amended, and re-referred to Com. on JUD.
 06/08/00 Read second time, amended, and re-referred to Com. on APPR.
 05/25/00 Referred to Com. on JUD.
 05/25/00 In Senate. Read first time. To Com. on RLS. for assignment.
 05/24/00 Read third time, passed, and to Senate. (Ayes 70. Nocs 4. Page 6573.)
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 02/29/00 In committee: Set, first hearing. Hearing canceled at the request of author.
 02/28/00 Referred to Com. on G.O.
 From printer. May be heard in committee March 30.
 Joint Rule 54 suspended. Assembly Rule 49(a) suspended. Read first time. To print.

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DEPARTMENT Consumer Affairs	AUTHOR Shelley	BILL NUMBER AB 2799
SPONSOR CA Newspaper Publishers Association	RELATED BILLS SB 2027	AMENDED DATE 6/22/00
ANALYST Rena M. Kimball	TELEPHONE 322-1203	
SUBJECT Public Records: Disclosure		

- DEPARTMENT'S AMENDMENTS ACCEPTED. Amendments reflect suggestions of analysis for the _____ version.
- AMENDMENTS HAVE A FISCAL IMPACT. A new fiscal analysis is provided.
- AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the analysis for the 5/23/00 version.
- MORE AMENDMENTS NECESSARY - See comments below.
- DEPARTMENT RECOMMENDS POSITION BE CHANGED TO _____
- REMAINDER OF ANALYSIS FOR _____ VERSION STILL APPLIES.
- OTHER - See comments below.

SUMMARY: This bill revises the Public Records Act to require public agencies to provide records, held in an electronic format, to the public in an electronic format. A public agency would also be required to justify, in writing, the withholding of a public record.

- The bill, as amended June 22nd, makes the following changes:
- Includes in the definition of unusual circumstances the need to compile data, write programming language or a computer program or construct a computer program to extract data.
 - Specifies that the cost of duplication is limited to the direct cost of producing a copy in an electronic format.
 - Provides that the requester would bear the cost of duplication, including cost to construct a record, and any programming and computer services when the record is produced at regularly scheduled intervals, or the request would require data compilation, extraction, or programming to produce the record.
 - Exempts records that if released would jeopardize or compromise the security or integrity of the original records of any proprietary software in which it is maintained.

These changes do not remove the Department of Consumer Affairs (DCA) concerns. The bill continues to take away an agency's flexibility in determining the best and most economical method of providing records and creates a liability exposure for DCA agencies.

The DCA continues to **OPPOSE AB 2799**.

DEPARTMENTS THAT MAY BE AFFECTED All departments		
STATE MANDATE <input checked="" type="checkbox"/>		GOVERNOR'S APPOINTMENT <input type="checkbox"/>
DEPARTMENT DIRECTOR POSITION <input type="checkbox"/> S <input checked="" type="checkbox"/> O <input type="checkbox"/> SIA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NIA <input type="checkbox"/> NAR <input type="checkbox"/> DEFER	AGENCY SECRETARY POSITION <input type="checkbox"/> S <input checked="" type="checkbox"/> O <input type="checkbox"/> SIA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NIA <input type="checkbox"/> NAR <input type="checkbox"/> DEFER	GOVERNOR'S OFFICE USE POSITION APPRVD. <input type="checkbox"/> POSITION DISAPP. <input type="checkbox"/> POSITION NOTED <input type="checkbox"/> By: _____ Date _____
DEPARTMENT DIRECTOR <i>Catherine Hamilton</i>	DATE <i>10/19/00</i>	AGENCY SECRETARY <i>HAPPY CHASTAIN</i> DATE JUL 25 2000
		DEPUTY SECRETARY

LEGISLATIVE INTENT SERVICE (800) 666-1917

DEPARTMENT OF CONSUMER AFFAIRS
FISCAL ANALYSIS OF LEGISLATION

DISTRIBUTED

7/12/00

DATE: JULY 06, 2000 DATE ASSIGNED: 06-22-00
 Prepared By: Nancy E. Campbell Bill Number: AB 2799
 Nancy E. Campbell
 Phone number: 323-7237 Author: Shelley
 Approved by: Francis S. Wark Date Approved: 7-11-00
 FISCAL ANALYSIS AS AMENDED: 06-22-00 Short Title: Public Records: Disclosure

OFFICE OF INFORMATION SERVICES: Fiscal impact? YES NO If "Yes, attach OIS fiscal Analysis and assumptions.
 OIS Reviewer: Conrad Lara DATE: _____

ANALYSIS AND FISCAL ASSUMPTIONS:

See Attached

SUMMARY OF FISCAL IMPACT:	
<input checked="" type="checkbox"/>	Insignificant fiscal impact (under \$10,000).
<input type="checkbox"/>	No Fiscal Impact
<input type="checkbox"/>	Minor fiscal impact. Can be absorbed within existing resources.
<input type="checkbox"/>	Ongoing cost of:
<input type="checkbox"/>	See below for fiscal impact.

	<u>2000/01</u>	<u>2001/02</u>	<u>Ongoing</u>
EXPENDITURES	\$ _____	\$ _____	\$ _____
OIS COSTS	_____	_____	_____
REVENUE	\$ _____	\$ _____	\$ _____

PROGRAM CONTACT: _____ Phone number: _____

PROGRAM CONCURS: YES NO (If no, note differences as appropriate.)

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Existing Law

Under the existing law a "public record" includes any writing containing information relating to the conduct of the public's business, which is prepared, owned, used, or retained by any state or local agency. All public records are subject to inspection, by any person, at any time during normal business hours, except as specified in the Public Records Act (PRA). The law states that if a public agency denies the access to a public record, the agency that denies the record is required to justify the reason. The agency must clarify how the record is exempt from the provisions of the PRA, or convey the circumstances of how the public interest is served best, by not making the record public, clearly outweighs the public's interest of disclosing the record. The law also gives the court special authority to make a record public, when a public official's decision not to disclose a public record, is not justified.

Summary of AB 2799

AB 2799, if approved, would require public agencies that keep public records in an electronic format; to make that information available, to the public in that format when requested. Agencies will be required to provide copies of records, upon request and payment of fees, that cover the direct costs of duplication, or a statutory fee if applicable. If an agency delays or obstructs the inspection or copying of public records, a notification of the denial, of the request must include the names and titles, or positions of each person responsible for the denial. The agency must also justify in writing, the reason that the record is being withheld and demonstrate how the record is exempt, under express provisions of this chapter, or explain how the public interest served by not disclosing the record, clearly outweighs the public interest served by disclosure of the record.

ASSUMPTIONS

- If approved SB 2799 will become effective on January 1, 2001.
- SB 2799 will 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 the agency must follow these guidelines.
 - Information must be available in any electronic format in which it holds the information.
 - A copy of an electronic record must be available in the format requested, if the requested format is one that has been used by the agency for its own use.
 - An agency will not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- The person requesting the public record will pay for the cost associated with the duplication of the records.
- This bill provides for a reverse-balancing test which will grant the courts and state agencies the authority to disclose any public record if the agency or superior court determines that, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.



- The Department of Consumer Affairs (DCA) Central Records Unit stores public records for the Bureaus and currently provides copies of public records in the form of CD-ROM, diskette, and hard copies.
- The Boards currently provide copies of public records in the form of diskette or hardcopies.
- DCA charges fees to offset the cost of providing the copies.

Fiscal Impacts

Bureaus store public records in DCA's Central Records Unit (CRU). The CRU provides copies of public records in CD-ROM and diskette format and are accessible electronically, there are only a few records, which are only available in hard copy format.

Boards that store public records in an electronic format are able to provide a copy of the record in the same electronic format in which it is stored, and therefore could comply with the provisions of AB 2799.

Existing law authorizes state agencies to charge the requestor, the direct cost for processing the request which includes time spent locating the record, segregation of the record, and cost of materials such as diskettes, etc.

AB 2799 would have a minimal and absorbable fiscal impact.



AB 2799 (Shelley): Public records: disclosure (Amended: 06/22/2000)
 Action: 06/22/2000 SEN JUDICIARY From committee chair with author's amendments: Amend and re-refer to committee.
 Read second time amended and re-referred to Com. on JUD.

Location: SEN JUDICIARY

Calendar: 06/29/2000 SENATE JUDICIARY

<u>Office</u>	<u>Sub-Offices</u>	<u>Position</u>	<u>Agency</u>	<u>Assigned To</u>	<u>Letters</u>
ALL DEPTS	ALL DEPTS PEND; FTB comp	(1)DFEH-FaxNar-3 /23/0 (2)FTB-Pending-4/ 4/0 A-Defer to DGS-5/1/0 (3)DGS-O-5/16/0 A-O-6/6/0 (4)FTB-Pending-5/ 17/0 A-Defer to DGS-6/6/0 (5)FTB-Pending-6/ 5/0 A-O-6/11/0 (6)DCA-O-6/13/0 (7)SPBB-N-6/13/0 <u>Governor's</u>		DISTEFANO FTB-LACKEY DCA-KIMBALL SPB-BALMAIN	PIFC-O-4/6/0 PIFC-N-5/2/0

History:

06/22/00 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.
 06/22/00 amended, and re-referred to Com. on JUD.
 06/08/00 Read second time, amended, and re-referred to Com. on APPR.
 05/25/00 Referred to Com. on JUD.
 05/25/00 In Senate. Read first time. To Com. on RLS. for assignment.
 05/24/00 Read third time, passed, and to Senate. (Ayes 70. Noes 4. Page 6573.)
 05/23/00 Read second time. To third reading.
 05/22/00 Read second time and amended. Ordered returned to second reading.
 05/08/00 From committee: Amend, and do pass as amended. (Ayes 17. Noes 2.) (May 17).
 05/02/00 From committee: Do pass, and re-refcr to Com. on APPR. Re-referred. (Aycs 12. Nocs 2.) (May 8).
 04/27/00 Re-referred to Com. on G.O.
 04/27/00 Joint Rule 61 (b)(5) suspended.
 04/24/00 From committee chair, with author's amendments: Amend, and re-refer to Com. on G.O. Read second time and amended.
 04/10/00 In committee: Set second hearing. Failed passage. Reconsideration granted.
 03/16/00 In committee: Set, first hearing. Hearing canceled at the request of author.
 02/29/00 Referred to Com. on G.O.
 02/28/00 From printer. May be heard in committee March 30.
 Joint Rule 54 suspended. Assembly Rule 49(a) suspended. Read first time. To print.

LEGISLATIVE INTENT SERVICE (800) 666-1917

STATE AND CONSUMER SERVICES AGENCY

DEPT. STATE PERSONNEL BOARD	AUTHOR Shelley	BILL NO. AB 2799
SPONSOR	RELATED BILLS	AMENDED DATE May 23, 2000
SUBJECT Public records: disclosure		CONTACT: Judy A. Balmain TELEPHONE: (916) 653-0453

BILL SUMMARY:

This bill would require public agencies to make public records that are in electronic format available in an electronic format when requested to do so. The bill would require disclosure of records in any electronic format in which the agency holds the information, or in the requested format if it is one used by the agency to create copies for its own use or for provision to other agencies, and would eliminate the authority of the agency to select the electronic format in which it will provide records. This bill would further require public agencies to justify withholding of public records from disclosure by providing written justification, as specified.

LEGISLATIVE HISTORY:

SB 2027 (Sher), concerning remedies for violation of the California Public Records Act, is currently pending.

DEPARTMENT SERVICE AND PROGRAM HISTORY:

Pursuant to the California Public Records Act (PRA), the State Personnel Board (SPB) receives and responds to numerous requests for public records.

SPECIFIC FINDINGS:

- Existing law requires state and local agencies, including the SPB, to make public records, as defined in the PRA (Gov. Code, § 6250, et seq.) (PRA), available for inspection and/or copying upon request by any person. Existing law provides that computer data shall be provided in a form determined by the agency. This bill would eliminate the authorization of an agency to determine the form in which computer data is to be provided and, instead, require agencies to make electronic information available in any electronic format in which it holds the information or

DEPARTMENTS THAT MAY BE AFFECTED

STATE MANDATE GOVERNOR'S APPOINTMENT

Department Director Position _____ S _____ O _____ SIA _____ OUA _____ X N _____ NP _____ NIA _____ NAR DEFER TO _____	Agency Secretary Position _____ S _____ O _____ SIA _____ OUA _____ N _____ NP _____ NIA _____ NAR DEFER TO _____	GOVERNOR'S OFFICE Position Apprvd. _____ Position Disapp. _____ Position Noted _____ By: _____ Date: _____
Department Director Date <i>Walt W. J. 6-13-00</i>	Agency Secretary Date	
Board Approved Position: (Date) <u>6/20/00</u>		

LEGISLATIVE INTENT SERVICE (800) 666-1917

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. It is unclear how an agency that has never copied electronic records for itself or others would be required to comply with this provision. For example, it is unclear whether the agency would be required to provide entire electronic data files or to copy such records to a floppy disc or compact disc. The provision of electronic records in this manner could lead to alteration and fraudulent use of the records by others.

2. Agencies would be permitted to charge for the direct costs of duplication of electronic records. It is unclear whether and how an agency would be required to provide information contained in electronic data files or databases; although the bill states that agencies would not be required to reconstruct a report in an electronic format if the agency no longer has the report itself available in an electronic format, it is unclear whether an agency that has electronic data available would be required to create a report or otherwise make the data available to the public.
3. The bill also provides that it is not to be construed as permitting an agency to make information available only in an electronic format, but it does not specifically prohibit an agency from doing so.
4. Existing law authorizes an agency to withhold records from disclosure if it determines that the record in question is exempt under the express provisions of the PRA 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. Existing law also requires an agency to determine within 10 days whether the request seeks copies of disclosable records, and notify the requester promptly of its determination, but does not require the agency to specify the reasons for its decision. Under existing law, it is somewhat unclear whether agencies have the discretion to voluntarily disclose records if an existing statute exempts those records from disclosure. As introduced, this bill would have clarified this ambiguity by expressly permitting agencies and the superior court to disclose or order the disclosure of records that are otherwise exempt from public disclosure under the express provisions of the PRA 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. As amended, however, the bill no longer provides this clarification.
5. Existing law authorizes a civil action to compel disclosure of records improperly withheld by an agency. This bill would require the agency to provide a written response when it denies, in whole or in part, a written request for inspection or copying of public records.

REGULATIONS:

This bill would not require the SPB to adopt any regulations.

COMMISSIONS AND BOARDS:

This bill would not require the creation of any new commission or board.

FISCAL IMPACT:

This bill would not substantially increase the cost to the SPB of responding to PRA requests.

LEGISLATIVE INTENSIVE SERVICE (800) 666-1917



NATIONAL INQUIRY:

The U.S. Freedom of Information Act (FOIA) (5 U.S.C. § 552) does not contain any specific language covering electronic records.

PROPOSERS/OPPONENTS:

Likely Proponents: Media organizations, public interest organizations.

Possible Opponents: Some public entities may object to the increased regulation of their obligations to make records available to the public and to provide written response when denying public records requests.

PRO/CON ARGUMENTS:

Pros

- Would increase public access to electronic public records.
- Would increase public access to all public records.

Cons

- Would require more work from agencies to provide written response to PRA requests.
- Could increase litigation over PRA requests.
- Bill is unclear whether agencies would be prohibited from maintaining records in electronic format only.
- Bill is unclear whether an agency that has never copied electronic records would be required to, for example, provide entire electronic data files or to copy such records to a floppy disc or compact disc.
- Provision of records in electronic format could lead to alteration and fraudulent use of the records by others.
- Bill is unclear whether and how an agency would be required to provide information contained in electronic data files or databases.
- Bill is unclear whether agencies would be permitted to voluntarily disclose records that are exempt from disclosure.

RECOMMENDATION:

The State Personnel Board recommends a **NEUTRAL** position on **AB 2799**; because this bill applies generally to all public agencies.

Judy Balmain, Director of Legislation
State Personnel Board

Office: 653-0453

Happy Chastain, Deputy Secretary, Legislation
State and Consumer Services Agency

Office: 653-3111



AB 2799 (Shelley): Public records: disclosure (Amended: 05/23/2000)
 Action: 06/08/2000 SEN JUDICIARY Referred to Com. on JUD.

Location: SEN JUDICIARY

Calendar: 06/29/2000 SENATE JUDICIARY

<u>Office</u>	<u>Sub-Offices</u>	<u>Position</u>	<u>Agency</u>	<u>Assigned To</u>	<u>Letters</u>
ALL DEPTS	ALL DEPTS	(1)DFEH-FaxNar-3/23/0		DISTEFANO	PIFC-O-4/6/0
	PEND; FTB comp	(2)FTB-Pending-4/4/0		FTB-LACKEY	PIFC-N-5/2/0
		A-Defer to DGS-5/1/0		DCA-KIMBALL	
		(3)DGS-O-5/16/0			
		A-O-6/6/0			
		(4)FTB-Pending-5/17/0			
		A-Defer to DGS-6/6/0			
		(5)FTB-Pending-6/5/0			
		[REDACTED]			
		(6)DCA-O-6/13/0			
		Governor's			

History:

06/08/00 Referred to Com. on JUD.
 05/25/00 In Senate. Read first time. To Com. on RLS. for assignment.
 05/25/00 Read third time, passed, and to Senate. (Ayes 70. Nocs 4. Page 6573.)
 05/24/00 Read second time. To third reading.
 05/23/00 Read second time and amended. Ordered returned to second reading.
 05/22/00 From committee: Amend, and do pass as amended. (Ayes 17. Nocs 2.) (May 17).
 05/08/00 From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 12. Nocs 2.) (May 8).
 05/02/00 Re-referred to Com. on G.O.
 04/27/00 Joint Rule 61 (b)(5) suspended.
 04/27/00 From committee chair, with author's amendments: Amend, and re-refer to Com. on G.O. Read second time and amended.
 04/24/00 In committee: Set second hearing. Failed passage. Reconsideration granted.
 04/10/00 In committee: Set, first hearing. Hearing canceled at the request of author.
 03/16/00 Referred to Com. on G.O.
 02/29/00 From printer. May be heard in committee March 30.
 02/28/00 Joint Rule 54 suspended. Assembly Rule 49(a) suspended. Read first time. To print.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



DEPARTMENT Consumer Affairs	AUTHOR Shelley	BILL NUMBER AB 2799
SPONSOR CA Newspaper Publishers Association	RELATED BILLS SB 2027	AMENDED DATE 5/23/00
SUBJECT Public Records: Disclosure		

BILL SUMMARY: This bill revises the Public Records Act to require public agencies to provide records held in an electronic format to the public in an electronic format. A public agency would also be required to justify, in writing, the withholding of a public record.

LEGISLATIVE HISTORY:

- SB 2027 (Sher) Pending in Assembly
- AB 1099 (Shelley, Chapter 843, Statutes of 1999)
- SB 48 (Sher, 1999, Vetoes)
- SB 1065 (Bowen, 1999, Vetoes)
- AB 179 (Bowen, 1997, Vetoes)
- SB 74 (Kopp, 1997, Vetoes)
- AB 142 (Bowen, 1996, died)
- SB 323 (Kopp, 1996, Vetoes)

DEPARTMENT SERVICE AND PROGRAM HISTORY:

Historically, there have been many attempts to compel public agencies to provide copies of public records held in an electronic format in any format requested. State agencies have been reluctant to provide copies in any format requested because records are stored in huge data bases and redacting the disclosable information from the non-disclosable is time consuming and susceptible to the inadvertent release of confidential information, which could lead to a lawsuit.

SB 2027 is similar to SB 48 and establishes an appeal process within the Attorney General's office for a public agency's denial of a public record, allows a court to impose a penalty up to \$100 per day for each day the court determines the agency's action resulted in the denial of plaintiff's right to inspect records, and authorizes state agencies to employ outside counsel in certain circumstances. This bill passed out of Senate Appropriations (8 - 3) on May 25th and is pending in the Assembly.

AB 1099 (1999), as introduced, would have required agencies to provide copies of records in any form requested as long as the record was stored in the requested format. This bill was later amended to contain different subject matter.

DEPARTMENTS THAT MAY BE AFFECTED ALL		GOVERNOR'S APPOINTMENT <input type="checkbox"/>	
STATE MANDATE <input checked="" type="checkbox"/>		GOVERNOR'S OFFICE USE	
DEPARTMENT DIRECTOR POSITION <input type="checkbox"/> S <input checked="" type="checkbox"/> O <input type="checkbox"/> SIA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NIA <input type="checkbox"/> NAR <input type="checkbox"/> DEFER		AGENCY SECRETARY POSITION <input type="checkbox"/> S <input checked="" type="checkbox"/> O <input type="checkbox"/> SIA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NIA <input type="checkbox"/> NAR <input type="checkbox"/> DEFER	
DEPARTMENT DIRECTOR <i>Cathie Sand</i>		POSITION APPRVD. <input type="checkbox"/> POSITION DISAPP. <input type="checkbox"/> POSITION NOTED <input type="checkbox"/> By: _____ Date _____	
DATE <i>6/13/00</i> AGENCY SECRETARY ORIGINAL SIGNED BY HAPPY CHASTAIN		DATE _____	

JUN 20 2000

DEPUTY SECRETARY
LEGISLATION

LH: 1119CSA-71

LEGISLATIVE INTENT SERVICE (800) 666-1917

SB 48 (1999) would have established a simplified procedure for an appeal to the Attorney General when a state agency denied a request for a public record. This bill was vetoed by Governor Davis who stated it would create a conflict of interest between the Attorney General and his major clients, which are state agencies. (See attached veto message)

SB 1065 (1999) would have required state agencies to provide public records in an electronic format when requested. This bill was vetoed by Governor Davis stating that not all state computer systems have the capacity to implement the provisions of the bill. The Governor mandated that the State's technology resources be directed toward making its computer systems year-2000 compliant. (See attached veto message)

AB 179 (1997) would have required state agencies to provide copies of electronic records in the format requested, unless unreasonable to do so, among other things. The bill was vetoed by former Governor Wilson on the basis that it created an inflexible mandate by requiring agencies to provide electronic records in any format requested and ignored the burdens on state agencies.

SB 74 (1997), among other things, would have required state agencies to provide copies of records stored in an electronic format in the form requested, unless unreasonable to do. The bill specified that records requested by members of the public for personal use were to be charged a fee that represented the direct costs of duplication or the prescribed statutory fee. For records requested for commercial purposes, the fee was to be the actual costs of search, retrieval, review, segregation, and duplication. This bill was vetoed by former Governor Wilson on the basis that:

- it created an inflexible mandate on state agencies to furnish records in the form requested without defining "unreasonable," leaving the interpretation open to litigation;
- it would create additional expense, burden and time to segregate the public data from the exempt data; and
- records should be readily accessible without adding costs and rigidity by mandating state agencies to provide copies in any form requested.

AB 142 (1996) would have required public agencies holding information in an electronic format to make that information available in an electronic format upon request. The bill failed passage.

SB 323 (1996) would have required public agencies to justify in writing by citing the statute or public interest served in denying a public record. The bill was vetoed by former Governor Wilson on the basis that it imposed an additional and unreasonable burden on state agencies and the costs to comply did not justify the expense.



According to the sponsor, the California Newspaper Publishers Association, this bill is intended to ensure quicker, more useful access to public records. The bill seeks to provide reasonable guidelines for public access to electronically held records. One of the common complaints against the public records process is that requesters often receive volumes of paper records and they must search through the material to find the particular record they actually wanted.

SPECIFIC FINDINGS:

Existing law, the Public Records Act (PRA):

- Defines public record to include any writing containing information relating to the conduct of the public's business,
- Requires public records to be open for inspection during office hours and specifies that every person has the right to inspect a public record, unless a record is specifically exempted,
- Requires public agencies to make an exact copy of a public record for any person upon payment of specified fees, and
- Authorizes computer data to be provided in a form determined by the agency.

This bill as amended May 23rd:

- Deletes an agency's discretion to provide computer data in a format of its choosing, and instead specifies that the data must be in electronic format.
- Requires information stored in an electronic format to be made available in an electronic format upon request as follows:
 1. Requires agencies to make the information available in any electronic format in which the information is held,
 2. Requires agencies to provide copies in the format requested if the agency uses that format to create copies for its own use or for other agencies,
 3. Specifies that public agencies are not required to reconstruct a report in an electronic format if the report no longer exists in that format,
 4. Prohibits state agencies from making information available only in an electronic format, and
 5. Prohibits public access to specified records held by the Department of Motor Vehicles.
- Requires public agencies to justify the withholding of a public record in writing.

The April 27th amendments removed a controversial provision that would have authorized court and state agencies to release records exempted by the PRA if it was determined that the public interest served by disclosure outweighed the public interest served by nondisclosure.



Concerns

Like other state agencies, the Department of Consumer Affairs (DCA), with its 33 boards and bureaus, has some serious concerns. These continue to be the same concerns expressed in SB 1065 in 1999.

The provisions of this bill take away a state agency's authority to determine the form in which it provides copies of computerized data. While all boards and bureaus within DCA make every effort to furnish requested records in the format requested, the provisions in this bill suggest that a requester's interest in obtaining copies of public records in a format requested is to be weighted more than the agency's interests in managing its workload.

The Central Records Unit (Unit) within the DCA stores departmental files on microfilm. The Unit indicates that it currently has the capability to provide all of the microfilm records, with the exception of some complaint records, on a CD-ROM and in other electronic formats. The Unit does provide records in any electronic format that is requested however, the boards, especially the small boards may, by necessity, continue to use older equipment to store records and may not have the capability to segregate disclosable information from the non-disclosable information. In those cases, redacting the information could be time-consuming and divert staff resources that may be needed elsewhere. There is also a concern (as has recently happened with one board) that a requester will use burdensome record requests to intimidate, retaliate, and harass an agency by diverting agency resources with requests when there is a disciplinary dispute.

REGULATIONS: N/A

LEGISLATIVELY-MANDATED REPORTS: N/A

COMMISSIONS AND BOARDS: N/A

FISCAL IMPACT: Insignificant – DCA generally has the capability to comply with the provisions of this bill. However, the smaller boards may expend considerable resources in complying with the bill.

NATIONAL INQUIRY:

Federal: The Freedom of Information Act and the Electronic Freedom of Information Act Amendments of 1996 allow public access to federal agency records.

Other States:

Florida: Provides for inspection of public records by any person at reasonable times and under reasonable conditions. Various fees are specified in statute. When a fee is not specified, the fee is the actual cost of duplication, including cost of material and supplies. When the nature or volume of records requested would require extensive use of technology resources or extensive clerical or supervisory assistance, a surcharge may be assessed based on the cost of personnel time spent retrieving the



information. **Records held in an electronic format are not singled out for different treatment.** Denials must be in writing, citing the particular law on which the denial is based.

New York: Authorizes each agency to promulgate rules and regulations pertaining to the availability of public records including the times the records would be available, fees and the contact person in control of the records. The assumption is that each state agency may determine the format in which the records are provided.

Pennsylvania: Specifies that public records are to be accessible for inspection and copying by any person during regular business hours. Each state agency is required to promulgate and post rules and regulations that include: fee schedule, duration of time allowed for inspection and copying, and conduct and handling of records in the area where records are stored. **Copies of records shall be provided in the most economical means available at the agency holding the records.**

Michigan: Provides access to public records by any person, except individuals incarcerated in state and local facilities, at reasonable times. Agencies may impose fees for actual costs, including labor and all associated costs. **The public agency is mandated to use the most economical means available for making copies of public records.**

Texas: Public information is available during normal office hours to any person, except incarcerated individuals. **Copies of public records must be provided in the requested medium unless the agency does not have the technological ability to provide a copy in the requested medium.** Fees for the duplication of public records include all costs related to reproducing the information such as, materials, labor and overhead.

PROPOSERS/OPPONENTS:

Support: California Newspaper Publishers Association (sponsor)
California First Amendment Coalition

Opposition: California Municipal Utilities Association
California State Sheriff's Office
California Association of Clerks and Elections Officials
Los Angeles County Board of Supervisors
San Bernardino Sheriff's Office

The author indicates that amendments are in progress in an attempt to remove opposition concerns.

PRO/CON ARGUMENTS:

Pro: Proponents argue that this bill would provide reasonable guidelines for public access to public records held electronically and would substantially increase the

06/11/00



availability of the records as well as reduce the cost and inconvenience associated with handling large volumes of paper.

Con: Opponents argue that requirements to provide public records in any available electronic format deletes agency authority to manage workload and the flexibility to determine the best and most economical method of providing the requested record. Additionally, the bill does not specifically authorize a fee to cover the cost of preparing electronic records for requestors. Responding to requests for large volumes of records from special interest groups and others can divert thousands of hours of staff time and use of other resources from their core responsibilities. They should be authorized to recover costs based on the personnel time spent retrieving the information, materials used, and other costs associated with duplication, as do several other states.

The sponsor states the one of the justifications for this bill is to lessen the burden on the requestor to search through volumes of paper records to retrieve the information they were seeking. This change in law would effectively place the majority of the burden of research on the governmental agency, using public resources at public expense.

RECOMMENDATION:

The Department of Consumer Affairs recommends an **OPPOSE** position on AB 2799. The provisions of this bill: 1) delete agency authority to determine the best and most economical method of providing public records, 2) could inadvertently create grounds for litigation, and 3) place additional fiscal burdens on public agencies with no authority to recover those costs.

CONTACT PERSONS:

Prepared by: Rena M. Kimball, Analyst

Phone: 322-1203

Sailaja Cherukuri, Deputy Director

Phone: 327-5196



DEPARTMENT OF CONSUMER AFFAIRS
FISCAL ANALYSIS OF LEGISLATION

DISTRIBUTED

5/10/00

DATE: APRIL 28, 2000 DATE ASSIGNED: 04-27-00
 Prepared By: Nancy E. Campbell Bill Number: AB 2799
 Phone number: 323-7237 Author: Shelley
 Approved by: Pamela S. West Date Approved: 5-10-00
 FISCAL ANALYSIS AS AMENDED: 04-27-00 Short Title: Public Records: Disclosure

OFFICE OF INFORMATION SERVICES: Fiscal impact? YES NO If "Yes, attach OIS fiscal
 OIS Reviewer: Conrad Lara DATE: _____ Analysis and assumptions.

ANALYSIS AND FISCAL ASSUMPTIONS:

See Attached

SUMMARY OF FISCAL IMPACT:	
<input checked="" type="checkbox"/>	Insignificant fiscal impact (under \$10,000).
<input type="checkbox"/>	No Fiscal Impact
<input type="checkbox"/>	Minor fiscal impact. Can be absorbed within existing resources.
<input type="checkbox"/>	Ongoing cost of:
<input type="checkbox"/>	See below for fiscal impact.

	<u>2000/01</u>	<u>2001/02</u>	<u>Ongoing</u>
EXPENDITURES	\$ _____	\$ _____	\$ _____
OIS COSTS	_____	_____	_____
REVENUE	\$ _____	\$ _____	\$ _____

PROGRAM CONTACT: _____ Phone number: _____

PROGRAM CONCURS: YES NO (If no, note differences as appropriate.)

LEGISLATIVE INTENT SERVICE (800) 666-1917

Existing Law

Under the existing law a "public record" includes any writing containing information relating to the conduct of the public's business, which is prepared, owned, used, or retained by any state or local agency. All public records are subject to inspection, by any person, at any time during normal business hours, except as specified in the Public Records Act (PRA). The law states that if a public agency denies the access to a public record, the agency that denies the record is required to justify the reason. The agency must clarify how the record is exempt from the provisions of the PRA, or convey the circumstances of how the public interest is served best, by not making the record public, clearly outweighs the public's interest of disclosing the record. The law also gives the court special authority to make a record public, when a public official's decision not to disclose a public record, is not justified.

Summary of AB 2799

AB 2799, if approved, would require public agencies that keep public records in an electronic format, to make that information available, to the public in that format when requested. Agencies will be required to provide copies of records, upon request and payment of fees, that cover the direct costs of duplication, or a statutory fee if applicable. If an agency delays or obstructs the inspection or copying of public records, a notification of the denial, of the request must include the names and titles, or positions of each person responsible for the denial. The agency must also justify in writing, the reason that the record is being withheld and demonstrate how the record is exempt, under express provisions of this chapter, or explain how the public interest served by not disclosing the record, clearly outweighs the public interest served by disclosure of the record.

ASSUMPTIONS

- If approved SB 2799 will become effective on January 1, 2001.
- SB 2799 will 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 the agency must follow these guidelines.
 - Information must be available in any electronic format in which it holds the information.
 - A copy of an electronic record must be available in the format requested, if the requested format is one that has been used by the agency for its own use.
 - An agency will not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- The person requesting the public record will pay for the cost associated with the duplication of the records.
- This bill provides for a reverse balancing test which will grant the courts and state agencies the authority to disclose any public record if the agency or superior court determines that, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.

Fiscal Impacts

Insignificant fiscal impact



Analyst Name: Roger Lackey
Phone No. 845-3627

STATE AND CONSUMER SERVICES AGENCY

BILL ANALYSIS

Department Franchise Tax Board	Author Shelley	Bill Number AB 2799
Sponsor	Related Bills AB1099 99/00 SB1065 99/00	Amendment Date 5/23/00
Subject Public Record Disclosure/Make Available In Electronic Format If Available & When Requested		

(See Attached)

LEGISLATIVE INTENT SERVICE (800) 666-1917

DEPARTMENTS THAT MAY BE AFFECTED:

STATE MANDATE

GOVERNOR'S APPOINTMENT

Board Position:

- S O
- SA OUA
- N NP
- NA NAR
- PENDING

Agency Secretary Position:

- S O
- SA OUA
- N NP
- NA NAR

GOVERNOR'S OFFICE USE

Position Approved _____
Position Disapproved _____
Position Noted _____

Franchise Tax Board Staff Date

Agency Secretary Date

By: _____ Date

[Handwritten Signature]

JUN 11 2000

DEPUTY SECRETARY
LEGISLATION

LH: 1127CSA-79

NO ANALYSIS REQUIRED

Franchise Tax Board

Author: Shelley Analyst: Roger Lackey Bill Number: AB 2799

Related Bills: See Legislative History Telephone: 845-3627 Amended Date: 05-23-2000

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 _____.
- MINOR AMENDMENT - No change in approved position of Pending. 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 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.

The May 23, 2000, amendment changed the requirement that a state agency justify in writing withholding a requested record. The new language clarifies that a written response is required only for a written request and regardless of whether the request is denied in whole or in part.

Except for the discussion above, the department's analysis of AB 2799 as amended April 27, 2000, still applies.

Board Position:	Franchise Tax Board Staff	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 type="checkbox"/> PENDING

LEGISLATIVE INTENT SERVICE (800) 666-1917

AB 2799 (Shelley): Public records: disclosure (Amended: 05/23/2000)

Action: 06/08/2000 SEN Referred to Com. on JUD.

Location: SEN

Calendar:

<u>Office</u>	<u>Sub-Offices</u>	<u>Position</u>	<u>Agency</u>	<u>Assigned To</u>	<u>Letters</u>
ALL DEPTS	ALL DEPTS	(1)DFEH-FaxNar-3 /23/0		DISTEFANO	PIFC-O-4/6/0
	PEND; FTB comp	(2)FTB-Pcnding-4/ 4/0 A-Defer to DGS-5/1/0 (3)DGS-O-5/16/0 A-O-6/6/0 (4)FTB-Pending-5/ 17/0 A-Defer to DGS-6/0/0 (5)FTB-Pending-6/ 5/0 <u>Governor's</u>		FTB-LACKEY	PIFC-N-5/2/0

History:

06/08/00 Referred to Com. on JUD.
 05/25/00 In Senate. Read first time. To Com. on RLS. for assignment.
 05/25/00 Read third time, passed, and to Senate. (Ayes 70. Noes 4. Page 6573.)
 05/24/00 Read second time. To third reading.
 05/23/00 Read second time and amended. Ordered returned to second reading.
 05/22/00 From committee: Amend, and do pass as amended. (Ayes 17. Noes 2.) (May 17).
 05/08/00 From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 12. Noes 2.) (May 8).
 05/02/00 Re-referred to Com. on G.O.
 04/27/00 Joint Rule 61 (b)(5) suspended.
 04/27/00 From committee chair, with author's amendments: Amend, and re-refer to Com. on G.O. Read second time and amended.
 04/10/00 In committee: Set second hearing. Failed passage. Reconsideration granted.
 03/16/00 In committee: Set, first hearing. Hearing canceled at the request of author.
 02/29/00 Referred to Com. on G.O.
 02/28/00 From printer. May be heard in committee March 30.
 Joint Rule 54 suspended. Assembly Rule 49(a) suspended. Read first time. To print.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



STATE AND CONSUMER SERVICES AGENCY

DEPARTMENT General Services	AUTHOR Shelley	BILL NUMBER AB 2799
SPONSOR California Newspaper Publishers Association	RELATED BILLS See legislative history	AMENDED DATE April 27, 2000
SUBJECT Public records: disclosure		

BILL SUMMARY:

Assembly Bill 2799 would make various changes to the California Public Records Act (Act) by providing that agencies having public records available in electronic format make that information available in an electronic format when requested.

LEGISLATIVE HISTORY:

Assembly Bill 1099 (Shelley, 1999) was similar to AB 2799 and required state agencies to provide computerized data in a format chosen by the requester if the agency uses that format in the course of its normal business. The bill was ultimately gutted and used for other legislation.

Senate Bill 48 (Sher, 1999) would provide an administrative appeals process for persons who are denied access to public records. The appeals process would be handled by the Attorney General's office. This bill was vetoed by Governor Davis (veto message attached).

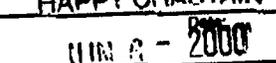
Senate Bill 1065 (Bowen, 1999) was identical to this bill and was vetoed by Governor Davis (veto message attached).

Senate Bill 143 (Kopp, Chapter 620, Statutes of 1998) made numerous changes to the Act including the establishment of a comprehensive index of public records that are exempt from disclosure under current law and contained in various other codes. (An early version of the bill deleted the language that allows an agency to determine the form in which computer data is to be provided; the language was reinstated at the request of the DGS).

Assembly Bill 179 (Bowen, 1997) would have required state agencies to disclose computerized data in a format chosen by the requestor unless determined unreasonable to do so. This bill was vetoed by Governor Wilson (veto message attached).

LEGISLATIVE INTENT SERVICE (800) 666-1917

DEPARTMENTS THAT MAY BE AFFECTED

STATE MANDATE		GOVERNOR'S APPOINTMENT		GOVERNOR'S OFFICE USE	
DEPARTMENT DIRECTOR POSITION		AGENCY SECRETARY POSITION		Position Approved: _____	
<input type="checkbox"/> S	<input checked="" type="checkbox"/> O	<input type="checkbox"/> S	<input checked="" type="checkbox"/> O	Position Disapproved: _____	
<input type="checkbox"/> SIA	<input type="checkbox"/> OUA	<input type="checkbox"/> SIA	<input type="checkbox"/> OUA	Position Noted: _____	
<input type="checkbox"/> N	<input type="checkbox"/> NP	<input type="checkbox"/> N	<input type="checkbox"/> NP	By: _____ Date: _____	
<input type="checkbox"/> NIA		<input type="checkbox"/> NIA			
<input type="checkbox"/> DEFER To		<input type="checkbox"/> DEFER To	ORIGINAL SIGNED BY HAPPY CHASTAIN		
DEPARTMENT DIRECTOR		AGENCY SECRETARY			
					
Date: 5/16/00		Date: JUN 8 - 2000			

Senate Bill 74 (Kopp, 1997) was similar to AB 179 and would have required state agencies to disclose computerized data in a format chosen by the requestor unless determined unreasonable to do so. This bill was vetoed by Governor Wilson (veto message attached).

Senate Bill 323 (Kopp, 1996) was similar to AB 179 and SB 74 in that it contained language relative to the disclosure of electronic data – this language was ultimately deleted from the bill.

Assembly Bill 2989 (Bowen, 1996) was the "Paper Reduction Act of 1996" and, among other things, required that reports required by law shall be submitted on paper and electronically sent to the State Librarian. This bill failed passage in the Assembly Governmental Organization Committee.

Assembly Bill 142 (Bowen, 1995) made changes to the Act relative to the availability of records contained in electronic format and established conditions under which "vital records" could be disclosed to the public. This bill was never heard and died in the Assembly Governmental Organization Committee.

DEPARTMENT SERVICE AND PROGRAM HISTORY:

The Department of General Services (DGS) incorporates six operating divisions composed of 23 offices that provide a broad range of business services to government. The DGS' functions include: procurement and contracting for goods and services; real estate and design services for state buildings; telecommunications; fleet management; information services; printing; architectural services; energy efficiency; legal services and building maintenance.

The State Board of Control (Board) Victims of Crime (VOC) Program reimburses victims for specified net out-of-pocket losses incurred as a result of a crime. Reimbursable expenses include medical expenses, mental health counseling, funeral/burial costs, and wage or support losses not otherwise covered by insurance or other sources. The VOC Program's revenue source, the Restitution Fund (Fund), receives its revenue primarily from state penalties assessed on court-ordered fines. The Board's Government Claims program processes, approves, and pays claims against the state in accordance with Government Code Section 980 et seq.

SPECIFIC FINDINGS:

1. Under existing law, the California Public Records Act provides that upon request and payment of duplication fees, state and local agencies must make non-exempt records available to the public. Among other things, the Act provides that "Computer data shall be provided in a form determined by the agency" (Government Code Section 6253; previously Section 6256, 1968).

AB 2799 would repeal that language and create a new section of law relative to the accessibility of electronic records.

2. Specifically, AB 2799 would provide that agencies having public records available in electronic format make that information available in electronic format when requested and, when applicable, comply with the following:

- a. make the information available in any electronic format in which it holds the information;
- b. provide a copy of an electronic record in the format requested if that format is one already used by the agency to create copies for itself or other agencies;
- c. duplication costs would include the costs associated with duplicating electronic records;
- d. an agency would not be required to reconstruct a report in an electronic format if it is no longer available in that format;
- e. an agency would not be permitted to make information available only in an electronic format;
- f. statutorily restricted Department of Motor Vehicle records would not be accessible.

CONCERNS:

The Act dictates that state and local agency records deemed eligible for public disclosure shall be provided to a requester generally within ten days of the request and that "Computer data shall be provided in a form determined by the agency".

Assembly Bill 2799 would instead mandate that electronic records eligible for disclosure be provided in a format **determined by the requester**. This mandate has been proposed six times in the last four years. It has been vetoed three times and amended out of three other bills before they reached the Governor's desk. Each time, opposition from state agencies contributed to this provision's demise.

Requiring that electronic records be provided in a format determined by the requester would burden the DGS, and presumably other state and local agencies, with the responsibility of compiling and sorting the information to fit the requester's specifications. These responsibilities are especially onerous when records must be painstakingly filtered to strike out information exempt from disclosure requirements or not pertinent to a given individual request.

Further, this measure would require an agency to make information available in any electronic format in which it holds that information (if the format is one that has been used by the agency for its own business or for making copies for another agency). This is overly broad and a requester may claim access to information the Act never intended to make publicly available, such as the identities and treatment information of crime victim applicants to the VOC. This information could be in the form of unfiltered spreadsheets or databases that the requester argues constitute a format used by a state agency for its own business. Without safeguards against such claims, this bill could subject the VOC Program and the Government Claims Program to increased litigation to resolve ambiguity in the Act.

REGULATIONS:

Existing law permits agencies to adopt requirements for themselves if those requirements provide for greater, faster, or more efficient access to records than is required by statute.



LEGISLATIVELY MANDATED REPORTS: N/A

COMMISSIONS AND BOARDS: N/A

FISCAL IMPACT:

Existing law provides that an agency may only recover the direct costs of duplicating a record. AB 2799 provides that these direct costs "... shall include costs associated with duplicating electronic records." This would seemingly not cover the cost of staff who must review and pull the information being requested in order to comply with the requester's choice of formats.

NATIONAL INQUIRY: N/A

PRO AND CON ARGUMENTS:

Arguments in Support of the Bill:

The business of government should be open and accessible to the public. Today, the vast majority of records created by state agencies are in an electronic format and easier to retrieve and reproduce. The public should have access to these records when available.

Arguments in Opposition to the Bill:

Under existing law, state agencies may determine what format computer data is to be provided. While fulfilling requests for public information electronically is a worthy policy for state agencies to pursue, it is not good policy to eliminate an agency's discretion in determining the most appropriate format to provide that information.

PROPONENTS/OPPONENTS:

Sponsor:

California Newspaper Publishers Association

Support:

First Amendment Coalition

Opposition:

California Municipal Utilities Association
California State Sheriffs Association
San Bernardino Sheriffs Department
California Association of Clerks and Election Officials

AB 2799
elley**RECOMMENDATION: OPPOSE**

All state agencies should be allowed to maintain discretion in determining the format of electronic records disclosed under the Act. This discretion is already circumscribed by a clear statutory mandate that state agencies shall not inhibit access to public information guaranteed by the Act. To that end, AB 2799 will not improve existing law, but rather, will make existing law ambiguous. Therefore, the Department of General Services recommends an **OPPOSE** position on AB 2799.

Karen Neuwald
Assistant Director—Legislation
Legislation
445-3946

Sherry Williams
Legislative Analyst
327-2268

Happy Chastain
Deputy Secretary—
Legislation, SCSA
653-3111

(SWork:ols.A2779.ana)

(800) 666-1917

LEGISLATIVE INTENT SERVICE



BILL NUMBER: SB 48
VETOED DATE: 10/09/1999

October 9, 1999

To Members of the California State Senate:

I am returning Senate Bill No. 48 without my signature.

This bill would authorize the Attorney General to issue an opinion on the validity of a State or local agency's denial of a request for information under the California Public Records Act.

I am signing Assembly Bill No. 427 which clarifies that no state agency, commissioner, or officer, shall employ legal counsel other than the Attorney General, or one of his assistants or deputies, in any matter in which they are interested, or a party to, as a result of office or official duties.

Therefore, under SB 48, should the Attorney General issue an opinion adverse to a state agency or department which ultimately leads to litigation, the Attorney General may not be able to represent an agency that it has already opined against.

SB 48 creates an Attorney General appeals process that will lead to inherent conflicts of interest between the Attorney General and his major clients, the state agencies and departments. Consequently, this bill could result in uneven legal representation and increased use of costly outside counsel by the agency or department.

Finally, the costs to comply with this bill would be borne by the General Fund and would likely be significant. Therefore, I am vetoing this bill.

Sincerely,

GRAY DAVIS

LEGISLATIVE INTENT SERVICE (800) 666-1917



BILL NUMBER: SB 1065
VETOED DATE: 10/10/1999

To the Members of the Senate:

I am returning Senate Bill 1065 without my signature.

This is well-intentioned legislation. However, many of the state's computer systems do not yet have the capacity to implement the provisions of this bill.

As such, this bill does not keep faith with previous legislation I have signed to protect the confidentiality of citizens whose personal information is maintained by state departments including the Employment Development Department, the Department of Motor Vehicles, the Department of Health Services, and the California Highway Patrol.

I believe 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.

Cordially,

GRAY DAVIS

(800) 666-1917

LEGISLATIVE INTENT SERVICE



BILL NUMBER: AB 179
VETOED DATE: 10/12/1997

To the Members of the California Assembly:

I am returning Assembly Bill No. 179 without my signature.

This bill would amend the California Public Records Act to require state agencies to provide "a copy of an electronic record in the form requested, unless, in light of surrounding circumstances, it is not reasonable to do so..." It does not change the public's right of access to government documents, but only restricts the agency's discretion as to the form of the document made available.

Government agencies receive hundreds of Public Records Act requests every month. They are most often not from ordinary citizens, but from political candidates or special interest groups searching for information. Government employees spend thousands of hours each year responding to the requests-segregating the requested documents from exempt documents, such as those which invade other citizens' personal privacy. Taxpayers pay for the time expended searching for and segregating these records. However, state agencies are presently permitted to determine the form in which computer data is provided.

This bill creates a new inflexible mandate by requiring the agency to provide the electronic data in the form requested, unless it is "unreasonable" to do so, without ever defining the breadth of that exemption, thereby leaving it open to litigation. A request that an electronic record be provided in a particular form may require additional expense, burden, and time to segregate the public data from the exempt data, but the bill provides no guidance whether or to what extent that additional burden makes it "unreasonable."

Agencies should make available to the public all documents to which public access is granted. But we need not add costs and rigidity to these obligations by specifying the form in which it will be done.

Cordially,

PETE WILSON

LEGISLATIVE INTENT SERVICE (800) 666-1917



BILL NUMBER: SB 74
VETOED DATE: 10/12/1997

To the Members of the California Senate:

I am returning Senate Bill No. 74 without my signature.

This bill would amend the California Public Records Act to require state agencies to provide "a copy of an electronic record in the form requested, unless, in light of surrounding circumstances, it is not reasonable to do so..." It does not change the public's right of access to government documents, but only restricts the agency's discretion as to the form of the document made available.

Government agencies receive hundreds of Public Records Act requests every month. They are most often not from ordinary citizens, but from political candidates or special interest groups searching for information. Government employees spend thousands of hours each year responding to the requests-segregating the requested documents from exempt documents, such as those which invade other citizens' personal privacy. Taxpayers pay for the time expended searching for and segregating these records. However, state agencies are presently permitted to determine the form in which computer data is provided.

This bill creates a new inflexible mandate by requiring the agency to provide the electronic data in the form requested, unless it is "unreasonable" to do so, without ever defining the breadth of that exemption, thereby leaving it open to litigation. A request that an electronic record be provided in a particular form may require additional expense, burden, and time to segregate the public data from the exempt data, but the bill provides no guidance whether or to what extent that additional burden makes it "unreasonable."

Agencies should make available to the public all documents to which public access is granted. But we need not add costs and rigidity to these obligations by specifying the form in which it will be done.

Cordially,

PETE WILSON

LEGISLATIVE INTENT SERVICE (800) 666-1917



AB 2799 (Shelley): Public records: disclosure (Amended: 04/27/2000)
 Action: 05/08/2000 ASM APPROPRIATIONS From committee: Do pass and re-refer to Com. on APPR. Re-referred. Ayes 12. Nocs 2. May 8.

Location: ASM APPROPRIATIONS

Calendar: 05/17/2000 ASSEMBLY APPROPRIATIONS

<u>Office</u>	<u>Sub-Offices</u>	<u>Position</u>	<u>Agency</u>	<u>Assigned To</u>	<u>Letters</u>
ALL DEPTS	ALL DEPTS	DFEH-FaxNar-3/23		DISTEFANO	PIFC-O-4/6/0
	PEND; FTB comp	/0			PIFC-N-5/2/0
		FTB-Pending-4/4/0			
		A-Defcr to			
		DGS-5/1/0			
		DGS-O-5/16/0			
		<u>Governor's</u>			

History:
 05/08/00 From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 12. Nocs 2.) (May 8).
 05/02/00 Re-referred to Com. on G.O.
 04/27/00 Joint Rule 61 (b)(5) suspended.
 04/27/00 From committee chair, with author's amendments. Amend, and re-refer to Com. on G.O. Read second time and amended.
 04/24/00
 04/10/00 In committee: Set second hearing. Failed passage. Reconsideration granted.
 03/16/00 In committee: Set, first hearing. Hearing canceled at the request of author.
 02/29/00 Referred to Com. on G.O.
 02/28/00 From printer. May be heard in committee March 30.
 Joint Rule 54 suspended. Assembly Rule 49(a) suspended. Read first time. To print.

LEGISLATIVE INTENT SERVICE (800) 666-1917



STATE AND CONSUMER SERVICES AGENCY

BILL ANALYSIS

Department Franchise Tax Board	Author Shelley	Bill Number AB 2799
Sponsor	Related Bills AB1099 99/00 SB1065 99/00	Amendment Date 4/27/00
Subject Public Record Disclosure/Make Available in Electronic Format if Available & When Requested		

(See Attached)

LEGISLATIVE INTENT SERVICE (800) 666-1917

DEPARTMENTS THAT MAY BE AFFECTED:

STATE MANDATE

GOVERNOR'S APPOINTMENT

Board Position: <input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR <input checked="" type="checkbox"/> PENDING	Agency Secretary Position: <input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR DEFER TO <u>DGS</u>	GOVERNOR'S OFFICE USE Position Approved <input type="checkbox"/> Position Disapproved <input type="checkbox"/> Position Noted <input type="checkbox"/>
Franchise Tax Board Staff Date <i>Roger Lackey</i> 5/17/00	Agency Secretary SIGNED Date HAPPY CHASTAIN JUN 5 2000	By: _____ Date _____

NO ANALYSIS REQUIRED

Franchise Tax Board

Author: Shelley Analyst: Darrine Distefano Bill Number: AB 2799
Related Bills: See Prior Analysis Telephone: 845-6458 Y 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	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	<input checked="" type="checkbox"/> PENDING

Franchise Tax Board Staff

Date

[Signature] 5/17/04

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LEGISLATIVE INTENT SERVICE (800) 666-1917

AB 2799 (Shelley): Public records: disclosure (Amended: 04/27/2000)
 Action: 05/17/2000 ASM APPROPRIATIONS Do pass as amended. Ayes: 17 Noes: 02 PASS

Location: ASM APPROPRIATIONS

Calendar:

<u>Office</u>	<u>Sub-Offices</u>	<u>Position</u>	<u>Agency</u>	<u>Assigned To</u>	<u>Letters</u>
ALL DEPTS	ALL DEPTS	DFEH-Fax Nar-3/23		DISTEFANO	PIFC-O-4/6/0
	PEND; FTB comp	/0		FTB-LACKEY	PIFC-N-5/2/0
		FTB-Pending-4/4/0			
		A-Dcfer to			
		DGS-5/1/0			
		DGS-O-5/16/0			
		FTB-Pending-5/17/			
		0			
		<u>Governor's</u>			

History:

05/08/00 From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 12. Noes 2.) (May 8).
 05/02/00 Re-referred to Com. on G.O.
 04/27/00 Joint Rule 61 (b)(5) suspended.
 04/27/00 From committee chair, with author's amendments: Amend, and re-refer to Com. on G.O. Read second time
 04/24/00 and amended.
 04/10/00 In committee: Set second hearing. Failed passage. Reconsideration granted.
 03/16/00 In committee: Set, first hearing. Hearing canceled at the request of author.
 02/29/00 Referred to Com. on G.O.
 02/28/00 From printer. May be heard in committee March 30.
 Joint Rule 54 suspended. Assembly Rule 49(a) suspended. Read first time. To print.

LEGISLATIVE INTENT SERVICE (800) 666-1917



STATE AND CONSUMER SERVICES AGENCY

BILL ANALYSIS

Department Franchise Tax Board	Author Shelley	Bill Number AB 2799
Sponsor	Related Bills AB1099 99/00 SB1065 99/00	Introduction Date 2/28/00
Subject Public Record Disclosure/Make Available In Electronic Format If Available & When Requested		

(See Attached)

LEGISLATIVE INTENT SERVICE (800) 666-1917

DEPARTMENTS THAT MAY BE AFFECTED:

STATE MANDATE

GOVERNOR'S APPOINTMENT

Board Position: <input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR <input checked="" type="checkbox"/> PENDING	Agency Secretary Position: <input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR <input checked="" type="checkbox"/> OFFER TO SIGNIFY	GOVERNOR'S OFFICE USE Position Approved _____ Position Disapproved _____ Position Noted _____
Department Director <i>[Signature]</i> Date 4/4/00	Agency Secretary <i>[Signature]</i> Date MAY -1 2000	By: _____ Date _____

ANALYSIS OF ORIGINAL BILL

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 type="checkbox"/> PENDING
	<i>[Signature]</i>	

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03/1/00 11:39 AM

LEGISLATIVE INTENT SERVICE (800) 666-1917

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.



AB 2799 (Shelley): Public records: disclosure (Introduced: 02/28/2000)
Action: 03/16/2000 ASM GOVERNMENTAL ORGANIZATION Referred to Com. on G.O.

Location: ASM GOVERNMENTAL ORGANIZATION

Calendar:
04/10/2000 ASSEMBLY GOVERNMENTAL ORGANIZATION

<u>Office</u>	<u>Sub-Offices</u>	<u>Position</u>	<u>Agency</u>	<u>Assigned To</u>	<u>Letters</u>
ALL DEPTS	ALL DEPTS PEND; FTB comp	DFEH-FaxNar-3/23 /0 FTB-Pending-4/4/0 <u>Governor's</u>		DISTEFANO	

History:
 03/16/00 Referred to Com. on G.O.
 02/29/00 From printer. May be heard in committee March 30.
 02/28/00 Joint Rule 54 suspended. Assembly Rule 49(a) suspended. Read first time. To print.

4/18

Would require any state or local agency that has public information in an electronic format to provide that information to the public in that same format. FTB has not taken a formal position here, but it doesn't appear that they have any concerns. We may want to wait for DCA + DGS instead of forwarding this FTB analysis. (hot issue - Gov vetoed last year)

LEGISLATIVE INTENT SERVICE (800) 666-1917



Personal Insurance Federation of California

California's Personal Lines Trade Association
REPRESENTING THE LEADING AUTOMOBILE AND HOMEOWNERS INSURERS

RECEIVED

APR 12 2000

STATE AND CONSUMER
SERVICES AGENCY

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

BOARD

Bill Mellick, Chairman
20th Century Insurance
Mary Nuehaus, Vice Chairman
Progressive Insurance Companies
Greg Jones, Treasurer
State Farm
John Conatum, Secretary
Farmers
Jim Fuddy
SAFECO

STAFF

Dan Dunmoyer
President
Phyllis Marshall
Vice President of Legislative
& Regulatory Affairs
Diane Colborn
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.

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LEGISLATIVE INTENT SERVICE



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



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

(800) 666-1917

LEGISLATIVE INTENT SERVICE



DEPARTMENT OF CONSUMER AFFAIRS
FISCAL ANALYSIS OF LEGISLATION

DISTRIBUTED

9/8/00

DATE: AUGUST 31, 2000 DATE ASSIGNED: AUGUST 25, 2000
 Prepared By: Nancy E. Campbell Bill Number: AB 2799
 Phone number: 323-7237 Author: Shelley
 Approved by: Pamela S. West Date Approved: 9-7-00
 FISCAL ANALYSIS AS ENROLLED: 08-25-00 Short Title: Public Records: Disclosure

OFFICE OF INFORMATION SERVICES: Fiscal Impact? YES NO If "Yes, attach OIS fiscal
 OIS Reviewer: Conrad Lara DATE: _____ Analysis and assumptions.

ANALYSIS AND FISCAL ASSUMPTIONS:

See Attached Fiscal

LEGISLATIVE INTENT SERVICE (800) 666-1917

SUMMARY OF FISCAL IMPACT:	
<input checked="" type="checkbox"/>	Insignificant fiscal impact (under \$10,000).
<input type="checkbox"/>	No Fiscal Impact
<input type="checkbox"/>	Minor fiscal impact. Can be absorbed within existing resources.
<input type="checkbox"/>	Ongoing cost of:
<input type="checkbox"/>	See below for fiscal impact.

	<u>2000/01</u>	<u>2001/02</u>	<u>2002/03</u>	<u>Ongoing</u>
EXPENDITURES	\$ _____	\$ _____	\$ _____	\$ _____
OIS COSTS	_____	_____	_____	_____
REVENUE	\$ _____	\$ _____	\$ _____	\$ _____

PROGRAM CONTACT: _____ Phone number: _____

PROGRAM CONCURS: YES NO _____ (If no, note differences as appropriate.)

EXISTING LAW

Under the existing law a "public record" includes any writing containing information relating to the conduct of the public's business, which is prepared, owned, used, or retained by any state or local agency. All public records are subject to inspection, by any person, at any time during normal business hours, except as specified in the Public Records Act (PRA). The law states that if a public agency denies the access to a public record, the agency that denies the record is required to justify the reason. The agency must clarify how the record is exempt from the provisions of the PRA, or convey the circumstances of how the public interest is served best, by not making the record public, clearly outweighs the public's interest of disclosing the record. The law also gives the court special authority to make a record public, when a public official's decision not to disclose a public record, is not justified.

SUMMARY OF AB 2799

If approved, AB 2799 would:

- Become effective on January 1, 2001.
- 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 the agency must follow these guidelines.
 - Information must be available in any electronic format in which it holds the information.
 - A copy of an electronic record must be available in the format requested, if the requested format is one that has been used by the agency for its own use.
 - An agency will not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- Require the person requesting the public record to pay for the cost associated with the duplication of the record.
- Extend the time to respond to a request of a public record, in some circumstances, for 14 days after the initial 10 days.
- Provides for a reverse balancing test which will grant the courts and state agencies the authority to disclose any public record if the agency or superior court determines that the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.

Continued on the next page.



FISCAL IMPACT

- Bureaus store public records in DCA's Central Records Unit (CRU). The CRU provides copies of public records in CD-ROM and diskette format and are accessible electronically, there are only a few records, which are only available in hard copy format.
- Boards that store public records in an electronic format are able to provide a copy of the record in the same electronic format in which it is stored, and therefore could comply with the provisions of AB 2799.
- Existing law authorizes state agencies to charge the requestor the direct cost for processing the request. This could include the time spent locating the record, segregation of the record, and cost of materials such as diskettes, etc. Although AB 2799 would have a minimal and absorbable fiscal impact since the DCA charges fees to offset the cost of providing the copies, DCA's Boards/Bureaus may need to increase reimbursements if the need becomes significant enough.



Introduced by Senator Bowen

February 26, 1999

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, as introduced, 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.



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 ~~Computer data shall be provided in a form determined~~
19 ~~by the agency.~~

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



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

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

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

12 (d) Nothing in this chapter shall be construed to
13 permit an agency to obstruct the inspection or copying of
14 public records. Any notification of denial of any request
15 for records shall set forth the names and titles or positions
16 of each person responsible for the denial.

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

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

24 6253.2. (a) Unless otherwise prohibited by law, any
25 agency that has information that constitutes an
26 identifiable public record that is in an electronic format
27 shall make that information available in an electronic
28 format when requested by any person and, when
29 applicable, shall comply with the following:

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

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

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



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

4 SEC. 3. No reimbursement is required by this act
5 pursuant to Section 6 of Article XIII B of the California
6 Constitution because a local agency or school district has
7 the authority to levy service charges, fees, or assessments
8 sufficient to pay for the program or level of service
9 mandated by this act, within the meaning of Section 17556
10 of the Government Code.

11 Notwithstanding Section 17580 of the Government
12 Code, unless otherwise specified, the provisions of this act
13 shall become operative on the same date that the act
14 takes effect pursuant to the California Constitution.

O



AMENDED IN SENATE APRIL 27, 1999

SENATE BILL

No. 1065

Introduced by Senator Bowen

February 26, 1999

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, as amended, 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.

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 but only to the extent reasonably necessary to the proper
33 processing of the particular request:



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

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

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

12 (d) Nothing in this chapter shall be construed to
13 permit an agency to obstruct the inspection or copying of
14 public records. Any notification of denial of any request
15 for records shall set forth the names and titles or positions
16 of each person responsible for the denial.

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

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

24 6253.2. (a) Unless otherwise prohibited by law, any
25 agency that has information that constitutes an
26 identifiable public record that is in an electronic format
27 shall make that information available in an electronic
28 format when requested by any person and, when
29 applicable, shall comply with the following:

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

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

38 (b) *Nothing in this section shall be construed to*
39 *require the public agency to reconstruct a report in an*



1 *electronic format if the agency no longer has the report*
2 *itself available in an electronic format.*

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

6 ~~(e)~~

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

10 SEC. 3. No reimbursement is required by this act
11 pursuant to Section 6 of Article XIII B of the California
12 Constitution because a local agency or school district has
13 the authority to levy service charges, fees, or assessments
14 sufficient to pay for the program or level of service
15 mandated by this act, within the meaning of Section 17556
16 of the Government Code.

17 ~~Notwithstanding Section 17580 of the Government~~
18 ~~Code, unless otherwise specified, the provisions of this act~~
19 ~~shall become operative on the same date that the act~~
20 ~~takes effect pursuant to the California Constitution.~~

O



Senate Bill No. 1065

Passed the Senate May 25, 1999

Secretary of the Senate

Passed the Assembly September 3, 1999

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 1999, at _____ o'clock ____M.

Private Secretary of the Governor

└



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



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



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



Approved _____, 1999

Governor



VOLUME 1
CALIFORNIA LEGISLATURE
AT SACRAMENTO
1999-2000 REGULAR SESSION

SENATE FINAL HISTORY

SHOWING ACTIONS TAKEN IN THIS SESSION ON ALL SENATE BILLS
CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT RESOLUTIONS
AND SENATE RESOLUTIONS

CONVENED DECEMBER 7, 1998
ADJOURNED SINE DIE NOVEMBER 30, 2000

DAYS IN SESSION 240
CALENDAR DAYS 725

LIEUTENANT GOVERNOR
President of the Senate

SENATOR JOHN L. BURTON
President pro Tempore

Compiled Under the Direction of
GREGORY SCHMIDT
Secretary of the Senate

By
DAVID H. KNEALE, ESQ.
History Clerk

LEGISLATIVE INTENT SERVICE (800) 666-1917



S.B. No. 1065—Bowen.

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

1999

- Feb. 26—Introduced. To Com. on RLS. for assignment. To print.
- Feb. 27—From print. May be acted upon on or after March 29.
- Mar. 1—Read first time.
- Mar. 18—To Com. on JUD.
- April 7—Set for hearing April 20.
- April 26—From committee: Do pass as amended, but first amend, and re-refer to Com. on APPR. (Ayes 6. Noes 0. Page 830.)
- April 27—Read second time. Amended. Re-referred to Com. on APPR.
- May 6—Set for hearing May 17.
- May 18—From committee: Do pass. (Ayes 9. Noes 3. Page 1215.)
- May 19—Read second time. To third reading.
- May 25—Read third time. Passed. (Ayes 31. Noes 7. Page 1354.) To Assembly.
- May 26—In Assembly. Read first time. Held at Desk.
- June 17—To Com. on G.O.
- 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.
- Aug. 19—From committee: Do pass. (Ayes 18. Noes 3.) Read second time. To third reading.
- Aug. 31—Placed on inactive file pursuant to Assembly Rule 78.
- Sept. 1—Notice of motion to remove from inactive file given by Assembly Member Romero.
- Sept. 2—From inactive file to third reading file.
- Sept. 3—Read third time. Passed. (Ayes 68. Noes 6. Page 3839.) To Senate.
- Sept. 3—In Senate. To enrollment.
- Sept. 10—Enrolled. To Governor at 11 a.m.
- Oct. 10—Vetoed by Governor.
- Oct. 11—In Senate. To unfinished business. (Veto).

2000

- Jan. 10—Stricken from Senate file. Veto sustained.



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

SB 1065	S
Senator Bowen	B
As Introduced	
Hearing Date: April 20, 1999	1
Government Code	0
GMO:jt	6
	5

SUBJECT

Public Records: Electronic Format

DESCRIPTION

This bill would require a public agency that keeps a record in an electronic format to make that information available in an electronic format, when requested, as follows:

- a) the record would be provided in the same electronic format it is held;
- b) the agency would provide a copy of the electronic record in the requested format if the format has been used to create copies for its own use;
- c) the agency would not be permitted to make information available only in electronic format

No records kept by the Department of Motor Vehicles would be accessible, if a statute prohibits access.

BACKGROUND

This bill reintroduces the substance of AB 179 (Bowen) of the 1997-98 session, that was vetoed by Governor Pete Wilson. The veto message indicated that AB 179 would have "added costs and rigidity" to the public agencies' obligations [to respond to requests for information under the Public Records Act], and AB 179 would have engendered litigation because the bill did not define what would be an "unreasonable" request of the agency in terms of additional burden.



CHANGES TO EXISTING LAW

The Public Records Act allows an agency to provide computer data in any form the agency determines. The act directs a public agency, upon request for inspection or a copy of the records, to respond to a request within 10 days after receipt of the request. [Government Code section 6253.]

This bill would eliminate the reference to computer data in the current law and create a separate section dealing with data in electronic format. It would require the public agency to provide records kept in electronic format to be provided in electronic format when requested. If the requested electronic format is how the data is formatted or copied for use by the agency or other agencies, the agency would be required to provide copies in that format. Authority would be given to charge for direct costs of duplication of the electronic records.

The bill would also make clear that the agency would not be permitted to make records available only in electronic format and that no records kept by the Department of Motor Vehicles would be accessible to the public, where access would be restricted by statute.

COMMENT

1. Need for the bill

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 no current authority under which a person seeking electronically available records could obtain such records in that format. This means that if an agency makes 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 print-outs 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.

Additionally, the author claims that public agencies are making profit centers out of making copies of documents that are already available on disk or other electronic format – so that the public, having already paid for the creation of those documents, are charged a second time for getting copies of the documents. The author cites the Department of Industrial Relations, which makes approximately \$200,000 per year selling workers' compensation records.

This bill would make it possible for those records in electronic format to be available in the same format – i.e., CD or disk or whatever electronic format would be available in the future.

2. Governor's veto message: undue burden on the public agency?

The governor's veto message for AB 179 cited undue burdens that would be created for public agencies attempting to respond to requests for data in electronic format.

SB 1065 may not create the nightmare the governor's veto feared, since the agencies creating data in electronic format would be required to make that data available in the same format, only if it is so requested and only if the requested format is the same format used by the agency to duplicate the record for itself and for other agencies.

That means if the agency copies the data in CD form, it would have to provide the data in the same form, if so requested. But if it prints out the data from the CD disk as the copy that would be distributed to other agencies, the person requesting the data in CD form could not get it, except as print-outs or copies of print-outs.

3. Target records to be duplicated

The author targets voluminous documents as those public records to which the public should have access in the electronic format, citing the city budget, environmental impact reports, or minutes from a Board of Supervisor's meeting, as documents that should be available on disk or the internet. Especially because these documents were created at 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 on to a disk or accessed on the internet. Most public agencies say they do not charge for costs of staff time and equipment when they charge duplication costs.

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. 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 records accessible to the public.



4. Agency cannot make information available only in electronic format

To ensure that this bill is not interpreted to limit access to public records, a provision in the bill would state that the requirement to provide data in an electronic format if requested, and if available in that format, would not permit a public agency to make information available only in electronic format.

5. DMV records protected

This bill would specifically exempt from its coverage DMV records to which access would otherwise be restricted.

6. Related legislation

AB 1099 (Shelley) will do practically the same thing as SB 1065, but goes further in that it would prohibit any state or local public agency, by January 1, 2000, from leasing or purchasing any electronic data processing system that would impair or impede the public's access to the records, electronically or otherwise.

Support: Society of Professional Journalists; Sierra Club (California)

Opposition: None Known

HISTORY

Source: Author

Related Pending Legislation: AB 1099 (Shelley) 1999-00

Prior Legislation: AB 179 (Bowen) 1997-98, vetoed



1999-2000

COMPLETE BILL HISTORY

BILL NUMBER : S.B. No. 1065
 AUTHOR : Bowen
 TOPIC : Public records: electronic format.
 TYPE OF BILL :

ACTIVE BILL	NON-URGENCY
NON-APPROPRIATION	2/3
STATE-MANDATED LOCAL PROGRAM	FISCAL
NON-TAX-LEVY	

BILL HISTORY

1999

Oct. 11 In Senate. To unfinished business. (Veto)
 Oct. 10 Vetoed 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.



11/10/99

Page 1

BILL NUMBER: SB 1065

VETOED DATE: 10/10/99

To the Members of the Senate:

I am returning Senate Bill 1065 without my signature.

This is well-intentioned legislation. However, many of the state's computer systems do not yet have the capacity to implement the provisions of this bill.

As such, this bill does not keep faith with previous legislation I have signed to protect the confidentiality of citizens whose personal information is maintained by state departments including the Employment Development Department, the Department of Motor Vehicles, the Department of Health Services, and the California Highway Patrol.

I believe 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.

Cordially,

GRAY DAVIS

LEGISLATIVE INTENT SERVICE (800) 666-1917



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

SB 1065	S
Senator Bowen	B
As Introduced	
Hearing Date: April 20, 1999	1
Government Code	0
GMO:jt	6
	5

SUBJECT

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This bill would require a public agency that keeps a record in an electronic format to make that information available in an electronic format, when requested, as follows:

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BACKGROUND

This bill reintroduces the substance of AB 179 (Bowen) of the 1997-98 session, that was vetoed by Governor Pete Wilson. The veto message indicated that AB 179 would have "added costs and rigidity" to the public agencies' obligations [to respond to requests for information under the Public Records Act], and AB 179 would have engendered litigation because the bill did not define what would be an "unreasonable" request of the agency in terms of additional burden.



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The bill would also make clear that the agency would not be permitted to make records available only in electronic format and that no records kept by the Department of Motor Vehicles would be accessible to the public, where access would be restricted by statute.

COMMENT

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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 no current authority under which a person seeking electronically available records could obtain such records in that format. This means that if an agency makes 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 print-outs 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.

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Support: Society of Professional Journalists; Sierra Club (California)

Opposition: None Known

HISTORY

Source: Author

Related Pending Legislation: AB 1099 (Shelley) 1999-00

Prior Legislation: AB 179 (Bowen) 1997-98, vetoed





SIERRA CLUB

C A L I F O R N I A

Gov 1065/S

April 13, 1999

Senator Adam Schiff, Chair
Senate Judiciary Committee
State Capitol, Room 5080
Sacramento, CA 95814

**SB 1065 (Bowen)
SUPPORT**

Dear Chairman Schiff:

Sierra Club California supports SB 1065 (Bowen), which would require public records to be made available in electronic format. Currently, members of the public can receive copies of public records upon request. This bill simply amends existing law to require state and local agencies to make public records available in an electronic format, when the records exist in such format

Making public records available electronically will encourage the public to participate in their government. Electronic information flow will allow citizens to receive government documents with more speed and with less use of paper than before. Additionally, it is cheaper to provide long documents on disk than on paper.

As electronic information flow increases in importance, SB 1065 will help to provide the public a larger quantity and a better quality of public records information.

On behalf of the Sierra Club, I urge your support on SB 1065 (Bowen).

Sincerely

William J. Craven
State Director

cc: Members, Senate Judiciary Committee
Senator Bowen

(800) 666-1917

LEGISLATIVE INTENT SERVICE



GMD

1005/s

SPJ

SOCIETY OF PROFESSIONAL JOURNALISTS

NORTHERN CALIFORNIA CHAPTER

FREEDOM OF INFORMATION COMMITTEE

Co-chairs:

**Elizabeth Pritzker,
Staff Counsel
First Amendment Project**

(510) 208-7744

**Dan Borenstein,
Political Editor
Contra Costa Times**

(925) 943-8248

BY FACSIMILE AND U.S. MAIL TO:

April 15, 1999

Honorable Adam Schiff, Chair
Senate Judiciary Committee
State Capitol, Room 5080
Sacramento, CA 95814
[via facsimile to: 916/324-7543]

APR 15 1999

re: Support of SB 1065 (Public Records: electronic format)

Dear Senator Schiff:

The Society of Professional Journalists, Northern California Chapter (SPJ), wishes to express its wholehearted support for Senate Bill 1065 (Bowen), which is set for hearing before the Committee on the Judiciary on Tuesday, April 20, 1999, at 1:30 p.m., in Room 4203.

SB 1065 is a vital and important extension of the Public Records Act decree that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in the state." Govt. Code § 6250. As every legislator, journalist and citizen knows, the business of government--like business everywhere--is quickly moving away from the desk top, and on to the desktop computer. SB 1065 is crucial to ensuring that the public's "right-to-know" keeps pace with these technological and informational reforms. --

SB 1065 promotes accountability and efficiency in government. It fulfills the Public Records Act's objective of increasing public access to public information held in electronic form, while at the same time reducing the burden--and expense--of having agency staff assemble, retrieve and duplicate paper records for requesters.

SPJ strongly urges a "yes" vote on Senate Bill 1065.

Sincerely,



Elizabeth Pritzker
Co-Chair, Freedom of Information Committee, Northern California Chapter of SPJ

cc: Gene Wong, Chief Counsel, Senate Judiciary Committee [via fax to 916/445-8390]
Senator Debra Bowen [via fax to 916/327-2201]

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California Newspaper Publishers Association

1225 8th Street, Suite 260, Sacramento, CA 95814-4809
(916) 443-5991 • Fax (916) 443-6447

10695
GMD

April 14, 1999

APR 15 1999

Honorable Debra Bowen
California State Senate
State Capitol, Room 4040
Sacramento, CA 95814

RE: Support SB 1065 (Bowen)

Dear Senator Bowen

I am writing on behalf of the California Newspaper Publishers Association to express our support of your **SB 1065**, which would amend the California Public Records Act to require state and local agencies to make electronically-held public records available to the public in an electronic format. **SB 1065** is scheduled to be heard by the Senate Judiciary Committee on April 20.

Both government and private business have found it no longer makes sense -- economically or functionally -- to keep information printed on paper locked up in metal file cabinets. Instead, virtually every state and local agency governed by the California Public Records Act is now holding a significant portion of the public's records electronically. The Act now gives very little guidance on how electronic format public records should be made available to the public. Under current law, a single sentence reads:

"Computer data shall be provided in a form determined by the agency."

It is obvious to CNPA that this 30 year old provision has little relation to how the world works in the late 1990s. **SB 1065** would give both government agencies and the record-requesting public needed guidance by providing that electronic format records should be made available in the electronic format requested "if the requested format is one that has been used by the agency to create copies for its own use or for provisions to other agencies." **SB 1065** would not require agencies to make records available in any format that they have not already used for their own purposes.

CNPA looks forward to working with you to ensure the governor's signature approval of **AB 1234**.

Sincerely,


Thomas W. Newton
CNPA General Counsel

cc: Honorable members of the Senate Judiciary Committee
Jack Bates, CNPA Executive Director
Bill Niese, General Counsel, Times Mirror Corp.
Jim Ewert, CNPA Legal Counsel
Richard Rios, Consultant, Assembly Governmental Organization Committee

LEGISLATIVE INTENT SERVICE (800) 666-1917



April 16, 1999



1100 K Street
Suite 101
Sacramento
California
95814

Telephone
916.327.7500
Facsimile
916.441.5507

The Honorable Debra Bowen
Member of the Senate
4040 Capitol Building
Sacramento, CA 95814

APR 16 1999

RE: SB 1065 - Oppose unless amended
Set for hearing April 20, Senate Judiciary Committee

Dear Senator Bowen:

The California State Association of Counties (CSAC) must unfortunately take an oppose unless amended position to SB 1065, your measure regarding duplication of public records in electronic formats.

SB 1065 would require any agency that maintains identifiable public records in an electronic format to make that information available electronically. This bill closely tracks AB 179 from the 1997-98 legislative session. As you know, CSAC participated actively in discussions of that bill, and ultimately a consensus was reached that allowed us to remove our opposition.

Regrettably, the current form of SB 1065 lacks a critical provision that would preserve the discretion of local agencies to not provide a document in an electronic format when it is not feasible to do so. The language (underlined below) that was included in AB 179 relating to this provision reads as follows:

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

6253.2 (a) ...

(2) Each agency shall provide a copy ... for provision to other agencies. The agency is not required to provide a copy in the format requested if, in light of surrounding circumstances, it is not reasonable to do so.

We understand that you would prefer to narrow the provision above to define the specific technical or operational circumstances under which such a denial is appropriate. Counties report, however, that the number of variables and the complexity of the relational, multi-dimensional database formats in use prevent them from identifying all situations in which providing an electronic image of a public record is not feasible.

Secondly, we appreciate the fact that in Section 6253.2(a)(2) your measure attempts to address costs incurred by the agency. However, we seek further clarification on the matter of direct costs of duplication. There are activities related to document duplication, including redaction, cost of equipment, and hardware and software needs *directly*

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required for producing the requested information. These activities often ca potentially significant cost and it would be important to define with greater spec what costs can be recovered.

CSAC hopes these comments are useful, and we look forward to working with y address counties' concerns related to this measure. We will continue to solicit c input on the provisions above and will contact you with more specific proposals as are developed. Please do not hesitate to contact me at 327-7500, ext. 513, or Eliz Howard at 327-7500, ext. 537, with any questions. Thank you.

Sincerely,



Rubin R. Lopez
Legislative Representative

cc: The Honorable Adam Schiff, Chair, Senate Judiciary Committee
Members and Counsels, Senate Judiciary Committee

(800) 666-1917

LEGISLATIVE INTENT SERVICE



STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL

COPY

April 12, 1999

Honorable Debra Bowen

S.B. 1065 — Conflict

Supplemental

The above measure, introduced by you, which is now set for hearing in the
Senate Judiciary Committee ✓
appears to be in conflict with the following other measure(s):

- A.B. 515 - Wright
- A.B. 1099 - Shelley

**ENACTMENT OF THESE MEASURES IN THEIR PRESENT FORM MAY GIVE RISE TO
A SERIOUS LEGAL PROBLEM WHICH OFTEN CAN BE AVOIDED BY APPROPRIATE
AMENDMENTS.**

**WE URGE YOU TO CONSULT OUR OFFICE IN THIS REGARD AT YOUR EARLIEST
CONVENIENCE.**

Very truly yours,
BION M. GREGORY
LEGISLATIVE COUNSEL

By: Corrections Section
PH: 445-0430

cc: Committee
named above
Each lead author
concerned

LH: 1184 SP - 12

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STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL

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RECEIVED

APR 13 1999

April 8, 1999

Honorable Debra Bowen

S.B. 1065 — Conflict

The above measure, introduced by you, which is now set for hearing in the
Senate Judiciary Committee ✓
appears to be in conflict with the following other measure(s):
A.B. 1099 - Shelley

**ENACTMENT OF THESE MEASURES IN THEIR PRESENT FORM MAY GIVE RISE TO
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Very truly yours,
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By: Corrections Section
PH: 445-0430

cc: Committee
named above
Each lead author
concerned

LH: 1185 SP - 13

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SENATE RULES COMMITTEE

AB 179

Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

THIRD READING

Bill No: AB 179
Author: Bowen (D)
Amended: 7/1/97 in Senate
Vote: 21

SENATE GOVERNMENTAL ORG. COMMITTEE: 7-1, 7/8/97
AYES: Burton, Hughes, Karnette, Knight, Rosenthal,
Thompson, Dills
NOES: Maddy
NOT VOTING: Calderon, Greene, Lewis

SENATE APPROPRIATIONS COMMITTEE: 8-4, 9/4/97
AYES: Johnston, Alpert, Burton, Calderon, Karnette, Lee,
McPherson, Vasconcellos
NOES: Johnson, Kelley, Leslie, Mountjoy
NOT VOTING: Dills

ASSEMBLY FLOOR: 63-8, 6/4/97 - See last page for vote

SUBJECT: Public records

SOURCE: Author

DIGEST: This bill requires any agency that has
identifiable public records in an electronic format to make
that information available to the public electronically,
unless otherwise prohibited by law. The Department of
Motor Vehicles is exempt from the provisions of this bill.

This bill requires each agency to provide records
electronically to the public if they have been providing
that information electronically for their own use or for



use by other agencies. The agencies are allowed to charge a fee to cover the direct costs of duplicating such as the cost of the disk.

ANALYSIS: Existing law, the California Public Records

Act, provides that any person may receive a copy of any identifiable public record upon payment of fees covering the direct costs of duplication or any applicable statutory fee.

This bill:

1. Stipulates that, unless expressly prohibited by law, any agency that has information that constitutes a public record that is in an electronic format shall make that information available in such a format when requested by any person.
2. Specifies that this electronic access to identifiable public records shall not be construed to permit public access to restricted Department of Motor Vehicles documents.
3. Requires each agency to 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 other agencies or for its own use. (The agency is not required to provide a copy in the format requested if it is not "reasonable" to do so.)
4. Allows agencies to charge for the direct cost of duplicating electronic records.

Prior Legislation

AB 2989 (Bowen) 1995-96 Session. Among other things, would have required all records subject to disclosure under the Public Records Act, and which exist in an electronic format, to be made available electronically. (Failed passage in Assembly policy committee)

AB 142 (Bowen) 1995-96 Session. Would have required any agency that has public records in an electronic format to make that information available in an electronic format, when requested by any person. Also, provided that "vital records" are not authorized to be disclosed. (Failed passage in Assembly policy committee)

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes

Local: Yes



Fiscal Impact (in thousands)

<u>Major Provisions</u>	<u>1997-98</u>	<u>1998-99</u>	<u>1999-2000</u>	<u>Fund</u>
Industrial Relations		\$65		
Revenue loss	\$100	\$200	\$200	Work Comp
Dept. of Corrections				
Revenue loss	\$200	\$200	\$200	General
Other state/local agencies	---Unknown, but significant---Various			

According to the Senate Appropriations Committee analysis:

Many of the agencies affected by AB 179 would incur a loss of revenue currently received by fees charged for copies of information that this bill requires them to provide electronically. Although AB 179 provides that agencies can charge a fee to recover costs of duplication, it does not allow for the recovery of staff time and equipment.

Even though many agencies currently have information available in an electronic format, all of that information is not necessarily public. According to the Department of Corrections, separating exempt from non-exempt material can be very time consuming and therefore very costly while diverting personnel away from performing other mandated functions.

The analysis also notes that this bill does not prohibit a third party from obtaining public record information electronically and then selling it for profit.

SUPPORT: (Verified 9/4/97)

-
- Barbary Coast Investigations and Security
 - Benoit Investigations (San Jose, CA)
 - Bruce A. Haskett & Associates (Long Beach, CA)
 - California Association of Licensed Investigators
 - California Financial Services Association
 - California Land Title Association
 - California Newspaper Publishers Association
 - California State Genealogical Alliance -- Sacramento Valley Region
 - Child Quest International, Inc.
 - Code 4, Incorporated (Ventura, CA)
 - Common Cause



Cynthia Erdelyi Investigations, CPI, CIP (Fawnskin, CA)
Daniel Y. Jones Professional Investigations (Sherman Oaks, CA)
Danny Davis Investigations (Riverside, CA)
F.W. Huntington & Associates
F.B. Jalosky & Associates (Garden Grove, CA)
G.A.B. Investigations (Pleasanton, CA)
Global Projects, LTD. (Marina del Rey, CA)
Golden State Investigations (Walnut Creek, CA)
Hoy & Associates Insurance Investigations (Folsom, CA)
Intelle Quest Investigations
Investigative Counsel Unlimited (San Anselmo, CA)
Investigative Dynamics, Inc.
Investigative Services (Sacramento, CA)
I.R.S.C., Inc. (Fullerton, CA)
JHRI, Inc. (Fullerton, CA)
JSM Enterprises (Mountain View, CA)
Klopper Investigations (San Jose, CA)
Krout and Schneider, Inc.
Lassen Investigative Services (Susanville, CA)
Legal Research Services Investigations, Inc. (San Jose, CA)
Maher & Maher Investigations (Arroyo Grande, CA)
Medical Board of California
Microsearch, Inc. (Cypress, CA)
Multidimensional Investigations (Red Bluff, CA)
Passanisi Investigations (San Francisco, CA)
Perrin Investigative Service (San Diego, CA)
Planning and Conservation League
R.J. Frasco Agency, Inc. (Burbank, CA)
Saraceno Investigations (Rancho Palos Verdes, CA)
Sierra Club
Specialized Investigations (Van Nuys, CA)
Specter Investigative Services (Santa Maria, CA)
Will Rogers, Columnist -- Leader Newspapers
Greater Los Angeles Press Club
Information Resource Service Corporation
Vital Statistics Analyses
Western League of Savings Institutions
Numerous other businesses and private citizens

OPPOSITION: (Verified 9/4/97)

County of Madera
Department of Corrections
Department of Motor Vehicles
Department of Parks and Recreation
League of California Cities
Department of Industrial Relations
Department of Forestry and Fire Protection
Department of Justice



Contra Costa Water District
Department of Water Resources
Department of Corporations
Office of Real Estate Appraisers

ARGUMENTS IN SUPPORT: The author believes that

government should respond to public inquiries in electronic form because it encourages civic participation. In addition, the author states that it is less costly to provide long documents on a computer disk rather than paper; however, government agencies "deny electronic access as a way of reducing easy access to the public who scrutinize government."

Proponents contend that this bill will not be onerous because it only requires that public records already held in an electronic format, be supplied in an electronic format to requesters. In addition, proponents emphasize that this measure would not impose large costs on government agencies because it allows agencies to charge for direct costs of electronic duplication.

ARGUMENTS IN OPPOSITION: Opponents claim that this bill

would create a significant fiscal and administrative burden for local government. Opponents contend that this bill does not allow for the recovery of staff time and equipment to duplicate the data, only for the recovery of direct costs, such as charging for a disk. Opponents also argue that this bill may result in a public subsidy of businesses (e.g. newspapers, realtors, etc.) that can afford to pay for such services. In addition, opponents point out that this bill does not protect any public entity from being required to provide electronic information which can then be sold or otherwise manipulated for private profit.

ASSEMBLY FLOOR:

AYES: Alquist, Aroner, Ashburn, Baca, Baldwin, Battin, Baugh, Bowen, Bowler, Brown, Caldera, Campbell, Cardoza, Cunneen, Davis, Ducheny, Escutia, Figueroa, Firestone, Floyd, Gallegos, Goldsmith, Granlund, Havice, Hertzberg, Honda, House, Kaloogian, Keeley, Knox, Kuehl, Kuykendall, Lempert, Leonard, Margett, Martinez, Mazzone, McClintock, Miller, Morrissey, Murray, Napolitano, Oller, Ortiz, Pacheco, Perata, Poochigian, Prenter, Richter, Scott, Shelley, Strom-Martin, Sweeney, Takasugi, Thomson, Torlakson, Villaraigosa, Vincent, Wayne, Wildman, Woods, Wright, Bustamante

NOES: Ackerman, Alby, Bordonaro, Brewer, Leach, Morrow, Runner, Thompson

NOT VOTING: Aguiar, Cardenas, Frusetta, Machado, Migden,



SENATE COMMITTEE ON JUDICIARY
Adam Schiff, Chairman

BACKGROUND INFORMATION REQUEST

Measure: SB 1065

Author : Senator Bowen

1. Origin of the bill:

- a. Who is the source of the bill? What person, organization, or governmental entity requested introduction?

The author.

- b. Has a similar bill been before either this session or a previous session of the legislature? If so, please identify the session, bill number and disposition of the bill.

AB 179 (Bowen) of 1997 - vetoed. AB 1099 (Shelley) of 1999 is similar to this.

- c. Has there been an interim committee report on the bill? If so, please identify the report.

2. What is the problem or deficiency in the present law which this bill seeks to remedy?

~~State & local agencies are~~ See attached

3. Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by committee staff.

4. Please attach copies of letters of support or opposition from any group, organization, or governmental agency who has contacted you either in support or opposition to the bill.

5. If you plan substantive amendments to this bill prior to the hearing, please explain briefly the substance of the amendments to be prepared.

None are planned

6. List the witnesses you plan to have testify.

None are lined up.

RETURN THIS FORM TO: SENATE COMMITTEE ON JUDICIARY
Phone (916) 445-5957

STAFF PERSON TO CONTACT: Evan Goldberg, 445-5953

STATE CAPITOL
SACRAMENTO CA 95814-4906
(916) 445-5953

2512 ARTESIA BLVD.
SUITE 200
REDONDO BEACH, CA 90278
(310) 318-6994

E-MAIL
SENATOR.D.BOWEN@SEN.CA.GOV

California State Senate

SENATOR
DEBRA BOWEN

TWENTY-EIGHTH SENATORIAL DISTRICT

REPRESENTING THE COMMUNITIES OF
CARBON, COMPTON, EL SEGUNDO, HARBOR CITY, HERMOSA BEACH, LOMITA, LONG BEACH,
MANHATTAN BEACH, MARINA DEL RAY, PALOS VERDES ESTATES, PLAYA DEL RAY, REDONDO
BEACH, TORRANCE, VENICE, WESTCHESTER, AND WILMINGTON.

CHAIRWOMAN
ENERGY, UTILITIES, &
COMMUNICATIONS

MEMBER
AGRICULTURE &
WATER RESOURCES

APPROPRIATIONS

CONSTITUTIONAL
AMENDMENTS

HOUSING & COMMUNITY
DEVELOPMENT

NATURAL RESOURCES
& WILDLIFE

REVENUE & TAXATION

SB 1065 (Bowen)



The goal of the bill is to require state and local agencies to make available electronic copies of public records if they have the record in an electronic format. It doesn't require them to computerize their records, nor does it require them to provide the public record in an electronic format that they don't have available to them.

The key question is the language regarding the "cost of duplication." For paper records, the cost is statutorily capped at a per page rate (although some would argue that many state and local agencies have found loopholes to get around that cap). However, there is no cap on electronic copies and many agencies have used that omission as a way to turn the electronic duplication of public records into a profit center.

The author believes that the taxpayers have already paid once to create the record. Therefore, they shouldn't be charged a premium in order to get an electronic copy of it. Plus, agencies shouldn't be allowed to factor the cost of every piece of equipment, employee, utility bill, etc. into determining the "cost of duplication."

This is a re-introduction of AB 179 (Bowen) from 1997, which was vetoed by Governor Wilson.

I'm attaching press clips and background from that bill, because a majority of it is relevant to SB 1065.

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LEGISLATIVE INTENT SERVICE



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GOVERNOR SLAMS DOOR SHUT ON COMPUTER ACCESS TO PUBLIC RECORDS

COMMENTARY -- Bowing to the will of state agencies that turn a profit by selling electronic copies of public records, Governor Wilson vetoed AB 179 by Assemblywoman Debra Bowen (Orange/Marina del Rey), which sought to give people electronic access to public records for less than the cost of duplicating the record.

"If you believe the taxpayers should have low cost, electronic access to the public records, why do you pay them to create or you don't. Clearly, the Governor is more interested in padding the pockets of his bureaucracy than he is in making it easier for people to gain access to their government," said Bowen. "State and local governments shouldn't be in the business of turning a profit by selling these records back to the taxpayers -- especially when, in many instances, it costs less to provide the record electronically than it does to provide it on paper."

AB 179 sought to change the Public Records Act to require government agencies to provide the records electronically if it's available electronically. The bill wouldn't have required government agencies to computerize paper records, but would have required them to provide the record in the electronic format in which it had the record. AB 179 would have allowed government agencies to charge only the "direct cost of duplication" -- the same standard that applies to paper copies of records -- and prohibited agencies from making a profit by selling records.

It is somewhat ironic that one day after patting himself on the back as Mr. Democracy for signing the bill to give people electronic access to political campaign reports, the Governor turns around and vetoes a bill to give voters electronic access to all computerized public records," said Bowen. "How can he, on the one hand, support free electronic access to political campaign reports, then on the other hand, oppose low cost electronic access to all public records under the pretext that it will cost too much?"

"Getting a city's budget, an environmental impact report or minutes from a Board of Directors' meeting on disk or via the Internet is more useful for many people than getting it on paper," said Bowen. "It doesn't make sense to stand at a copy machine for ten minutes to copy a page report when you can copy it onto a disk in ten seconds. If we're trying to encourage citizens to get involved and strengthen our democracy, we have to make participation in government easier, not more costly."

"Not only people who opposed this common sense approach were government agencies who own the records -- they -- not the taxpayers -- own the public records and ought to be able to sell them at a profit," noted Bowen. "The Department of Industrial Relations makes \$200,000 a year by selling workers' compensation records. Taxpayers paid to create these records and they shouldn't have to pay more than the cost of duplication when they want a copy of the record."

AB 179 was approved on bi-partisan votes in both houses of the Legislature -- 71-6 in the Assembly and 26-7 in the Senate.

Office: State Capitol • P.O. Box 942849 • Sacramento, CA 94249-0001 • (916) 445-8528
District Office: 18411 Crenshaw Blvd., Suite 280 • Torrance, CA 90504 • (310) 523-4831

Many state agencies take the 'public' out of public records

By STEVE GEISSINGER
The Associated Press

SACRAMENTO — State government knows, but it won't tell you.

Want to see the computerized accident records showing how many people died on a particular stretch of California freeway? Forget it, says the Transportation Department. Caltrans attorney Scott Burns said even asking for the agency's records was unreasonable.

Yet another agency — the Highway Patrol — agreed to disclose the identical information, along with all of the other information about accidents contained in a broader database known as the Statewide Integrated Traffic Report System, for about \$125 in processing costs.

How about the information amassed by the Water Resources Control Board on pits or ponds where toxic materials have been discharged? Not available, at least not from a single source.

Meanwhile, a form letter for requesting the information — worded exactly as suggested by the California Newspaper Publishers Association — was criticized by a water resources board attorney as "one of the rudest requests I've seen."

One outfit in California's secretive government is so secret it won't even identify its clients, let alone what it does for them: The Teale Data Center, the state's largest computer facility, was asked for records showing who has given it data to process.

Director Chong Ha replied only with a list of the 352 state units that are authorized to use the center — essentially all of state government. The center declined to specify which, if any, of the authorized users had asked it to process data, or describe the numbers it had crunched.

For one reason or another, many of the records amassed at taxpayer expense aren't available to the public, an Associated Press survey found. Moreover, few of the available records are in an electronic form compatible with the age of computers and the Internet.

"I'm hardly shocked," said Assemblywoman Debra Bowen, D-Marina del Rey. "I think it's just not

a priority in many agencies. Sometimes it's staffing problems. Sometimes it's other things.

"Overall for the state, access to public records and particularly electronic records has not been a priority," she said.

In all, the AP asked 29 agencies for electronic copies of 69 sets of records described in "Paper Trails," a 1996 guide to California public records by investigative reporters Stephen Levine and Barbara Newcombe.

The requests were made under the California Public Records Act, which is aimed at helping ensure public access to government documents.

In writing their book, Levine and Newcombe asked the agencies themselves to

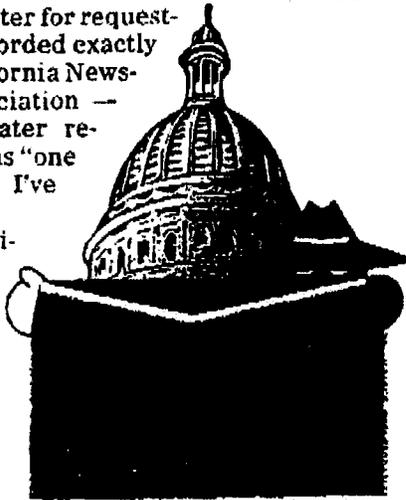
describe the databases they maintained, so that — ideally — the people seeking the records and the agency officials handling the requests would be starting from common-ground.

It doesn't always work that way, however. The Corrections Department, asked to supply prison and parole records the agency told "Paper Trails" it maintains, told the AP that it did not keep such records.

The first follow-up phone message with further details to department spokesman Tip Kindel went unreturned. Kindel later acknowledged the existence of the records, but said some aren't computerized and others can't be disclosed because the department won't remove the few items that would violate inmates' privacy.

If you're interested in details about fatal accidents on the job, don't look to state government. Industrial Relations Department Director Dorothy Vuksich says federal privacy rules prevent her from releasing details on the deaths of California workers.

Nor can the public see the database that shows who's providing what kind of farm labor housing. Allowing access to the data



Gary Newman/Santa Rosa (Calif.)
The Press Democrat via AP

Davis
Enterprise
8-10-97

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LEGISLATIVE INTENT SERVICE



could open the door for someone to counterfeit employee housing permits, according to the Department of Housing and Community Development. The record storage format would provide the basics for forged permits, officials said.

Of the 29 agencies, only seven — about a fourth — said they could supply every requested record, either in electronic form or on paper.

"Access to records is critical because it gives the public an eye into what's happening with their government," said Bowen. "It's the way we ensure the proper working of government in a democracy."

But the administration of Republican Gov. Pete Wilson sees the issue as "a pesky little detail that nobody's very interested in working on," Bowen said.

Wilson spokesman Ron Low said, however, that the administration takes the Public Records Act very seriously.

"The Public Records Act is important and we lead by example by giving requests all due attention," Low said.

"We cannot oversee and moderate all the requests that come into the state agencies and departments, but we demand and insist that they follow the letter and the spirit of the Public Records Act law," he said.

About half the surveyed agencies met the 10-day deadline under the Records Act for some kind of response. But many of the responses simply said their agencies needed more time to consider the requests or complained that the request had been too vague.

Complaints of vagueness were countered by explaining to agencies that the AP had used the agencies' own descriptions of the records they maintain, as reported in "Paper Trails."

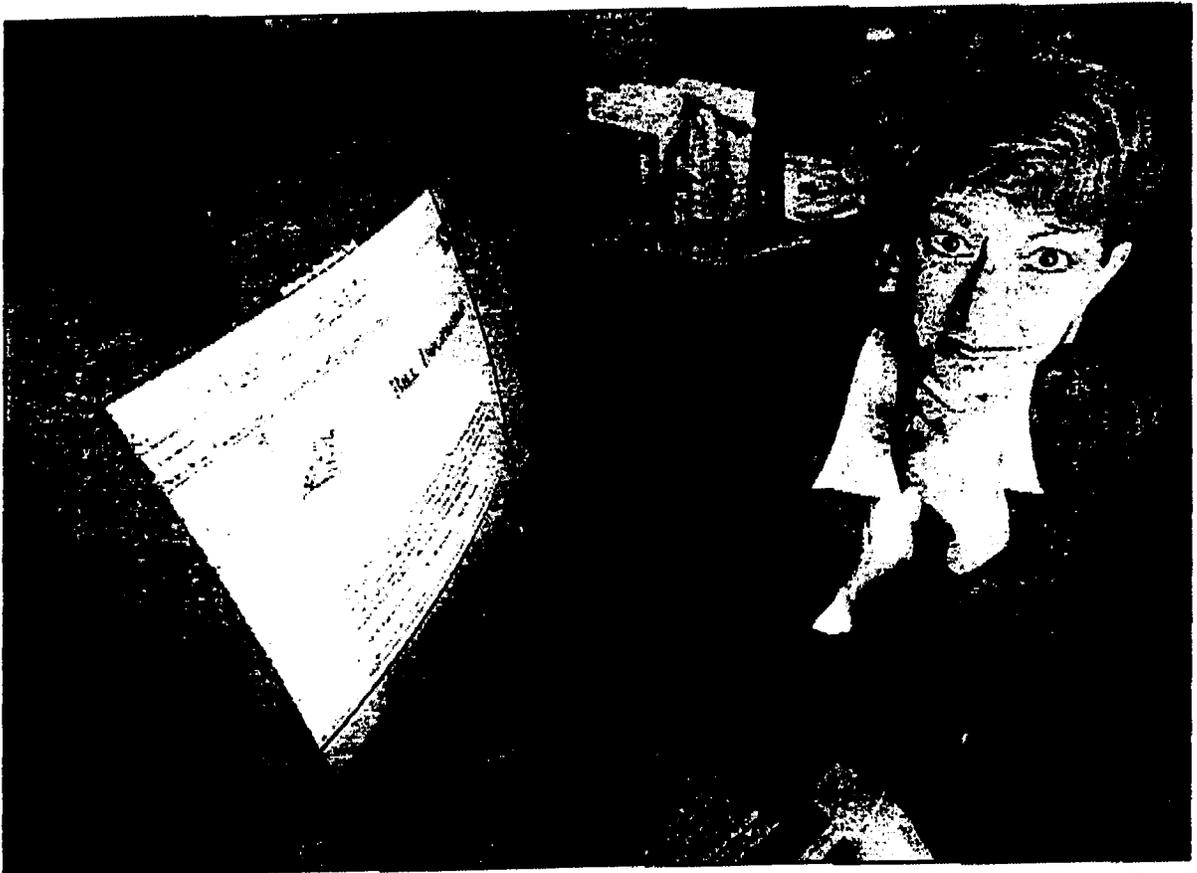
Some agencies then set about investigating "Paper Trails," rather than focusing on the records request. Molly Arnold, an attorney for the Department of Housing and Community Development, said her agency had determined the full title of the guide and identified its authors and publishers.

She said the investigation included identifying all references in the book to her "department's functions, the functions of some of the department's programs and some of the department's reports."

Levine, who is also a writer at the Center for Investigative Reporting in San Francisco, said the departments' reactions point to a bigger problem.

"People working in government agencies do not often understand the public records law or have a clear sense that the information they work with is public," he said.

Some databases that sounded interesting have been abandoned by the state, due to problems such as a lack of funds and technical difficulties.



The Associated Press
Assemblywoman Debra Bowen, D-Marina del Rey, pauses in her state Capitol office recently. Bowen has sponsored legislation to open up more state government records to the pu

One of the defunct databases, for example, was to contain applications from distinguished minorities and women who were candidates for corporations looking to integrate their governing boards. A lack of funds to properly administer the database led to its downfall.

Among the agencies ready to disclose records, there emerged a few champions of open government. Foremost was the Office of Emergency Services. Nobody performed more quickly or more publicly.

Four days after it was asked for a computer database on hazardous material spills, the office complied in an unexpected manner: It put the information on its web site for everyone to access through the Internet. (The address is <http://www.oes.ca.gov:8001>.)

In the quest for databases, even if they were available, there was sometimes another hitch. The cost of some — especially electronic databases — was outside the reach of the average taxpayer.

The typical cost of available databases was in the hundreds of dollars. The cost is supposed to be only the direct expense of duplication, but that can include pricey mainframe computer-run time.

The most expensive was the \$4,000 price tag for the Secretary of State's Uniform Commercial Code files, containing information such as tax liens against businesses.

The second most expensive — at \$2,500, plus \$1,500 a year for updates — was the Fish and Game Department's Wildlife Habitat Relationships Databank, which predicts the wildlife likely to occur in a given area.

On the other hand, six computer disks arrived free of charge, though they contained limited details.

They came from the Department of Food and Agriculture, Franchise Tax Board, Public Employees' Retirement System, Department of Fish and Game, Department of Aging and Department of Pesticide Regulation.

The disks contained vastly simplified summaries of data rather than the raw information itself. In some cases, the departments did not specify the software program needed to access the disks.

Availability and price are major factors in acquiring a database. Working out the format, including software type, and the storage vehicle — such as tape, cartridge, diskette, or compact disc — can also be tricky. There is no standard format for the state.

Nobody knows the percentage of state records available in electronic format, according to Bowen. She has a bill pending in the Legislature that would require government agencies to provide public records in an electronic format if they are already computerized.

Perhaps the best method of providing access is putting the records on the Internet, which Bowen said is a growing trend in state government. But legislation she has drafted that would require Internet posting has been defeated the past two years due to government objections about possible costs.

Yet another challenge in obtaining government records lies in working around the parts of the files that are secret because of personal privacy concerns.

For instance, the Public Employees' Retirement System said it could supply records on monthly payments to 300,000 pensioners. But the agency said privacy restrictions would force it to delete everything but the numerical listing of monthly check amounts.

Levine says government's hostility toward public records requests usually stems from the agency's poor understanding of its own records.

Caltrans attorney Scott Burns' response to a records request was

among the most disapproving.

"The courts look with disfavor upon burdensome, unfocused and unspecific demands for voluminous information," Burns wrote in response to the request for accident information — the same information the Highway Patrol said it could easily supply. "They also have respected the right of state agencies to avoid 'entering the printing business' by imposing reasonable guidelines and restricting requests to copies of specific information or documents.

"Unfortunately, your request was neither reasonable nor specific."

Then there was the reply from Darryl East of the Fair Political Practices Commission, in denying a request for electronic copies of audits of campaign spending reports:

"Your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosures."

Public records aren't so public anymore

Santa Cruz Sentinel
8-12-97

■ **PUBLIC RECORDS:** Instead of using computers to make more information public, governments are doing the opposite.

THE ONLINE world has made more and more information about our government available to the average citizen. But with progress has come problems, and increasingly, information that the citizenry deserves is being withheld.

The Associated Press recently completed an exhaustive report on how state agencies are withholding information from the public — information that the state says is too sensitive to release.

The state's transportation department, Caltrans, refused to consider an AP request to release information about the most dangerous stretch of highway in the state. A Caltrans attorney, in fact, said even requesting the data was inappropriate.

But the AP turned around and requested the same information from the California Highway Patrol, which willingly turned it over.

A couple years ago, the Sentinel wanted to find out how many licensed guns were registered in Santa Cruz County. We didn't ask who owned them — just how many were out there. The agency in charge told us, politely, that it was none of our business. It makes you wonder — why shouldn't the public know how many licensed weapons are in our midst?

Such is the case with many such requests. AP wanted to know about fatal accidents on the job, but the Industrial Relations Department refused. Nor can the public view the database showing details about farm-labor housing.

Closer to home, Santa Cruz County has been reluctant to give up computerized data. Officials generally offer one of two explanations: confidentiality concerns and expense. County officials say that preparing computerized information is often too expensive. They also say that the release of the information is a profit center for the county — that they sell data to private companies.

What they fail to realize is that the information generated is done at public expense, and that the public has a right to it.

Unfortunately, government officials — elected and appointed — rarely understand what open government entails. They also tend to look at computerized data differently from the old-time paper documents. In fact, technology has changed the way information looks — but it still deserves to be available to the public.

Often, the issue of open government is left to media organizations to argue over, but in fact, it's not a press issue. Government information should be available to all whenever possible — and for whatever reason. For example, groups opposed to government funding are seen, obviously, as enemies by many elected officials. But they still have a right to the same information as the rest of us.

The California Public Records Act is designed to ensure public access to government documents. But the computer age has rendered parts of the act outdated; officials are saying that they don't have to release information on computer discs and tapes. Assemblywoman Debra Bowen, D-Torrance, has sponsored a bill to ensure that computerized records remain public. The measure, AB 179, has been held up in a Senate committee, and, tellingly, faces opposition from, among others, the League of California Cities and the California State Association of Counties.

The interest group most active in fighting for open government is the California First Amendment Coalition, an organization that began as a service to media outlets. It has grown, and now includes individual members from all over the state.

The group will address the issue of public records at its third annual California First Amendment Assembly, set for Sept. 26 and 27 in San Francisco.

Among the subjects to be covered:

- Practical approaches to obtaining public records.
- Helping to develop openness policies with non-profit groups.
- The right of access versus the right of privacy on the Internet.

Early registration for CFAC members is \$75, and \$95 for non-members. The Sept. 26 event will be at the Freedom Forum in San Francisco, 1 Market St., and the Sept. 27 session will be at the Holiday Inn Golden Gateway, Van Ness Avenue at Pine St.

For more information, write to CFAC at 926 J St., Suite 1406, Sacramento, Calif. 95814.

Public documents are public domain

Santa
Cruz
Sentinel
10-16-97

■ **OPEN GOVERNMENT:** By siding with money-driven state bureaucracy, Gov. Pete Wilson has denied taxpayers easy and low-cost access to computerized public files.

GOV. PETE WILSON has never been a friend to those who favor open government, and he proved it again this week.

The Republican governor signed two bills that were supported by open-government advocates, but rejected a third that would have guaranteed the timely release of computerized public documents.

One of the sponsors of the computerized records bill, Debra Bowen, D-Torrance, immediately criticized Wilson for vetoing her bill, known as AB 179.

Bowen accused Wilson of "bowing to the will of state agencies that turn a profit by selling electronic copies of public records."

"Either you believe the taxpayers should have low cost, electronic access to the public records that they paid to create or you don't," Bowen said in a written statement. "Clearly, the governor is more interested in padding the budgets of his bureaucracy than he is in making it easier for people to gain access to their government."

In vetoing the bill, Wilson issued a statement saying "a request that an electronic record be provided in a particular form may require additional expense, burden and time to segregate the public data from the exempt data."

Wilson's argument makes no sense. In today's world of computerized data, it's more of a burden in most cases for governments to print out computerized data than to hand it over to interested parties in digital form. As Bowen says, "It doesn't make sense to stand at a

copy machine for 10 minutes to copy a 100-page report when you can copy it onto a disk in 10 seconds. If we're trying to encourage people to get involved and strengthen our democracy, we have to make participation in government easier, not more costly."

Wilson did sign two open-government measures that the Legislature had passed during this year's session. One would expand public access to state government meetings by making them subject to the same open-meeting standards required of local governments. That measure has been long overdue.

Wilson also had earlier signed another long-overdue bill to give people electronic access to campaign-contribution information.

But these gains aren't much compared to what could have been gained with mandated public access to computerized documents. Bowen is correct that many agencies — state and local — are protecting these records either because they want them kept private or because they think they can make some extra money by selling them to private companies willing to pay for them.

As Bowen commented, "The only people who opposed this common-sense approach were government agencies who think they — not the taxpayers — own the public records and ought to be able to sell them at a profit."

She said that the state Department of Industrial Relations makes \$200,000 a year by selling workmen's compensation records. "Taxpayers paid to create these records and they shouldn't have to pay more than the cost of duplication when they want a copy of the record."

AB 179 had been approved by 71-6 in the Assembly and 26-7 in the State Senate. We expect that a similar bill will be brought back next year.



PUP
News
10-18-97

Wilson Vote Lacks Consistency

Last Monday, which was Columbus Day, Gov. Pete Wilson had the chance to forge new ground in a key component of the democracy we are proud and fortunate to call our own: public access to government records. But, in one case, he opted to take the safer route — the one clearly preferred by the state agencies he oversees.

Monday must have been quite a busy day for the governor, since it marked the deadline when he had to either sign or veto the hundreds of bills sent to him by the Legislature in the final days of its 1997 session. So perhaps he was not fully cognizant of the discrepancy between saying "yes" to Sen. Betty Karnette's SB 49, The Online Disclosure Act of 1997, and saying "no" to AB 179 by Assemblywoman Debra Bowen, which sought to give the public electronic access to public records for the cost of duplicating the record.

The Senate Bill, which will require that campaign and lobbying reports be made available on the Internet, represents a great advancement in terms of granting the public easy access to vital information. We laud the governor, who had warned of a veto, for signing this important piece of legislation.

Assembly Bill 179 would have constituted a similar advancement had it been signed. It too was designed to increase our access to the government and the people running it. In essence, the bill sought to change the Public Records Act to require government agencies to provide the record electronically if it's available electronically (i.e. on disk or via the Internet).

Both bills were aimed at increasing the public's access to the government agencies and, specifically, to the public records that we already pay for with our tax dollars.

Both bills also received overwhelming bipartisan support in both houses of the Legislature.

Says Assemblywoman Bowen of the governor's decision: "How can he, on the one hand, support free electronic access to political records, then, on the other hand, oppose low-cost electronic access to all

public records under the guise that it will 'cost too much'?"

According to the Associated Press, Wilson said that that the bill would create "a new inflexible mandate" that "may require additional expense, burden and time."

It doesn't take a financial expert to see that it should cost less, not more, to provide the record electronically than it does to provide it on paper. We all use computers and many of us use the Internet, so we understand what's involved here.

It seems much easier to duplicate a file electronically than to require someone to spend 10 minutes at a photocopier reproducing a 100-page report.

The question is: Why hold back information from a certain medium used by the public when it is already available on that medium? What's the point?

AB 179 would have allowed government agencies to charge the direct cost of duplication — the same standard that applies to paper copies of public records — and prohibited agencies from making a profit by selling records.

Perhaps "profit" is the operative word here. The Department of Industrial Relations stated in a letter to Bowen that it opposed AB 179 because it "could cost the Department's Division of Workers' Compensation (DWC) up to \$200,000 in annual lost revenue."

A list of government entities in opposition to the bill includes the departments of Corrections, Motor Vehicles, Industrial Relations, Justice and Water Resources.

Groups supporting the bill include the California Land Title Association, California Newspaper Publishers Association, Common Cause, Medical Board of California, Sierra Club and the Greater Los Angeles Press Club.

Did the governor bow to the will of state agencies that turn a profit by selling electronic copies of public records?

We will never be sure of Wilson's true intent, but his explanation certainly seems to lack the clarity and sound judgment of this bill which, like SB 49, was aimed at strengthening our democracy.

LEGISLATIVE INTENT SERVICE (800) 666-1917

LAT

10-19-97

Squeezing the Information Flow

Two vetoes by Wilson are blows against public's right to know

Gov. Pete Wilson erred last week when he vetoed two bills that had everything to do with the public's legitimate interest in how its government works and little to do with the "special interests" that he argued would be the only beneficiaries of the bills.

The first, sponsored by Sen. Quentin Kopp (I-San Francisco), would have overturned Wilson administration regulations that effectively block news reporters from arranging one-on-one interviews with inmates in state prisons. The governor says that "interviews with prisoners about their crimes tend to glamorize criminal activity." But by that logic, the governor might also contemplate limits on the reporting of testimony in criminal cases.

Wilson also insisted that Kopp's bill gave the press "special access" to information not available to the general public. Is he suggesting that the press' obligation to report openly and fully on the \$3.7-billion, tax-funded prison system is just another self-serving special interest?

The regulations imposed last year will now remain in effect. Reporters can question inmates they encounter at random during prison tours, ask prisoners to call them collect or try to visit during regular visiting hours. But

forget about taking in pens, notebooks, cameras or tape recorders. These unwarranted limits should give every prudent taxpayer pause.

Wilson's veto of AB 179, by Assembly member Debra Bowen (D-Marina del Rey), is similarly misguided. This bill would have required agencies to give Californians electronic copies of public records for the cost of providing those records. The bill applies to public documents generated by cities, counties and the state, including agency budgets, complaints before watchdog agencies against doctors or auto makers, environmental impact statements and industrial accident reports.

State law already guarantees the public access to paper copies of state and local records, charging just for the cost of duplication. And under a bill Wilson wisely did sign this month, beginning next year candidates must file their campaign finance statements electronically as well as in paper form. Those statements will be available on the Internet without charge.

Yet Wilson saw Bowen's bill as creating an "inflexible mandate" on behalf of political candidates or special interest groups. Huh? We urge Kopp and Bowen to try again next year. Perhaps the governor will come around.

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LEGISLATIVE INTENT SERVICE

