

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Shelley Analyst: Darrine Distefano Bill Number: AB 914

Related Bills: See Legislative History Telephone: 845-6458 Introduced Date: 02-23-2001

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Public Records/State Agency Disclose Records if Withholding Would Cause Harm to Public

SUMMARY

This bill would require a state agency or court to disclose records if withholding them would harm the public interest or safety or a person's constitutional rights.

PURPOSE OF THE BILL

The author's staff has indicated that the purpose of this bill is to have agencies or courts disclose information that would be beneficial for public knowledge.

EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2002, and would apply to disclosures made on or after that date.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Federal and state law requires state agencies to comply with strict requirements and guidelines in the use of personal information. The Information Practices Act of 1977 (Civil Code section 1798, et. seq.) and the California Public Records Act (Government Code section 6250, et. seq.) provide measures to assure fair treatment of individuals who are referred to in state agency records.

Board Position:

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Department Director

Date

Gerald H. Goldberg

08/01/01

Currently, the California Public Records Act (the Act) requires that all state and local agencies make their public records available for public inspection during office hours, except as specifically exempted by law. There are a significant number of specific exemptions from disclosure. Some exemptions prohibit the disclosure of certain kinds of information at any time, such as, personnel or medical records, certain geological, geophysical or plant production data obtained in confidence, correspondence of and to the Governor, records related to deliberative processes, and the home addresses and phone numbers of peace officers in licenses to carry firearms. Other exemptions prohibit disclosure for a limited period, such as, records pertaining to litigation until finally adjudicated or settled and records related to certain contract negotiations until the contract is fully executed. The Act further requires that if a state agency withholds any public record, it must demonstrate that 1) the record was exempt from disclosure, or 2) the public interest for nondisclosure outweighed the public interest for disclosure.

The Act allows any person to institute a court proceeding to enforce his or her right to a public record, or class of public records. The Act allows the judge to set time frames with the object of securing an early decision. If the judge finds in favor of the plaintiff, the judge must order the government official to make the record public. If the judge finds that the record was properly withheld from disclosure, the judge shall return the record to the agency without disclosure. This decision may be appealed to the appellate court.

The Act requires a successful plaintiff to be awarded court costs and reasonable attorney fees. However, if the plaintiff's case is found to be frivolous, the court must award costs and fees to the public agency.

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 is provided to a requester.

Existing state law prohibits the disclosure of any taxpayer information, except as specifically authorized by statute. Any Franchise Tax Board (FTB) employee or member responsible for the unauthorized disclosure of state or federal tax information is subject to criminal prosecution. Improper disclosure of state tax information is a misdemeanor and improper disclosure of federal tax information is a felony.

THIS BILL

This bill would require the release of any record, regardless of specific exemption provisions of the Act, if it were found that withholding it would seriously harm the public interest, public safety, or constitutional rights of a person. However, any record that is expressly prohibited from disclosure by law would not be released.

This bill would add the above provision to the Act when the court is petitioned to decide if a public record should be disclosed or not.

IMPLEMENTATION CONSIDERATIONS

This bill would create additional standards under which records would be required to be released. For the tax system to be effective, individuals rely upon FTB to protect their confidential taxpayer information. Although this bill does not require the release of confidential taxpayer information protected under the Revenue and Taxation Code, there are other FTB records, such as external correspondence, internal memorandum, procedures, and other departmental information that are currently exempt from disclosure under the Act. Moreover, if a record were released with information a person believed would be protected under the Act, it would reduce the confidence and trust placed in FTB for the protection of these records.

Under this bill, there could be an increase in requests for records that may lead to litigation. FTB may need additional resources to handle the additional requests and to handle any cases that result from petitions to the court.

LEGISLATIVE HISTORY

SB 48 (Sher, 1999/2000) and SB 2027 (Sher, 1999/2000) would have amended the California Public Records Act to require that state agencies justify the withholding of any record by demonstrating in writing that a record is exempt from disclosure or the public interest is served by not making the record public. These bills would have established a procedure to allow any person to appeal to the Attorney General if a state or local agency denied access to a public record or subverted the intent of either bill by actions short of denial of inspection. The Governor's veto message stated that SB 48 was vetoed because of its interaction with another bill he signed and its potentially significant costs. SB 2027 was vetoed because of the "bureaucratic reporting mechanism" the bill was establishing and its potentially significant costs.

AB 2799 (Shelley, Stats. 2000, Ch. 982) allows a public record to be disclosed if, on the facts of the particular case brought in an action, the public interest is served by disclosing the record.

OTHER STATES' INFORMATION

Review of *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* laws found similar procedures to California's Public Records Act for disclosure of public records.

These states were reviewed because of the similarities between California income tax laws and their tax laws.

FISCAL IMPACT

Departmental costs cannot be determined because it is not known how many records will be requested. Also, FTB costs would rise if a plaintiff is awarded court costs and attorney fees by the court if it is found a record should be disclosed.

ECONOMIC IMPACT

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

POLICY CONCERNS

This bill would permit the judgment of an agency or court to supersede the specific exemptions in existing law. The Act was drafted in order to protect an individual's privacy. Releasing an exempted record could be more detrimental to the public interest, safety, or constitutional rights of any person. This bill would take precedence over the Act that has continually protected individual's rights and privacies. A law that overrides the specific exemptions is contrary to the principle that an individual's information is privileged.

LEGISLATIVE STAFF CONTACT

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