

SUMMARY ANALYSIS OF AMENDED BILL

Author: Leno Analyst: Darrine Distefano Bill Number: AB 2927
 Related Bills: See Prior Analysis Telephone: 845-4142 Amended Date: June 22, 2006
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Public Records Disclosure/State Agency Internet Web Sites/Public Information Center

- DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as amended May 26, 2006.
- AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
- AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as amended May 26, 2006.
- FURTHER AMENDMENTS NECESSARY.
- DEPARTMENT POSITION CHANGED TO _____.
- REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED May 26, 2006, STILL APPLIES.
- OTHER – See comments below.

SUMMARY

This bill would require a state agency to include specific information on its web site about requests for copies of public records.

SUMMARY OF AMENDMENTS

The June 22, 2006, amendments make the following changes:

- Removes the “name” under “Whom to Contact” for requests to inspect or copy public records.
- Requires the written guidelines for requesting records established by state bodies to be posted under the words “How to Request Records.”
- Requires statements of economic interests, employment or consulting contracts, and lawsuit settlements to be posted to the agency’s website within 10 calendar days instead of within five business days.

Board Position:	Legislative Director	Date
<input type="checkbox"/> S	Brian Putler	7/17/06
<input type="checkbox"/> SA		
<input type="checkbox"/> N		
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- Deletes the requirement to post statements of economic interests from individuals who have a significant role in making or recommending decisions for purchasing, contracting, or issuing licenses, or similar official regulatory approvals. Replaces that language with a requirement to post statements of economic interests from all persons employed in a career executive assignment position.
- Modifies the "Lawsuit Settlements" requirement to post the full text of every settlement of civil litigation where the agency is a named party on the web site.
- Excludes publications and mass-produced materials from being posted on the web site under "Records Disclosed This Year."
- Requires an agency to redact the name and personal identifying information of the requester when posting the request, letter, or other communication from a requester on the web site.
- Adds a provision that expressly states that an agency is not required under this section to disclose records that are exempt from disclosure pursuant to the Public Records Act (PRA).
- Allows reimbursement to local agencies and school districts if the Commission on State Mandates determines that this act contains costs mandated by the state.

The June 22, 2006, amendments resolve one of the department's implementation considerations for the bill as amended May 26, 2006. However, the June 22nd amendments result in one revised and four new implementation concerns and a technical concern that are addressed below. The remaining implementation and technical considerations from the April 17, 2006, and May 26, 2006, analyses are provided below for convenience. The department has provided suggestions to resolve some of these considerations as well. In addition, the department's costs have been revised and a suggestion for language to allow a direct appropriation to fund FTB costs. The remainder of the department's analysis of the bill as amended April 17th still applies.

POSITION

Pending.

ANALYSIS

IMPLEMENTATION CONSIDERATIONS

This bill would have a significant impact upon the department. The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

Although the bill changes the timeframe from five business days to 10 calendar days for posting items to the web site, it would be difficult for the department to meet the 10 calendar day requirement without additional personnel. Department staff would need to redact confidential, proprietary, and privileged information before any items can be posted to the web site. The agencies have a reasonable amount of time to produce the responsive records depending on the volume of the record that meet the request currently under the PRA. The author may wish to revise the bill to be consistent with the provisions already under the PRA.

The requirement that information be posted on the department's webpage would be problematic when the 10th calendar day falls on a weekend or holiday. Most state agencies are closed on weekends and holidays. It is recommended that the bill be amended expressly to exclude weekends and holidays.

During the tax season of January through May, the principal contact for taxpayers is through the department's web site. The department must post information timely to the web site for taxpayers to file their tax returns on time. It may be difficult for the department to meet the requirements of the bill and maintain the web site for tax season.

It is unclear what type of contracts for "individual's services" needs to be posted under "Officials Employment or Consulting Contracts." To comply with this provision, the department would post consulting contracts where individual services are provided to the department such as recommendations to improve a business process or purchasing a particular product. These contracts typically list the individual who is providing the service. If the author's intent is different, it is suggested that the bill be amended to expressly describe the type of contracts to be posted to the web site.

Under the provision that describes the HTML form, it is unclear why the bill requires a copy of the request to be sent back to the requester instead of an acknowledgement of receipt.

Below is the remaining concern from the May 26, 2006 analysis:

The amendment adds the term "without inspection," to the "Send me copies of the records" field on the HTML request form. This term is ambiguous because some records are exempt from disclosure by law and the department is required to inspect (review) and redact records for confidential, proprietary, and privileged information before those can be sent to the requester. As written the department would be unable to "send copies of the records without inspection" as required under this bill. If this interpretation is contrary to the author's intent, it is suggested that the term be clarified.

Below are the remaining concerns from the April 17, 2006 analysis:

The statement of economic interests requires state and local government officials and employees to disclose personal assets and income publicly. The statement also includes an employee's full name, address, phone number, and e-mail address. This statement can currently be requested under the PRA. However, disclosure of personal information of this nature via the Internet would potentially expose government employees required to file the statement to increased potential for threats, harassment, and identity theft. Because this information is available to the public when requested, the author may wish to remove this provision to eliminate this concern.

This bill could result in abuse by frivolous activity non-filers. Many requests for records received by FTB are from persons who object to the concept of the state income tax. Requests from such taxpayers are made to waste state resources and to direct FTB personnel away from tax collection duties. The author may wish to add a provision that limits requests made in bad faith and solely to abuse the process. It is also recommended that agencies be allowed to post only the first 10 pages of the requester's request, letter, or other communication to maintain space on computer servers.

It is unclear if the provision requiring a copy of every record disclosed without redaction means only documents released without redaction or all documents regardless of what was redacted. Most PRA records are over 10 pages and would not be posted. The department would interpret this language to mean that only documents that have been redacted will be posted to the web site. If the author's intent is different, it is suggested that the bill be amended expressly to identify the type of redacted records that are to be posted to the web site.

The PRA currently requires an interactive process between the requester and a state agency to clarify, assist, and identify appropriate records. FTB's Disclosure Section ensures the administration of the PRA is carried out by working with a requester if the description of a record is unclear. Under this bill, it appears that the requester could remain anonymous for requests made on the web site. Anonymity of the requester could frustrate the current interactive process in conflict with the PRA. The author may wish to remove the term "optional" from the labeled fields on the HTML form.

Because the bill would make the requester's postal address and phone an optional field on the HTML form used to request documents, it might be difficult or impossible for the department to contact the requester to clarify the request or send paper copies of records. In addition, if the requester only provides an e-mail address, there may be limitations placed by the requestor's Internet Service Provider (ISP) on e-mail size. To ensure the department is able to provide requested records, the HTML form should require the requester's postal address.

It is unclear if the department could make some corrections to the original request for records for clarity purposes before posting the request to the web site or if the request must be posted as originally written. The author may wish to amend the provision to allow agency's the option of making corrections to the original request for clarity purposes.

The term "Public Information Center" could cause confusion for taxpayers that use FTB's web site. This link could appear to taxpayers as a quick link specifically for tax information. The department has conducted usability tests in the past and found that the term "center" could imply anything from a repository to a physical structure. The author may wish to use a term such as "Public Record Requests" or something similar to clearly identify for the public the link to request public records.

FTB uses Google as the general search engine for the department's web site because Google works best for content that is widely linked and frequently requested. It is unclear if the term used in the bill, "text-searchable archive," would require a separate search engine or if Google would satisfy this requirement. Maintenance and updates to a search engine used for a limited purpose could redirect department resources away from other required web site updates, such as tax forms and publications for current year filing. To avoid the additional cost of a separate search engine, the department would create a hierarchy list within the "Archives" link that allows a person to review by year and month all records posted to the web site.

This bill would require the department to post a copy of original requests and requested records on the department's web site. Depending on the document type, the document may need to be scanned for posting on the department's web site. The scanned document may result in a

situation where a person who relies on optical character recognition software (screen readers) could have difficulty hearing the record. In this instance, that person would need either to contact the department directly for a paper copy of the requested record or print their own copy.

The bill specifies that the form must be designed using the HTML format. This would restrict the use of alternative or future technology. Requiring agencies to maintain a format that is obsolete could cause complications and increase costs. The author may wish to amend the provision to specify HTML, alternate, or successor technology.

TECHNICAL CONSIDERATIONS

On page 17, line 9, the word “agency” was inadvertently deleted and needs to be re-inserted to identify a “state agency.”

Below is the concern from the May 26, 2006 analysis:

The author may wish to insert the word “public” in front of “record” so that requests for records under the Information Practices Act (IPA) are directed appropriately. The IPA pertains to an individual’s personal information collected and maintained by an agency. This information can only be disclosed under specified circumstances and usually only to the specified individual.

FISCAL IMPACT

Although the amendment removes the five business day timeframe for posting information to the Internet, the department would still need additional personnel to meet the specified timeframes and respond to requests under this bill. The additional personnel, along with existing staff, would also be required to do the following: create the online form, conduct usability testing, conduct focus group research to identify the best link text and most effective search terms, analyze requests, redact and post requester’s documents, update other documents as required to be filed under this bill, and maintain the web page.

The department’s costs are anticipated to be approximately \$314,396 for two personnel years (PY) in the Disclosure Section, one new PY in Electronic Services Section, and one new PY in the Legal Department.

Amendment 1 is provided to suggest appropriation language to fund the department's costs.

LEGISLATIVE STAFF CONTACT

Darrine Distefano
Franchise Tax Board
(916) 845-4142
darrine.distefano@ftb.ca.gov

Brian Putler
Franchise Tax Board
(916) 845-6333
brian.putler@ftb.ca.gov

Analyst	Darrine Distefano
Telephone #	845-4142
Attorney	Patrick Kusiak

FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 2927
As Amended June 22, 2006

AMENDMENT 1

SEC. 7. The sum of three hundred fourteen thousand three-hundred ninety-six dollars (\$314,396) is hereby appropriated to the Franchise Tax Board in augmentation of its support budget (Item of the Governor's Budget - Chapter ____, Statutes of ____).