

SUMMARY ANALYSIS OF AMENDED BILL

Author: Leno and Maze Analyst: Deborah Barrett Bill Number: AB 1393
 Related Bills: See Prior Analysis Telephone: 845-4301 Amended Date: August 1, 2007
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Public Record Disclosure/State Agency Internet Web Sites/Public Records Center/Authorize Persons To Request To Inspect Or Receive Public Record

- 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 amended June 28, 2007.
- FURTHER AMENDMENTS NECESSARY.
- DEPARTMENT POSITION CHANGED TO _____.
- REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED June 28, 2007, STILL APPLIES.
- OTHER – See comments below.

SUMMARY

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

SUMMARY OF AMENDMENTS

The August 1, 2007, amendments would make clarifying technical changes relating to what a court may consider in determining an award for failure of an agency to provide access to public documents and would exclude from the award calculation the time that a request for an opinion is pending with the Attorney General's office and the time that a court is considering the plaintiff's petition. The August 1, 2007, amendments did not resolve the "Implementation Consideration" that was identified in the department's analysis of the bill as amended June 28, 2007, or include appropriation language to fund the department's costs. The "Suggested Amendment" and "Implementation Considerations" are repeated here for convenience, and the "This Bill" discussion is updated. The remainder of the department's analysis of the bill as amended June 28, 2007, still applies.

Board Position:	Legislative Director	Date
<input type="checkbox"/> S	Brian Putler	8/21/07
<input type="checkbox"/> NA		
<input type="checkbox"/> SA		
<input type="checkbox"/> N		
<input type="checkbox"/> NP		
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<input type="checkbox"/> NAR		
<input checked="" type="checkbox"/> PENDING		

POSITION

Pending.

Summary of Suggested Amendment

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

THIS BILL

This bill would require every state agency that maintains an Internet site to include on the homepage, prominently displayed so it is easily visible without scrolling when viewing the homepage, the words "Public Information Center." Those words would be followed by or would link to another page showing all of the following:

- Under the words "Whom to Contact," the title, mailing address, telephone number, and e-mail address of the public information officer or other person(s) to whom requests for inspection or copying of records or informal requests for simple factual information should be directed.
- Under the words "How to Request Records," the written procedures in the form of guidelines or regulations for accessing public records at the agency and a form in HTML language or comparable alternative technology, for submitting online requests consisting of all the following labeled fields:
 - Today's date.
 - My name (optional).
 - My contact information including at least one of the following:
 - 1) My e-mail address
 - 2) My postal address
 - 3) My telephone number
 - I am interested in the following records or information.
 - Where can I inspect these records?
 - Send me copies of the records.
 - Send me a fee estimate before copying.

The submitted form would be designed to send a copy of the request immediately and automatically to the e-mail address listed on the form, if the email address was provided by the submitter. These requirements are operative as of January 1, 2009.

This bill would allow any person to institute proceedings in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record and to enforce a state agency's duty to post information in its offices or on its Website.

If a court determines that an agency acted in bad faith or with reckless disregard of the agency's obligations in denying access to public records, the court, in its discretion, may make an award not to exceed one hundred dollars (\$100) per day for each day that the agency's action resulted in the denial of the plaintiff's right to copy or inspect the record in question. The bill would exclude from the award calculation the period of time that a request for an opinion is pending with the Attorney General's office or the period of time that a court is considering the plaintiff's petition.

This bill would require a court, when determining an award amount, to consider all the facts and circumstances surrounding the agency's decision including, but not limited to the following:

- Whether the agency unreasonably failed to respond within the set timelines or otherwise engaged in conduct that caused undue delay.
- Whether the agency's justification for denying the request was reasonably based upon its perceived obligation to protect the rights of persons or entities identified in the requested records.
- Whether the agency has developed publicly assessable internal operating procedures and guidelines.
- Whether the plaintiff acted in good faith while pursuing the request.
- Whether the agency's denial or other conduct inconsistent with the provisions of this bill was based on a reasonable interpretation of the law.

This bill would outline the duties of the court if a plaintiff brings an action against an agency for failure to comply with the requirements under this bill.

In addition, this bill would provide for the establishment of an advisory task force that would be convened by the Department of Justice to consider and make recommendations for a statutory standard governing the postings of requests and denials and public documents that are subject to disclosure. The bill prescribes the membership of the task force and also prescribes the issues the task force is to consider. The bill would require the task force to report its findings and recommendations to the Governor and the Legislature by no later than September 30, 2008, at which time the task force would cease to exist.

IMPLEMENTATION CONSIDERATIONS

The bill would require that when a desktop monitor is used, the Public Record Center link must be prominently displayed and viewable on the home page of the web site without scrolling. Because of the variances in users' screen resolutions, FTB cannot ensure that a taxpayer can view the link without scrolling. The author may wish to consider specifying a precise location for the link that is not hampered by variances in screen resolution from one user to another as the method to ensure the bill is administered as the author intends.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 1393
As Amended August 1, 2007

AMENDMENT 1

On page 11, after line 17, insert:

SEC 7. The sum of three hundred and two thousand dollars (\$302,000) is hereby appropriated to the Franchise Tax Board in augmentation of item 1730-001-0001 of the Governor's Budget, Chapter XX, Statutes of XXXX.