

BILL ANALYSIS

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Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	Yee	SB 1696

SUBJECT

California Public Records Act/State Agencies May Not Allow Another Party To Control The Disclosure Of Information Subject To Disclosure

SUMMARY

This bill would do the following:

- Prohibit a state agency from allowing another party to control the disclosure of information that is otherwise subject to the Public Records Act (PRA), and
- Require that a contract entered into by a state or local agency subject to the PRA that requires a private entity to review, audit, or report on any aspect of that agency is a public document.

PURPOSE OF BILL

According to the author's office, the purpose of the bill is to ensure that public records remain accessible to the public.

EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2009. The provisions prohibiting a state agency from allowing another party to control the disclosure of information that is otherwise subject to disclosure under the PRA is declaratory of existing law. Provisions requiring contracts entered into by state or local agencies subject to the PRA that require a private entity to review, audit, or report on any aspect of that agency to be made disclosable under the PRA to the extent otherwise closeable would be operative on January 1, 2009.

Brian Putler, FTB Contact Person (916) 845-6333 (Office)	Executive Officer Lynette Iwafuchi for Selvi Stanislaus	Date 6/24/08
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ANALYSIS

FEDERAL/STATE LAW

Under federal law, the United States (U.S.) Freedom of Information Act (FOIA) ensures public access to U.S. government records. FOIA carries a presumption of disclosure; the burden is on the government to substantiate why information may not be released. Upon written request, federal agencies are required to disclose the requested records, unless they can be lawfully withheld from disclosure under one of the specific exemptions in the FOIA. Federal agencies have 20 days to determine whether the agency is able to comply with the information request and notify the requestor of their determination.

The California Constitution provides that people have the right of access to information concerning the conduct of the people's business. Meetings of public bodies and the writings of public officials and agencies are required to be open to the public for review. Under state law, the PRA is designed to give the public access to information in possession of public agencies. The state agency bears the burden of justifying nondisclosure of requested information. The agency must justify the withholding of any record by demonstrating that the record is exempt or that the public interest in confidentiality outweighs the public interest in disclosure. The state agency has 10 days to determine whether the department possesses records responsive to the request that may be disclosed and to notify the requestor accordingly along with the estimated date and time when the records will be made available.

THIS BILL

This bill would provide, as declaratory of existing law, that a state agency may not allow another party to control the disclosure of information otherwise subject to the PRA. The bill would also provide that any contract entered into by a state or local agency, including the University of California, which requires a private entity to review, audit, or report on any aspect of that agency, is a public document to the extent it is otherwise subject to disclosure under the PRA.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's operations or programs.

LEGISLATIVE HISTORY

AB 721 (Maze, 2007) would have shortened the timeframe within which public agencies must respond to PRA requests when a request comes from a Member of the Legislature. This bill was held in the Assembly Appropriations Committee.

AB 1393 (Leno, 2007) would have required a state agency to include specific information on its web site about requesting copies of public records. This bill was vetoed by Governor Schwarzenegger. The veto message is attached as Appendix A.

Proposition 59, approved by voters November 3, 2004, added provisions to the California Constitution requiring meetings of public bodies and the writings of public officials and agencies to be open to the public for review.

AB 1014 (Papan, Ch. 355, Stats. 2001) requires a state or local agency to estimate the date and time when a public record that can be disclosed will be made available. This law also requires a state or local agency to identify, describe, and assist the requester with reasonable options to obtain records responsive to their request or inquiry.

AB 2799 (Shelley, Ch. 982, Stats. 2000) requires the denial to a request for public records be in writing.

FISCAL IMPACT

Implementing this bill would not significantly impact department programs or operations.

ECONOMIC IMPACT

This bill would not impact state income tax revenues.

VOTES

Assembly Floor – Ayes: 77, Noes: 0

Senate Floor – Ayes: 33, Noes: 1

LEGISLATIVE STAFF CONTACT

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**Appendix A to SB 1696
Prior Legislation Veto Message**

Veto Message for AB 1393

BILL NUMBER: AB 1393
VETOED DATE: 10/11/2007

To the Members of the California State Assembly:

I am returning Assembly Bill 1393 without my signature.

Ensuring access to public information is one of my Administration's top priorities. That is why last year I issued Executive Order S-03-06 (Order), requiring all state agencies to review their guidelines governing access to public information. In addition, the Order required that every agency identify and train staff to be responsible for ensuring compliance with the California Public Records Act.

As I noted in my veto of similar legislation last year, I believe the steps that were taken as a result of the Order, combined with the ongoing efforts of agencies to comply with the law, are working to ensure the needs of the public are met. This bill imposes an unnecessary one-size-fits-all mandate on state agencies. In addition, this bill would require the formation of a task force to consider even more statutory standards to govern the disclosure of public records. Such a task force and such additional statutory changes are also unnecessary. My Administration's commitment to the Public Records Act is unwavering and I am confident future Administrations will share this attitude.

Sincerely,

Arnold Schwarzenegger