

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Negrete McLeod Analyst: Matthew Cooling Bill Number: SB 1324
Related Bills: See Legislative History Telephone: 845-5983 Introduced Date: February 19, 2010
Attorney: Patrick Kusiak Sponsor:

SUBJECT: State Agencies Authorized To Impose Additional Fees For Requests Of Public Records For Commercial Use

SUMMARY

This bill would allow state agencies to impose additional fees relating to search and disclosure review costs of the agencies in connection with public records requests when those records are requested for commercial use.

PURPOSE OF THE BILL

It appears the purpose of this bill is to provide a funding source to mitigate the costs state agencies incur when responding to public records requests made for commercial use.

EFFECTIVE/OPERATIVE DATE

Assuming enactment on or before September 30, 2010, this bill would be effective January 1, 2011, and operative with respect to public records requests made on or after that date.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

The Freedom of Information Act (FOIA) generally provides that any person has the right to request access to federal agency records or information. All agencies of the Executive Branch of the United States (U.S.) Government are required to disclose records upon receiving a written request for them, except for those records (or portions of them) that are protected from disclosure by law. Federal agencies are given 20 days to determine whether the agency is able to comply with the information request and notify the requestor of their determination. FOIA directs each federal agency to provide an electronic access mechanism for disseminating records to the public and requires the federal government to publish a list of its systems of records. The U.S. Department of Justice's Office of Information and Privacy is the principal contact point within the executive branch for advice and policy guidance on matters pertaining to the administration of FOIA. The U.S. Department of Justice's Internet site maintains a list of principal FOIA contacts for each federal agency. The list contains the name of the principal contact, address, phone, and, in some instances, the e-mail address. Each federal agency is responsible for meeting its FOIA responsibilities for its own records.

Table with Board Position (S, NA, NP, SA, O, NAR, N, OUA, X, PENDING) and Department Director (Selvi Stanislaus) and Date (06/21/10).

Under the California Public Records Act (PRA), every person is allowed to inspect and obtain copies of public records that are not exempt from disclosure. If a portion of the record is confidential, the person generally may obtain the remainder of the record after that portion has been redacted.

Currently, the PRA requires that all state and local agencies make public records available for public inspection during office hours, unless exempted by law. 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.

Within ten days after receiving a request for a record, each agency must determine whether the request seeks public records that are in the agency's possession and can be disclosed. In unusual circumstances, the ten-day time limit may be extended. The agency then must provide the requester with a written notice explaining the reasons for the extension and the date on which a determination can be expected to be provided. Upon request of an identifiable record, the agency is required to make the record available promptly to the requester once the duplicating or statutory fee is paid.

In addition, Executive Order S-03-06 signed by Governor Schwarzenegger on March 29, 2006, requires state agencies to establish or review their written guidelines for accessibility of records, identify and designate members of their staff who are primarily responsible for receiving and responding to PRA requests, and submit a written certification to the Legal Affairs Secretary that the designated staff members have been trained on the responsibilities and requirements of the PRA.

THIS BILL

This bill would allow state agencies to impose an additional fee that would cover the costs of staff search and review time, based on an hourly rate, salary, and benefits for each employee involved, if the public records request is for commercial use.

This bill would define the following:

- "Commercial use" means a request for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is being made, with the exception of a representative of the media.
- "Search and review time" means the following:
 - The actual time that staff would spend identifying and locating records,
 - Searching for information within records responsive to a request,
 - Determining if the information can be disclosed, and
 - Making the necessary preparations, including redaction, of the documents before disclosure.

IMPLEMENTATION CONSIDERATIONS

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.

This bill would allow a state agency to impose additional fees when public record requests are made for commercial use unless the requests are made by a representative of the media. It is unclear how the FTB would determine that a request is made for noncommercial use or by a representative of the media. A commercial use requester could simply state that the request is for noncommercial use or that the requester is a journal, newsletter, or other type of media to avoid the fees.

In addition, the bill lacks clarity on the additional fee dispute resolution procedures. If a person makes a public records request and disagrees with the additional fee imposed or with the determination of how the additional fee is calculated, it is unclear how the department would process this dispute. The author may wish to amend the bill to provide clear direction about how to resolve dispute claims made related to public records requests and the additional fee imposed.

LEGISLATIVE HISTORY

AB 721 (Maze, 2007/2008) would have shortened the timeframe within which public agencies must respond to PRA requests when a request comes from a Member of the Legislature. AB 721 was held in the Assembly Appropriations Committee.

AB 1393 (Leno, 2007/2008) would have required a state agency to include specific information on its web site about requesting copies of public records. AB 1393 was vetoed by Governor Schwarzenegger. The veto message is attached as Appendix A.

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.

SB 1696 (Yee, 2007/2008) would have prohibited a state agency from allowing another party to control the disclosure of information that is otherwise subject to the PRA and would have required 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. SB 1696 failed to pass out of the Senate.

FISCAL IMPACT

This bill would not impact the department's costs.

ECONOMIC IMPACT

This bill would not impact state income tax revenue.

LEGISLATIVE STAFF CONTACT

Legislative Analyst

Matthew Cooling

(916) 845-5983

matthew.cooling@ftb.ca.gov

Revenue Manager

Monica Trefz

(916) 845-4002

monica.trefz@ftb.ca.gov

Legislative Director

Brian Putler

(916) 845-6333

brian.putler@ftb.ca.gov

APPENDIX A

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