Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Yee	Analyst:	Janet Jennings	Bill Number:	SB 1002
Related Bills:	See Legislative History	Telephone:	845-3495	Amended Dates:	March 12, 29, and April 9, 2012
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Public Records: Electronic Format

SUMMARY

This bill would create a narrow exception to prevent an agency from charging requestors under the California Public Records Act (CPRA) and would require documents that are made available to the public via the internet to be in an easily accessible format.

This analysis addresses provisions of the bill only as they impact the department.

RECOMMENDATION

No position.

Summary of Amendments

The March 12 and March 29, 2012, amendments made technical changes to the bill.
The April 09, 2012, amendments made various technical changes and removed the requirement for state or local agencies to update software or hardware with products that satisfy specified requirements.

This is the department's first analysis of the bill.

REASON FOR THE BILL

According to the author's office, the purpose of the bill is to provide greater access to government records.

EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2013, and would apply to public record requests made on or after that date.

Board Position:			Executive Officer	Date
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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 are given 20 days to determine whether the agency is able to comply with the information request and notify the requestor of their determination.

Under state law, the CPRA 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 is given 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 continue to allow state agencies to charge for copies of records, but create a narrow exception to prevent an agency from charging requestors under the CPRA for the additional cost to construct a record or the cost of programming and computer services necessary to produce a copy of the record for any of the following:

- Data extraction, but only when the agency is exercising an exemption. Extraction does not include the redaction of exempt information from the electronic record.
- Extraction, compilation, programming, or conversion of data to a different medium if the task is initiated by, and performed for the benefit of, the agency.

Additionally, this bill would require a state or local agency to provide electronic documents or data in an open format when required by law to make the data or documents available to the public.

The bill defines open format as the following:

- Data or documents can be located and downloaded by open-source software or public Internet applications that are available for free, or both.
- Data or the text in the documents is machine readable and can be searched, indexed, organized, categorized, and is otherwise automatically process able.
- Data or documents are available without restrictions that would impede the use of the information.
- Data or documents maintain the integrity of databases and all associated relationships or mappings between data or content.
- Data or documents provide data granularity, definitions, and structured formats in the original quality available to the state or local agency.

The bill defines open-source software as the following:

- Computer software that is provided under a free software license that permits users to study, change, improve, and distribute the software.

IMPLEMENTATION CONSIDERATIONS

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

LEGISLATIVE HISTORY

SB 1696 (Yee, Ch. 62, Stats. 2008) prohibits a state or local agency from allowing another party to control the disclosure of information that is otherwise subject to disclosure under the CPRA. Additionally, the bill specified that regardless of any contract term to the contrary, a contract for the purpose of conducting a review, audit, or report between a private entity and a state or local agency, including the University of California, is subject to the same disclosure requirements and exceptions as other public records under the CPRA.

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

AB 1393 (Leno, Vetoed, 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.

FISCAL IMPACT

This bill would require additional staff to review, prepare, and post documents in the prescribed usable format. As a result, this bill would impact the department's disclosure and web service staffing needs. The additional costs will be developed as the bill moves through the legislative process.

ECONOMIC IMPACT

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

SUPPORT/OPPOSITION

Support: Cal Aware, California Newspaper Publishers Association, AFSCME, and Common Cause.[1]

Opposition: None provided.[2]

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[1] As reported on the authors Fact Sheet for SB 1002.
[2] As reported on the Legislative Counsel's Web site at http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_1002&sess=CUR&house=B&author=yee [as of April 4, 2012]

ARGUMENTS

Proponents: This bill would provide for an easily accessible transparent government by requiring documents published online to be in an open and accessible format.

Opponents: This bill would require additional staffing in state government to meet the bill mandates at a time when the economic conditions are requiring the state government to reduce its workforce.

LEGISLATIVE STAFF CONTACT

Janet Jennings	Titus Toyama
Legislative Analyst, FTB	Interim Legislative Director, FTB
(916) 845-3495	(916) 845-6333
janet.jennings@ftb.ca.gov	titus.toyama@ftb.ca.gov