

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: DeSaulnier Analyst: Janet Jennings Bill Number: SB 1337
Related Bills: See Legislative History Telephone: 845-3495 Amended Dates: April 3, & April 21, 2014
Attorney: Bruce Langston Sponsor: _____

SUBJECT: FTB Shall Include Signed Statement by Executive Officer When Submitting Reports to the Legislature or State Legislative Body/State Agencies; Provide Requested Disclosable Public Records ASAP & No Later Than 30 Days

SUMMARY

This bill would modify the due dates of public records requests and information required in legislatively mandated reports.

RECOMMENDATION

No position.

Summary of Amendments

The April 3, 2014, amendments removed provisions of the bill related to electronic copies to media requests, and replaced them with the provisions discussed in this analysis.

The April 21, 2014, amendments removed the provision that would have required public records maintained in an electronic format by a state agency to be provided in that electronic format, and added a provision specifying the deadline for a state agency to provide a response to a public record request.

This is the department's first analysis of the bill. This analysis only addresses the provisions of this bill that impact the department's programs and operations.

REASON FOR THE BILL

The reason for this bill is to increase transparency and accountability in state government by providing a specified period for a state agency to respond to a California Public Records Act (Act) request and to ensure that the Legislature receives accurate and trustworthy information from the various state agencies, departments, and boards.

EFFECTIVE/OPERATIVE DATE

The bill would be effective January 1, 2015. The reports requirement would be operative as of the effective date, January 1, 2015.

Board Position:

_____ S _____ NA X NP
_____ SA _____ O _____ NAR
_____ N _____ OUA

Executive Officer

Date

Selvi Stanislaus

5/13/14

ANALYSIS

FEDERAL/STATE LAW

Under state law, the Act requires that all state and local agencies make their 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 10 days after receiving a request for a record, each agency must determine whether the request seeks public records that can be disclosed. In unusual circumstances, the 10-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 it expects to provide a determination. Upon request for an identifiable record, the agency will make the record available promptly to the requester once the duplicating or statutory fee is paid.

Existing federal and state laws prohibit the disclosure of any taxpayer information, except as specifically authorized by statute. Any Franchise Tax Board (FTB) employee or member responsible for the unauthorized disclosure of federal or state tax information is subject to criminal prosecution. Improper disclosure of federal tax information is a felony and improper disclosure of state tax information is a misdemeanor.

Under federal law, the Freedom of Information Act (FOIA) requires federal agencies to make public information available upon request, unless specifically exempted by law. The provisions under FOIA are similar to the Act.

Under current state law, the FTB is required to make available or submit to the Legislature the following reports:

- Annual Taxpayers' Bill of Rights
- Audit and Compliance Activities
- Fresh Fruits & Vegetables Estimated Donated Value
- Financial Integrity and State Manager's Accountability Act
- Enterprise Data to Revenue Project
- Multistate Tax Commission Formula for Uniform Apportionment of Net Income from Financial Institutions
- IT Contracts and Software License Agreements
- Enterprise Zones
- Summary of Federal Income Tax Changes
- New Employment Credit
- Governor's Economic Development Initiative - Ca. Competes Credit

THIS BILL

This bill would do the following:

- Require a public agency, including the FTB, to respond to a disclosable public record request as soon as possible, but no later than 30 days after the determination that a record is disclosable.
- Permit the head of a state agency or their designee, including the Executive Officer of the FTB or her designee, in unusual circumstances, to extend the 30-day time limit one time for no more than 14 days upon written notice to the requester.

This bill would require the head of any state agency or department that is required to submit a written report to the Legislature, a Member of the Legislature, or any state legislative or executive body, to sign a statement that to the best of his or her knowledge the information in the report is accurate, true, and correct. This bill specifies that the Executive Officer of the FTB would be required to sign this statement.

The bill's requirements would be applicable to every state agency or department including elected officials of state government and any state official whose duties are prescribed by the California Constitution.

The bill would define a written report to be one of the following:

- A document required by statute to be prepared and submitted to the Legislature or any state legislative or executive body, or
- A document, summary, or statement requested by a Member of the Legislature.

The bill would provide that the declaration attesting to the truth, accuracy, and completeness in the signed statement would not apply to any predictions, forecasts, predictions, recommendations, or opinions contained in the written report.

This bill would add a civil penalty not to exceed twenty thousand dollars (\$20,000) for any person who declares true any material matter that he or she knows to be false. The Attorney General would bring the civil action in the name of the people of the State of California.

IMPLEMENTATION CONSIDERATIONS

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

LEGISLATIVE HISTORY

AB 1585 (Committee on Accountability and Administrative Review, Chapter 7, Statutes of 2010) required all state agencies, including the FTB, to provide a summary of any required report to each member of the house or houses of the Legislature, as appropriate.

AB 1993 (Strickland, 2009/2010) would have required the head of certain public entities to certify, in a signed statement, that the information in legislatively mandated reports is true, accurate, and complete to the best of his or her knowledge. AB 1993 failed to pass out of the Senate.

OTHER STATES' INFORMATION

Since this bill would modify the California Public Records Act and requirements for reports to the Legislature, a Member of the Legislature, or any state legislative or executive body, a comparison to other states would not be relevant.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

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

SUPPORT/OPPOSITION

Support: None on file.

Opposition: None on file.

ARGUMENTS

Proponents: Some would argue that requiring state agencies to respond to requests as soon as possible will improve public access to reports, and that the possibility of the imposition of a penalty could enhance the accuracy of reports submitted to the Legislature.

Opponents: Some could argue that imposing a deadline for responding to requests could divert resources from the department's core mission. Additionally, the potential imposition of a penalty may have no effect on the accuracy of reports to the Legislature, a Member of the Legislature, or any state legislative or executive body.

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