

# ANALYSIS OF ORIGINAL BILL

Author: Wieckowski Analyst: Janet Jennings Bill Number: SB 201  
 See Legislative  
 Related Bills: History Telephone: 845-3495 Introduced Date: February 10, 2015  
 Attorney: Bruce Langston Sponsor \_\_\_\_\_

<b>SUBJECT:</b>	California Public Records Act/Disclosure of Public Records to Third Party
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## SUMMARY

This bill would add requirements to the Government Code pertaining to the California Public Records Act (Public Records Act).

## RECOMMENDATION

No position.

## REASON FOR THE BILL

The reason for the bill is to require notice of the filing a judicial suit to prevent a disclosure under the Public Records Act to the requester of the disclosure and to apply the provisions of the Public Records Act in specified actions as if the action was initiated by a person.

## EFFECTIVE/OPERATIVE DATE

This bill would become effective and operative January 1, 2016.

## FEDERAL/STATE LAW

Under federal law, the United States Freedom of Information Act (Information Act) ensures public access to U.S. government records. The Information Act 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 Information Act, Federal agencies are given twenty days to determine whether the agency is able to comply with the information request and notify the requestor of the determination.

Under state law, the Public Records Act 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 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 ten 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.

Board Position:	Executive Officer	Date
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## **THIS BILL**

This bill would require:

- Courts, in an action brought by a third party, to apply the provisions of the Public Records Acts as if the third party was a person requesting disclosure under the Public Records Act.
- Third parties seeking an injunction or declaratory relief, to provide notice to the person who requested the action at the same time as the defendant public agency is served.
- Courts to permit the person whose request prompted the action to intervene at the person's request.

## **IMPLEMENTATION CONSIDERATIONS**

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

## **LEGISLATIVE HISTORY**

SB 1002 (Yee, Vetoed 2012) would have required the State Chief Information Officer to conduct a study to determine the feasibility of providing electronic records in an open format. The veto states in part, that another legislative report on electronic public records isn't necessary.

## **OTHER STATES' INFORMATION**

Since this bill would, in specified circumstances, subject state courts to provisions of the Public Records Act a comparison to other state taxes would not be relevant.

## **FISCAL IMPACT**

This bill would impact the department's privacy, security and disclosure bureau. As the bill continues to move through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

## **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 Public Records Act requesters must be notified of legal challenges in a timely fashion.

Opponents: Some would argue that the merits of an exemption from the Public Records Act are statutorily defined making additional notice to third parties unnecessary.

## **LEGISLATIVE STAFF CONTACT**

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