

# ANALYSIS OF ORIGINAL BILL

Author: Pan Analyst: Janet Jennings Bill Number: SB 573  
 Related Bills: None Telephone: 845-3495 Introduced Date: February 26, 2015  
 Attorney: Bruce Langston Sponsor \_\_\_\_\_

<b>SUBJECT:</b>	Statewide Open Data Portal
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## SUMMARY

This bill would, under the Government Code, establish and define the role of the Chief Data Officer and establish a statewide open data portal.

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

## RECOMMENDATION

No position.

## REASON FOR THE BILL

The reason for the bill is to create a statewide open data portal to provide public access to data sets from state agencies.

## EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2015, and contains various operative dates.

## FEDERAL/STATE LAW

Current federal and state law provides that income tax returns and tax information are confidential and may not be disclosed, unless specifically authorized by statute. Any Franchise Tax Board (FTB) employee or member responsible for the improper disclosure of federal or state tax information is subject to criminal prosecution or fines, or both. Improper disclosure of federal tax information is punishable as a felony, and improper disclosure of state tax information is punishable as a misdemeanor.

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.

Board Position:	Executive Officer	Date
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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.

Existing state law allows the publication of statistics unless that publication would make possible the identification of particular reports or returns and items contained in those reports or returns. Department policy prohibits the release of statistical information for groups' fewer than ten taxpayers.

### **THIS BILL**

This bill would require the FTB as a state agency to identify and publish data sets as defined.

This bill would provide the following definitions:

- "Agency" means, but is not limited to, a state agency (including the FTB), authority, board, bureau, commission, council, department, division, or office.
- "Data set" generally means any information comprising a collection of information held in electronic form where all or most of the information has been compiled for the purpose of providing the agency with information to provide for any function or service of the agency. The compiled information is to be factual and not a product of analysis or interpretation other than calculation, and is to be presented as data not adapted or otherwise materially altered since it was compiled.
- "Inventory" means a summary listing of all available data sets within an agency. The listing would include, but is not limited to, a descriptive title of the data set as well as a brief informative description of what information may be found within the data set.
- "Open data roadmap" means a strategic plan describing the process by which 100 percent of the data held by an agency will be made publicly available, subject to any state or federal law or regulation relating to privacy. The roadmap would include, but is not limited to, an agency's data inventory, a concrete timeline for the release of data sets on a statewide or agency basis, and a methodology for compliance with any state or federal law or regulation relating to privacy. "Statewide open data portal" means a centralized data Internet Web site, with the ability to display and export data published from state agencies.

This bill would require each agency to do the following on or before:

- August 1, 2016, appoint a data coordinator to be responsible for compliance with this bill's provisions and participate in the open data working group headed by the Chief Data Officer. The agency data coordinator could appoint a data steward for each data set the agency will publish.
- October 1, 2016, identify any data set within the agency and transmit the inventory to the Chief Data Officer in the form he or she prescribes.
- November 1, 2016, create a plan for publication of any inventory that may be published.

The bill provides that an agency may publish its inventory on its own Internet Web site, or utilize the statewide open data portal. If the agency utilizes its own Internet Web site, the agency must include a link on its Internet Web site to the statewide open data portal site.

Additionally, the bill would require any inventory published to comply with all state and federal privacy laws and regulations.

The bill would require each agency to publish its data sets as specified:

- 10 percent by January 1, 2018
- 35 percent by January 1, 2019
- 65 percent by January 1, 2020
- 90 percent by January 1, 2021
- 100 percent by January 1, 2022

Each agency would be required to update any published data sets as necessary.

On or before January 1, 2017, in consultation with the Attorney General, the Chief Data Officer would publish a set of guidelines for use by each agency. The guidelines would include definitions and assessments of security, privacy, and legal concerns related to the creation of an inventory and publication of data.

## **IMPLEMENTATION CONSIDERATIONS**

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve this and other concerns that may be identified.

The definition of "data set" lacks the precision necessary for the department to implement this bill. For example, it is unclear whether data sets containing confidential information would be excluded from publication or the confidential information would be removed prior to the data set's publication. Additionally, the existing definition could be interpreted to include information such as agency phone listings, agency facility detail, agency asset inventories, human resources data, and third party information. To clearly express the author's intent, and for efficient and accurate implementation, the bill should be amended.

This bill uses the undefined term "data" and the defined term "data sets" interchangeably. To clearly express the author's intent and avoid disputes between taxpayers and the department, the bill should be amended for consistent use of refined terms.

The bill would require published data sets to be updated as necessary, but is silent as to the publication of data sets created after January 1, 2022. The bill should be amended to clearly express the author's intent regarding data sets established in the future.

## **OTHER STATES' INFORMATION**

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

*Florida, Illinois, and New York* have established open data portals, no information was located for *Massachusetts, Michigan, or Minnesota*.

## **FISCAL IMPACT**

The department's costs to implement this bill have yet to be determined. As the bill moves 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 may argue an open data portal to government-held data would enhance services to citizens by improving coordination among agencies, and between internal and external stakeholders.

Opponents: Some may argue that posting volumes of raw data online fails to make the data useful or relevant.

## **LEGISLATIVE STAFF CONTACT**

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