

ANALYSIS OF AMENDED BILL

Author: Ting Analyst: Janet Jennings Bill Number: AB 1215
 See Legislative
 Related Bills: History Telephone: 845-3495 Amended Date: March 26, 2015
 Attorney: Bruce Langston Sponsor _____

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| SUBJECT: | California Open Data Act |
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SUMMARY

This bill, under the Government Code, would enact the California Open Data Act; by creating the position of the Chief Data Officer who would establish standards for state agencies to make public data available, as specified.

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

RECOMMENDATION

No position.

Summary of Amendments

The March 26, 2015, amendments removed provisions of the bill related to legislative intent, and replaced them with the provisions discussed in this analysis. This is the department’s first analysis of the bill.

REASON FOR THE BILL

The reason for the bill is to enact the California Open Data Act to create a centralized online information portal for state agencies to submit standardized public access data.

EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2016, 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.

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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.

Government Code section 11000 defines "state agency" as every state office, officer, department, division, bureau, board, and commission. "State agency" does not include the California State University, unless explicitly provided that it applies to the university.

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 enact the California Open Data Act, and create the position of the Chief Data Officer, who would establish standards for state agencies to make public data available, as specified.

The bill provides the following definitions:

- "Public data" means all data that is collected by a state agency in pursuit of that state agency's responsibilities that is otherwise subject to disclosure pursuant to the California Public Records Act.
- "State agency" has the same meaning as Section 11000 of the California Government Code.¹
- "Strategic enterprise application plan" means a comprehensive program developed by a state agency, articulating both principles and goals related to the application of its services and programs to the current and future needs of enterprise in the state.

¹ See "Federal/State Law" section.

- "Strategic plan" means a state agency's evaluation, over a period of up to five years, of its strategy and direction, including, but not limited to, a framework for decision making with respect to resource allocation to achieve defined goals.

A state agency that releases public data would do so in compliance with this bill's provisions and on the Internet Web portal that is linked to data.ca.gov or any successor Internet Website maintained by, or on behalf of, the state for the purposes of this bill. If a state agency cannot make all public data available on the Internet Web portal, the state agency would report to the Chief Data Officer all the public data it is unable to make available, state the reasons why it is unable to do so, and the date by which the state agency expects the public data to be made available on the Internet Web portal.

Public data would be made available in accordance with technical standards established by the Chief Data Officer.

On or before July 1, 2016, this bill would require each state agency to complete and post to the Internet Web portal at data.ca.gov and submit to the Chief Data Officer, a strategic plan and a strategic enterprise application plan.

The strategic plan would include the following:

- A summary description of public data under the control of the state agency on or after January 1, 2016.
- A summary explanation of how its plans, budgets, capital expenditures, contracts, and other related documents and information for each information technology and telecommunications project it proposes to undertake can be utilized to support the California Open Data Standard and related savings and efficiencies.
 - The strategic plan would prioritize public data for inclusion on the Internet Web portal on or before January 1, 2017, in accordance with the standards established by the Chief Data Officer.

To prioritize the public data, the FTB would consider whether the public data does any of the following:

- Increases the FTB's accountability and responsiveness.
- Improves public knowledge of the FTB and its operations.
- Furthers the mission of the FTB.
- Creates economic opportunity.
- Responds to an online demand for public data.
- Responds to a need or demand identified by public consultation.

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.

The bill would require a state agency to provide a strategic plan on or before July 1, 2016, that is to include a description of public data under the control of the state agency on or after January 1, 2016. It is unclear how state agencies could provide a description of public data that is not currently, but in the future becomes, under the agency's control. If the author's intent is for state agencies to periodically update the strategic plan and strategic enterprise application plan to reflect current data, this bill should be amended. The "established technical standards" are unknown, any newly created standards may have unforeseen costs and implementation issues.

The phrase "public data subject to disclosure" is undefined and could be more broadly, or narrowly, interpreted than the author intends. The author may wish to amend this bill to clarify that this data includes only data that is subject to disclosure under the laws and regulations applicable to the state agency making the disclosure.

TECHNICAL CONSIDERATIONS

The word "decisionmaking" on page 3, line 31 should be two words.

The Roman lowercase lettering for subparagraphs on Page 6, lines 20-26 should be capital letters.

LEGISLATIVE HISTORY

SB 573 (Pan, 2015/2016) would create a statewide open data portal to provide public access to data sets from state agencies. SB 573 has been referred to the Senate Committee on Government Organization.

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, but no information was identified 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 and the implementation concerns are resolved, 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/OPPOSITION²

Support: Open Data Coalition, California Newspaper Publishers Association, CA Forward

Opposition: None on file.

ARGUMENTS

Proponents: Some may argue a centralized Web portal for public information that is presented based on specified data standards would increase transparency and facilitate citizen participation in state government.

Opponents: Some may argue it is cost-prohibitive and wasteful to publish all public data absent an identified need or use.

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² According to the Authors Fact Sheet for AB 1215.