

BILL ANALYSIS

Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	Gatto	AB 2853

SUBJECT

State Agency Public Records Act

SUMMARY

This bill would, under the Government Code, modify provisions of the California Public Records Act (PRA).

REASON FOR THE BILL

The reason for the bill is to provide more efficient and cost-effective access to public records by allowing a state agency to post disclosable records online where a member of the public could access and download the record without making a formal PRA request and without requiring the agency to process a request through the required PRA responses.

EFFECTIVE/OPERATIVE DATE

This bill would become effective on January 1, 2017, and operative with respect to PRA requests received on or after that date.

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 20 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 PRA is designed to give the public access to inspect information in possession of public agencies, unless it is expressly exempted. 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 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.

Under current law, the response to a written request for inspection or copies of public records that includes a denial, in whole or in part, of the request is required to be in writing. "Writing" is defined as any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.¹

THIS BILL

This bill would allow a public agency, including the Franchise Tax Board, to comply with the PRA disclosure requirement by posting a public record on its website. The bill would allow the public agency to direct a requestor for a public record to the Internet web site where the public record is posted. If the requestor asks for a copy of the public record due to an inability to access or reproduce the public records from the web site, the public agency would be required to, within 10 days,² prepare a copy of the public record and promptly notify the requestor of the availability of the public record.

LEGISLATIVE HISTORY

AB 1707 (Linder, 2015/2016) would modify the California Public Records Act to provide the requester with the specific exemption that applies to the denied record request. AB 1707 is currently pending before the Assembly Committee on Local Government.

SB 201 (Wieckowski, 2015/2016) would have added requirements to the Government Code pertaining to the California Public Records Act. SB 201 failed to pass out of the Senate by the constitutional deadline.

SB 1002 (Yee, 2011/2012) would have required the State Chief Information Officer to conduct a study to determine the feasibility of providing electronic records in an open format. SB 1002 was vetoed by Governor Brown on September 28, 2012, stating in part, that another legislative report on electronic public records isn't necessary.

OTHER STATES' INFORMATION

Since this bill would add requirements to provisions of the PRA, a comparison to other state taxes would not be relevant.

FISCAL IMPACT

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

¹ Government Code section 6252(g).

² And upon payment of fees covering direct costs of duplication or a statutory fee (if applicable) under current law.

ECONOMIC IMPACT

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

APPOINTMENTS

None.

SUPPORT/OPPOSITION³

Support: League of California Cities, the Association of School Administrators, the Orange County Department of Education, and the Glendale Unified School District.

Opposition: None on file.

VOTES

	Date	Yes	No
Concurrence	08/22/16	79	0
Senate Floor	08/15/16	38	0
Assembly Floor	05/12/16	78	0

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³ According to the April 8, 2016, Assembly Judiciary Committee's Bill Analysis.