



Analysis of Amended Bill

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Subject: Public Records/Retention of Writing Transmitted by Electronic Mail

Summary

This bill would, under the Government Code (GC), modify the California Public Records Act (CPRA), as specified.

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

Recommendation – No position.

Summary of Amendments

The March 25, 2019, amendments replaced intent language with the provisions discussed in this analysis.

The April 24, 2019, amendments removed “notwithstanding” language, and clarified the electronic mail that must be retained.

The May 16, 2019, amendments made clarifying changes to the bill's retention requirements.

This is the department's first analysis of this bill.

Reason for the Bill

The reason for this bill is to ensure that public record retention requirements are appropriately applied to emails, given their increasing importance in how public agencies conduct their work.

Effective/Operative Date

This bill would be effective on January 1, 2020, and operative as of that date.

Program Background

Information received, generated, and maintained by the Franchise Tax Board (FTB) is generally considered confidential unless specifically made public by statute. The FTB has stringent departmental policies and procedures regarding privacy and disclosure. All employees receive training annually about ensuring the confidentiality of taxpayer information and are given updated procedures on a regular basis. Any violation of these policies and procedures is subject to disciplinary action, punishable by law, or both.

The CPRA provides access to public information the FTB maintains unless the records are exempt from disclosure by law. This may include written or electronic information.

The FTB is exempt from disclosing information, such as:

- Personnel, medical, or similar files for FTB employees.
- Tests questions and scoring keys for employment exams.
- Preliminary drafts of documents not retained by the department.
- Records pertaining to pending litigation.

State Law

Current state tax law provides that information collected on income tax returns is considered confidential and, unless specifically available for other uses, must be used only to administer the income tax laws. The FTB may disclose taxpayer information only in limited circumstances and only to specific agencies as authorized by law. Improper disclosure of federal tax information is punishable as a felony, and improper disclosure of state tax information is punishable as a misdemeanor.

Current state law, under the CPRA,¹ generally requires that state and local agencies make available for inspection “public records,” unless otherwise exempted. State law specifically exempts income tax return information that would be prohibited from disclosure under the Revenue and Taxation Code (R&TC) from disclosure under the CPRA.²

Public agencies generally must provide copies of disclosable public records within 10 days. The requestor generally must reimburse the state for the cost of duplication of paper or electronic copies. For information available in an electronic format, the CPRA also requires the requester cover the cost of producing a copy of the record,

¹ GC section 6251.

² R&TC section 19542.

including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record, if either of the following applies:

- The public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.
- The request would require data compilation, extraction, or programming to produce the record.

The CPRA defines the following terms, among others:

“Public record” means “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”

“Writing” means “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.”

Current state law, under the State Records Management Act (SRMA),³ generally requires each state agency to establish and maintain a records management and retention program. For purposes of the SRMA “public records” have the same meaning as under the CPRA. The retention period is generally determined by the state agency, and consideration must be given to the usefulness or significance of the record, regardless of physical form or characteristics.

This Bill

This bill, under the GC, would require a public agency, including the FTB, for the purposes of the CPRA, to retain and preserve for at least two years every writing containing information relating to the conduct of the public’s business prepared, owned, or used by any public agency that is transmitted by electronic mail, unless a longer retention period is required by statute or regulation.

³ GC sections 12270 through 12279.

This bill would make express legislative findings and declarations that this act furthers the right of public access to the writings of local public officials and local agencies by requiring that public agencies preserve for at least two years every writing containing information relating to the conduct of the public's business prepared, owned, or used by any local agency that is transmitted by electronic mail.

Implementation Considerations

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

This bill uses the undefined phrase "every writing containing information relating to the conduct of the public's business prepared, owned, or used by any public agency" that is substantially similar to the CPRA definition of a "public record". To avoid any confusion, the author may wish to amend the bill by replacing that phrase with "any public record as defined in subdivision (e) of Section 6252".

Implementation of the bill's requirements would substantially increase the data the department is mandated to retain, requiring additional storage capacity and the acquisition of additional servers. Depending on the enactment date, the department may be unable to acquire the additional servers by the bill's operative date. Additionally, the substantial increase in data retained would result in greater effort and cost to identify and compile disclosable emails pursuant to a records request. For administrative ease, the author may wish to change the operative date to January 1, 2021.

Legislative History

Research of California legislation found no legislation similar to the provisions of this bill.

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.

All of the states surveyed have public record laws similar to the CPRA providing for retention of public records; however, none of the state laws surveyed provide a specified retention period for emails similar to the one that would be created by this bill.

Fiscal Impact

Staff estimates a cost of approximately \$150,000 for 2020-2021 and \$38,000 for 2021-2022 for the acquisition of additional storage.

Economic Impact

Revenue Estimate

Estimated Revenue Impact of AB 1184 as Amended May 16, 2019
Assumed Enactment after June 30, 2019.

This bill as amended on May 16, 2019, would not impact state income or franchise tax revenue.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

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