



Bill Analysis

Author: Levine

Sponsor:

Bill Number: AB 2370

Related Bills: See Legislative
History

Introduced February 16, 2022,
and Amended March 23, 2022

SUBJECT

Public Records- State Agency Retention

SUMMARY

Under the Government Code (GC), this bill would, require the Franchise Tax Board (FTB) to retain and preserve every public record, regardless of physical form or characteristics, for at least two years.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The March 23, 2022, amendments made a technical change to the definition of public records that should be preserved.

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

REASON FOR THE BILL

The reason for the bill, is to require all state agencies to retain emails and other public records for a minimum of two years.

ANALYSIS

This bill would, under the GC, require state agencies, including the FTB, to retain and preserve every public record, regardless of physical form or characteristics, for at least two years.

Public records would include 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.

Effective/Operative Date

This bill would be effective and operative January 1, 2023.

Introduced February 16, 2022, and Amended March 23, 2022

Federal/State Law

Federal Law

No comparable provision in federal law.

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 California Public Records Act (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 (RTC) from disclosure under the CPRA.²

Pursuant to the rules of the CPRA, 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.

The CPRA provides that any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce the right to inspect or to receive a copy of any public record or class of public records.

If the superior court determines that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why the record is not disclosable. If the court finds that the public official’s decision to refuse disclosure is unjustified under the CPRA³, the judge shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, the judge shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

¹ GC section 6251.

² RTC section 19542.

³ GC sections 6254 or 6255.

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The CPRA defines the following terms, among others: "member of the public," "person," "public agency," "public record," "state agency," "unusual circumstances," and "writing."

- The CPRA defines a "public record" to include 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 characteristic.

Implementation Considerations

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional considerations 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 considerations that may be identified.

Currently, the FTB does not have statutory responsibility to preserve records for a certain minimum period of time. However, there are notable exceptions, such as when litigation is pending or a notice to preserve records is received, a CPRA request has been received, or certain types of records are involved, such as regulatory files or historical records. This bill would require the FTB to update internal policies, which would require department-wide education, training, and enforcement of the new policy. Because this bill would require many changes to departmental policies it may take longer to implement than desired.

This bill would require the department to substantially increase data retention beginning January 1, 2023, requiring the procurement and deployment of additional licensing for some services and storage capacity. It is unclear whether the department could fully implement this bill by the January 1, 2023, operative date considering state project and procurement rules and time required to install and deploy new hardware.

Technical Considerations

None noted.

Policy Considerations

None noted.

Introduced February 16, 2022, and Amended March 23, 2022

LEGISLATIVE HISTORY

AB 1184 (Gloria, 2019/2020), similar to this bill, would have under the GC, modified the CPRA to require a public agency to retain and preserve every public record, as specified in the CPRA for at least two years. AB 1184 was vetoed by the Governor, whose veto message read in part, "This bill does not strike the appropriate balance between the benefits of greater transparency through the public's access to public records, and the burdens of a dramatic increase in records-retention requirements, including associated personnel and data-management costs to taxpayer."

AB 2093 (Gloria, 2019/2020), which was identical to AB 1184 (2019/2020), did not pass out of the Assembly Appropriations committee by the constitutional deadline.

PROGRAM BACKGROUND

Information received, generated, and maintained by the FTB is generally considered confidential unless specifically provided otherwise 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 certain types of information, such as:

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

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.

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ECONOMIC IMPACT

Revenue Estimate

This bill as introduced February 16, 2022, and amended March 23, 2022, would not impact the state income or franchise tax revenue.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

None noted.

ARGUMENTS

The May 20, 2022, Assembly Floor analysis contained the following arguments:

Proponents

A joint letter by the California News Publishers, the First Amendment Coalition, and Californians Aware states:

A clear statutory minimum standard for the retention and preservation of public records, especially electronic mail, is necessary in an era in which many agencies routinely communicate on important issues concerning the conduct of the people's business and automatically purge these email communications. In their eagerness to purge these records from their servers, agencies dispose of records that provide the public with insights into the development of public policy, illuminate controversial decisions, or potentially hide evidence of corruption and self-dealing. Such records are critical to the public's ability to hold its government to account.

This problem is not limited to electronic mail. As recently reported, the chief administrative officer of a state agency testified that she routinely shredded scoring worksheets that she no longer considered "relevant," even though they were central to a contract bidding dispute.

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Opponents

None received.

LEGISLATIVE CONTACT

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