

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

NATIONAL LAWYERS GUILD, SAN
FRANCISCO BAY AREA CHAPTER,

Plaintiff and Appellant,

v.

CITY OF HAYWARD, ET AL.,

Defendants and Respondents.

No. S252445

(Court of Appeal No. A149328)

(Super. Ct. No. RG15785743)

SUPREME COURT
FILED

AFTER A DECISION OF COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION THREE

APR 02 2019

Jorge Navarrete Clerk

Deputy

DECLARATION OF JUSTIN NISHIOKA

EXHIBIT B

— VOLUME I —

(PAGES 1-300)

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Perez, and Diane Urban.

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DECLARATION OF JUSTIN NISHIOKA

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Attorneys for Defendants
and Respondents City of Hayward, Adam
Perez, and Diane Urban.

ASSEMBLY BILL

No. 2799

Introduced by Assembly Member Shelley
(Principal coauthor: Senator Bowen)

February 28, 2000

An act to amend Sections 6253 and 6255 of, and to add Section 6253.2 to, the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 2799, as introduced, Shelley. Public records: disclosure.

(1) The California Public Records Act provides that any person may receive a copy of any identifiable public record from any state or local agency upon payment of specified fees. The act provides that it shall not be construed to permit an agency to obstruct the inspection or copying of public records and requires any notification of denial of any request for records pursuant to the act to set forth the names and titles or positions of each person responsible for the denial. The act also requires computer data to be provided in a form determined by the agency.

This bill would provide that nothing in the act shall be construed to permit an agency to delay or obstruct the inspection or copying of public records and would require that the notification of denial of any request for records justifying its withholding to be in writing. This bill would delete the requirement that computer data be provided in a form determined by the agency and would require any

agency that has information that constitutes an identifiable public record that is in an electronic format to make that information available in an electronic format when requested by any person. The bill would require the agency to make the information available in any electronic format in which it holds the information. Because these requirements would apply to local agencies as well as state agencies, this bill would impose a state-mandated local program.

(2) The act requires the agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the act or that, on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

This bill would authorize the agency or the superior court to disclose a record made exempt under the express provisions of the act if the agency or the superior court determines that, on the facts of the particular case, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record. By imposing new duties on local public officials, the bill would create a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



The people of the State of California do enact as follows:

1 SECTION 1. Section 6253 of the Government Code is
2 amended to read:

3 6253. (a) Public records are open to inspection at all
4 times during the office hours of the state or local agency
5 and every person has a right to inspect any public record,
6 except as hereafter provided. Any reasonably segregable
7 portion of a record shall be available for inspection by any
8 person requesting the record after deletion of the
9 portions that are exempted by law.

10 (b) Except with respect to public records exempt
11 from disclosure by express provisions of law, each state or
12 local agency, upon a request for a copy of records that
13 reasonably describes an identifiable record or records,
14 shall make the records promptly available to any person
15 upon payment of fees covering direct costs of duplication,
16 or a statutory fee if applicable. Upon request, an exact
17 copy shall be provided unless impracticable to do so.
18 ~~Computer data shall be provided in a form determined~~
19 ~~by the agency.~~

20 (c) Each agency, upon a request for a copy of records,
21 shall, within 10 days from receipt of the request,
22 determine whether the request, in whole or in part, seeks
23 copies of disclosable public records in the possession of
24 the agency and shall promptly notify the person making
25 the request of the determination and the reasons
26 therefor. In unusual circumstances, the time limit
27 prescribed in this section may be extended by written
28 notice by the head of the agency or his or her designee to
29 the person making the request, setting forth the reasons
30 for the extension and the date on which a determination
31 is expected to be dispatched. No notice shall specify a date
32 that would result in an extension for more than 14 days.
33 As used in this section, "unusual circumstances" means
34 the following, but only to the extent reasonably necessary
35 to the proper processing of the particular request:

36 (1) The need to search for and collect the requested
37 records from field facilities or other establishments that
38 are separate from the office processing the request.



1 (2) The need to search for, collect, and appropriately
2 examine a voluminous amount of separate and distinct
3 records that are demanded in a single request.

4 (3) The need for consultation, which shall be
5 conducted with all practicable speed, with another
6 agency having substantial interest in the determination
7 of the request or among two or more components of the
8 agency having substantial subject matter interest therein.

9 (d) Nothing in this chapter shall be construed to
10 permit an agency to *delay or* obstruct the inspection or
11 copying of public records. ~~Any~~ The notification of denial
12 of any request for records *required by Section 6255* shall
13 set forth the names and titles or positions of each person
14 responsible for the denial.

15 (e) Except as otherwise prohibited by law, a state or
16 local agency may adopt requirements for itself that allow
17 for faster, more efficient, or greater access to records than
18 prescribed by the minimum standards set forth in this
19 chapter.

20 SEC. 2. Section 6253.2 is added to the Government
21 Code, to read:

22 6253.2. (a) Unless otherwise prohibited by law, any
23 agency that has information that constitutes an
24 identifiable public record that is in an electronic format
25 shall make that information available in an electronic
26 format when requested by any person and, when
27 applicable, shall comply with the following:

28 (1) The agency shall make the information available in
29 any electronic format in which it holds the information.

30 (2) Each agency shall provide a copy of an electronic
31 record in the format requested if the requested format is
32 one that has been used by the agency to create copies for
33 its own use or for provision to other agencies. Direct costs
34 of duplication shall include the costs associated with
35 duplicating electronic records.

36 (b) Nothing in this section shall be construed to
37 require the public agency to reconstruct a report in an
38 electronic format if the agency no longer has the report
39 itself available in an electronic format.

1 (c) Nothing in this section shall be construed to permit
2 an agency to make information available only in an
3 electronic format.

4 (d) Nothing in this section shall be construed to permit
5 public access to records held by the Department of Motor
6 Vehicles to which access is otherwise restricted by statute.

7 SEC. 3. Section 6255 of the Government Code is
8 amended to read:

9 6255. (a) The agency shall justify withholding any
10 record *in writing* by demonstrating that the record in
11 question is exempt under express provisions of this
12 chapter or that on the facts of the particular case the
13 public interest served by not ~~making~~ *disclosing* the
14 record ~~public~~ clearly outweighs the public interest served
15 by disclosure of the record.

16 (b) *Notwithstanding any provision of this chapter, an*
17 *agency, or the superior court in any action brought*
18 *pursuant to Section 6259, may disclose or order to be*
19 *disclosed any record made exempt by express provisions*
20 *of this chapter if, on the facts of the particular case, the*
21 *public interest served by disclosing the record clearly*
22 *outweighs the public interest served by not disclosing the*
23 *record.*

24 SEC. 4. Notwithstanding Section 17610 of the
25 Government Code, if the Commission on State Mandates
26 determines that this act contains costs mandated by the
27 state, reimbursement to local agencies and school
28 districts for those costs shall be made pursuant to Part 7
29 (commencing with Section 17500) of Division 4 of Title
30 2 of the Government Code. If the statewide cost of the
31 claim for reimbursement does not exceed one million
32 dollars (\$1,000,000), reimbursement shall be made from
33 the State Mandates Claims Fund.

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AMENDED IN ASSEMBLY APRIL 27, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2799

Introduced by Assembly Member Shelley
(Principal coauthor: Senator Bowen)

February 28, 2000

An act to amend Sections 6253 and 6255 of, and to add Section 6253.2 to, the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 2799, as amended, Shelley. Public records: disclosure.

(1) The California Public Records Act provides that any person may receive a copy of any identifiable public record from any state or local agency upon payment of specified fees. The act provides that it shall not be construed to permit an agency to obstruct the inspection or copying of public records and requires any notification of denial of any request for records pursuant to the act to set forth the names and titles or positions of each person responsible for the denial. The act also requires computer data to be provided in a form determined by the agency.

This bill would provide that nothing in the act shall be construed to permit an agency to delay or obstruct the inspection or copying of public records and would require that the notification of denial of any request for records justifying its withholding to be in writing. This bill would delete the requirement that computer data be provided in a



form determined by the agency and would require any agency that has information that constitutes an identifiable public record that is in an electronic format to make that information available in an electronic format when requested by any person. The bill would require the agency to make the information available in any electronic format in which it holds the information. Because these requirements would apply to local agencies as well as state agencies, this bill would impose a state-mandated local program.

(2) The act requires the agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the act or that, on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

~~This bill would authorize the agency or the superior court to disclose a record made exempt under the express provisions of the act if the agency or the superior court determines that, on the facts of the particular case, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.~~ *require the agency to justify withholding any record in writing.* By imposing this new ~~duties~~ *duty* on local public officials, the bill would create a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6253 of the Government Code is
2 amended to read:

3 6253. (a) Public records are open to inspection at all
4 times during the office hours of the state or local agency
5 and every person has a right to inspect any public record,
6 except as hereafter provided. Any reasonably segregable
7 portion of a record shall be available for inspection by any
8 person requesting the record after deletion of the
9 portions that are exempted by law.

10 (b) Except with respect to public records exempt
11 from disclosure by express provisions of law, each state or
12 local agency, upon a request for a copy of records that
13 reasonably describes an identifiable record or records,
14 shall make the records promptly available to any person
15 upon payment of fees covering direct costs of duplication,
16 or a statutory fee if applicable. Upon request, an exact
17 copy shall be provided unless impracticable to do so.

18 (c) Each agency, upon a request for a copy of records,
19 shall, within 10 days from receipt of the request,
20 determine whether the request, in whole or in part, seeks
21 copies of disclosable public records in the possession of
22 the agency and shall promptly notify the person making
23 the request of the determination and the reasons
24 therefor. In unusual circumstances, the time limit
25 prescribed in this section may be extended by written
26 notice by the head of the agency or his or her designee to
27 the person making the request, setting forth the reasons
28 for the extension and the date on which a determination
29 is expected to be dispatched. No notice shall specify a date
30 that would result in an extension for more than 14 days.
31 As used in this section, "unusual circumstances" means
32 the following, but only to the extent reasonably necessary
33 to the proper processing of the particular request:

34 (1) The need to search for and collect the requested
35 records from field facilities or other establishments that
36 are separate from the office processing the request.



1 (2) The need to search for, collect, and appropriately
2 examine a voluminous amount of separate and distinct
3 records that are demanded in a single request.

4 (3) The need for consultation, which shall be
5 conducted with all practicable speed, with another
6 agency having substantial interest in the determination
7 of the request or among two or more components of the
8 agency having substantial subject matter interest therein.

9 (d) Nothing in this chapter shall be construed to
10 permit an agency to delay or obstruct the inspection or
11 copying of public records. The notification of denial of
12 any request for records required by Section 6255 shall set
13 forth the names and titles or positions of each person
14 responsible for the denial.

15 (e) Except as otherwise prohibited by law, a state or
16 local agency may adopt requirements for itself that allow
17 for faster, more efficient, or greater access to records than
18 prescribed by the minimum standards set forth in this
19 chapter.

20 SEC. 2. Section 6253.2 is added to the Government
21 Code, to read:

22 6253.2. (a) Unless otherwise prohibited by law, any
23 agency that has information that constitutes an
24 identifiable public record that is in an electronic format
25 shall make that information available in an electronic
26 format when requested by any person and, when
27 applicable, shall comply with the following:

28 (1) The agency shall make the information available in
29 any electronic format in which it holds the information.

30 (2) Each agency shall provide a copy of an electronic
31 record in the format requested if the requested format is
32 one that has been used by the agency to create copies for
33 its own use or for provision to other agencies. Direct costs
34 of duplication shall include the costs associated with
35 duplicating electronic records.

36 (b) Nothing in this section shall be construed to
37 require the public agency to reconstruct a report in an
38 electronic format if the agency no longer has the report
39 itself available in an electronic format.



1 (c) Nothing in this section shall be construed to permit
2 an agency to make information available only in an
3 electronic format.

4 (d) Nothing in this section shall be construed to permit
5 public access to records held by the Department of Motor
6 Vehicles to which access is otherwise restricted by statute.

7 SEC. 3. Section 6255 of the Government Code is
8 amended to read:

9 6255. (a) The agency shall justify withholding any
10 record in writing by demonstrating that the record in
11 question is exempt under express provisions of this
12 chapter or that on the facts of the particular case the
13 public interest served by not disclosing the record clearly
14 outweighs the public interest served by disclosure of the
15 record.

16 ~~(b) Notwithstanding any provision of this chapter, an~~
17 ~~agency, or the superior court in any action brought~~
18 ~~pursuant to Section 6259, may disclose or order to be~~
19 ~~disclosed any record made exempt by express provisions~~
20 ~~of this chapter if, on the facts of the particular case, the~~
21 ~~public interest served by disclosing the record clearly~~
22 ~~outweighs the public interest served by not disclosing the~~
23 ~~record.~~

24 SEC. 4. Notwithstanding Section 17610 of the
25 Government Code, if the Commission on State Mandates
26 determines that this act contains costs mandated by the
27 state, reimbursement to local agencies and school
28 districts for those costs shall be made pursuant to Part 7
29 (commencing with Section 17500) of Division 4 of Title
30 2 of the Government Code. If the statewide cost of the
31 claim for reimbursement does not exceed one million
32 dollars (\$1,000,000), reimbursement shall be made from
33 the State Mandates Claims Fund.

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AMENDED IN ASSEMBLY MAY 23, 2000
AMENDED IN ASSEMBLY APRIL 27, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2799

Introduced by Assembly Member Shelley
(Principal coauthor: Senator Bowen)
(Coauthors: *Assembly Members Alquist and Romero*)

February 28, 2000

An act to amend Sections 6253 and 6255 of, and to add Section 6253.2 to, the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 2799, as amended, Shelley. Public records: disclosure.

(1) The California Public Records Act provides that any person may receive a copy of any identifiable public record from any state or local agency upon payment of specified fees. The act provides that it shall not be construed to permit an agency to obstruct the inspection or copying of public records and requires any notification of denial of any request for records pursuant to the act to set forth the names and titles or positions of each person responsible for the denial. The act also requires computer data to be provided in a form determined by the agency.

This bill would provide that nothing in the act shall be construed to permit an agency to delay or obstruct the inspection or copying of public records ~~and would require~~



~~that the notification of denial of any request for records justifying its withholding to be in writing.~~ This bill would delete the requirement that computer data be provided in a form determined by the agency and would require any agency that has information that constitutes an identifiable public record that is in an electronic format to make that information available in an electronic format when requested by any person. The bill would require the agency to make the information available in any electronic format in which it holds the information. Because these requirements would apply to local agencies as well as state agencies, this bill would impose a state-mandated local program.

(2) The act requires the agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the act or that, on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

This bill would require ~~the agency to justify withholding any record~~ *a response to a written request for public records that includes a denial of the request in whole or in part to be in writing.* By imposing this new duty on local public officials, the bill would create a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



The people of the State of California do enact as follows:

1 SECTION 1. Section 6253 of the Government Code is
2 amended to read:

3 6253. (a) Public records are open to inspection at all
4 times during the office hours of the state or local agency
5 and every person has a right to inspect any public record,
6 except as hereafter provided. Any reasonably segregable
7 portion of a record shall be available for inspection by any
8 person requesting the record after deletion of the
9 portions that are exempted by law.

10 (b) Except with respect to public records exempt
11 from disclosure by express provisions of law, each state or
12 local agency, upon a request for a copy of records that
13 reasonably describes an identifiable record or records,
14 shall make the records promptly available to any person
15 upon payment of fees covering direct costs of duplication,
16 or a statutory fee if applicable. Upon request, an exact
17 copy shall be provided unless impracticable to do so.

18 (c) Each agency, upon a request for a copy of records,
19 shall, within 10 days from receipt of the request,
20 determine whether the request, in whole or in part, seeks
21 copies of disclosable public records in the possession of
22 the agency and shall promptly notify the person making
23 the request of the determination and the reasons
24 therefor. In unusual circumstances, the time limit
25 prescribed in this section may be extended by written
26 notice by the head of the agency or his or her designee to
27 the person making the request, setting forth the reasons
28 for the extension and the date on which a determination
29 is expected to be dispatched. No notice shall specify a date
30 that would result in an extension for more than 14 days.
31 As used in this section, "unusual circumstances" means
32 the following, but only to the extent reasonably necessary
33 to the proper processing of the particular request:

34 (1) The need to search for and collect the requested
35 records from field facilities or other establishments that
36 are separate from the office processing the request.



1 (2) The need to search for, collect, and appropriately
2 examine a voluminous amount of separate and distinct
3 records that are demanded in a single request.

4 (3) The need for consultation, which shall be
5 conducted with all practicable speed, with another
6 agency having substantial interest in the determination
7 of the request or among two or more components of the
8 agency having substantial subject matter interest therein.

9 (d) Nothing in this chapter shall be construed to
10 permit an agency to delay or obstruct the inspection or
11 copying of public records. The notification of denial of
12 any request for records required by Section 6255 shall set
13 forth the names and titles or positions of each person
14 responsible for the denial.

15 (e) Except as otherwise prohibited by law, a state or
16 local agency may adopt requirements for itself that allow
17 for faster, more efficient, or greater access to records than
18 prescribed by the minimum standards set forth in this
19 chapter.

20 SEC. 2. Section 6253.2 is added to the Government
21 Code, to read:

22 6253.2. (a) Unless otherwise prohibited by law, any
23 agency that has information that constitutes an
24 identifiable public record that is in an electronic format
25 shall make that information available in an electronic
26 format when requested by any person and, when
27 applicable, shall comply with the following:

28 (1) The agency shall make the information available in
29 any electronic format in which it holds the information.

30 (2) Each agency shall provide a copy of an electronic
31 record in the format requested if the requested format is
32 one that has been used by the agency to create copies for
33 its own use or for provision to other agencies. Direct costs
34 of duplication shall include the costs associated with
35 duplicating electronic records.

36 (b) Nothing in this section shall be construed to
37 require the public agency to reconstruct a report in an
38 electronic format if the agency no longer has the report
39 itself available in an electronic format.



1 (c) Nothing in this section shall be construed to permit
2 an agency to make information available only in an
3 electronic format.

4 (d) Nothing in this section shall be construed to permit
5 public access to records held by the Department of Motor
6 Vehicles to which access is otherwise restricted by statute.

7 SEC. 3. Section 6255 of the Government Code is
8 amended to read:

9 6255. (a) The agency shall justify withholding any
10 record ~~in writing~~ by demonstrating that the record in
11 question is exempt under express provisions of this
12 chapter or that on the facts of the particular case the
13 public interest served by not disclosing the record clearly
14 outweighs the public interest served by disclosure of the
15 record.

16 (b) *A response to a written request for inspection or*
17 *copies of public records that includes a determination*
18 *that the request is denied, in whole or in part, shall be in*
19 *writing.*

20 SEC. 4. Notwithstanding Section 17610 of the
21 Government Code, if the Commission on State Mandates
22 determines that this act contains costs mandated by the
23 state, reimbursement to local agencies and school
24 districts for those costs shall be made pursuant to Part 7
25 (commencing with Section 17500) of Division 4 of Title
26 2 of the Government Code. If the statewide cost of the
27 claim for reimbursement does not exceed one million
28 dollars (\$1,000,000), reimbursement shall be made from
29 the State Mandates Claims Fund.

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AMENDED IN SENATE JUNE 22, 2000
AMENDED IN ASSEMBLY MAY 23, 2000
AMENDED IN ASSEMBLY APRIL 27, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2799

Introduced by Assembly Member Shelley
(Principal coauthor: Senator Bowen)
(Coauthors: Assembly Members Alquist and Romero)

February 28, 2000

An act to amend Sections 6253 and 6255 of, and to add Section ~~6253.2~~ 6253.9 to, the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 2799, as amended, Shelley. Public records: disclosure.

(1) The California Public Records Act provides that any person may receive a copy of any identifiable public record from any state or local agency upon payment of ~~specified~~ fees *covering direct costs of duplication or a statutory fee if applicable*. The act provides that it shall not be construed to permit an agency to obstruct the inspection or copying of public records and requires any notification of denial of any request for records pursuant to the act to set forth the names and titles or positions of each person responsible for the denial. The act also requires computer data to be provided in a form determined by the agency.



This bill would provide that nothing in the act shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. This bill would delete the requirement that computer data be provided in a form determined by the agency and would require any agency that has information that constitutes an identifiable public record *not otherwise exempt from disclosure* that is in an electronic format to make that information available in an electronic format when requested by any person. The bill would require the agency to make the information available in any electronic format in which it holds the information, *but would not require release of a record in the electronic form in which it is held if its release would jeopardize or compromise the security or integrity of the original record or any proprietary software in which it is maintained.* Because these requirements would apply to local agencies as well as state agencies; this bill would impose a state-mandated local program.

Regarding payment of fees for records released in an electronic format, the bill would require that the requester bear the cost of programming and computer services necessary to produce a record not otherwise readily produced, as specified.

(2) The act requires the agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the act or that, on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

This bill would require a response to a written request for public records that includes a denial of the request in whole or in part to be in writing. By imposing this new duty on local public officials, the bill would create a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other



procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6253 of the Government Code is
2 amended to read:

3 6253. (a) Public records are open to inspection at all
4 times during the office hours of the state or local agency
5 and every person has a right to inspect any public record,
6 except as hereafter provided. Any reasonably segregable
7 portion of a record shall be available for inspection by any
8 person requesting the record after deletion of the
9 portions that are exempted by law.

10 (b) Except with respect to public records exempt
11 from disclosure by express provisions of law, each state or
12 local agency, upon a request for a copy of records that
13 reasonably describes an identifiable record or records,
14 shall make the records promptly available to any person
15 upon payment of fees covering direct costs of duplication,
16 or a statutory fee if applicable. Upon request, an exact
17 copy shall be provided unless impracticable to do so.

18 (c) Each agency, upon a request for a copy of records,
19 shall, within 10 days from receipt of the request,
20 determine whether the request, in whole or in part, seeks
21 copies of disclosable public records in the possession of
22 the agency and shall promptly notify the person making
23 the request of the determination and the reasons
24 therefor. In unusual circumstances, the time limit
25 prescribed in this section may be extended by written
26 notice by the head of the agency or his or her designee to
27 the person making the request, setting forth the reasons
28 for the extension and the date on which a determination
29 is expected to be dispatched. No notice shall specify a date



1 that would result in an extension for more than 14 days.
2 As used in this section, "unusual circumstances" means
3 the following, but only to the extent reasonably necessary
4 to the proper processing of the particular request:

5 (1) The need to search for and collect the requested
6 records from field facilities or other establishments that
7 are separate from the office processing the request.

8 (2) The need to search for, collect, and appropriately
9 examine a voluminous amount of separate and distinct
10 records that are demanded in a single request.

11 (3) The need for consultation, which shall be
12 conducted with all practicable speed, with another
13 agency having substantial interest in the determination
14 of the request or among two or more components of the
15 agency having substantial subject matter interest therein.

16 (4) *The need to compile data, to write programming*
17 *language or a computer program, or to construct a*
18 *computer report to extract data.*

19 (d) Nothing in this chapter shall be construed to
20 permit an agency to delay or obstruct the inspection or
21 copying of public records. The notification of denial of
22 any request for records required by Section 6255 shall set
23 forth the names and titles or positions of each person
24 responsible for the denial.

25 (e) Except as otherwise prohibited by law, a state or
26 local agency may adopt requirements for itself that allow
27 for faster, more efficient, or greater access to records than
28 prescribed by the minimum standards set forth in this
29 chapter.

30 SEC. 2. Section ~~6253.2~~ 6253.9 is added to the
31 Government Code, to read:

32 ~~6253.2.~~

33 6253.9. (a) Unless otherwise prohibited by law, any
34 agency that has information that constitutes an
35 identifiable public record *not exempt from disclosure*
36 *pursuant to this chapter* that is in an electronic format
37 shall make that information available in an electronic
38 format when requested by any person and, when
39 applicable, shall comply with the following:

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1 (1) The agency shall make the information available in
2 any electronic format in which it holds the information.

3 (2) Each agency shall provide a copy of an electronic
4 record in the format requested if the requested format is
5 one that has been used by the agency to create copies for
6 its own use or for provision to other agencies. ~~Direct costs~~
7 ~~of duplication shall include the costs associated with~~
8 ~~duplicating electronic records.~~

9 ~~(b) The cost of duplication shall be limited to the~~
10 ~~direct cost of producing a copy of a record in an electronic~~
11 ~~format.~~

12 (b) Notwithstanding paragraph (2) of subdivision (a),
13 the requester shall bear the cost of producing a copy of
14 the record, including the cost to construct a record, and
15 the cost of programming and computer services
16 necessary to produce a copy of the record when either of
17 the following applies:

18 (1) In order to comply with the provisions of
19 subdivision (a), the public agency would be required to
20 produce a copy of an electronic record and the record is
21 one that is produced only at otherwise regularly
22 scheduled intervals.

23 (2) The request would require data compilation,
24 extraction, or programming to produce the record.

25 (c) Nothing in this section shall be construed to
26 require the public agency to reconstruct a ~~report~~ record
27 in an electronic format if the agency no longer has the
28 ~~report itself~~ record available in an electronic format.

29 ~~(e)~~

30 (d) Nothing in this section shall be construed to permit
31 an agency to make information available only in an
32 electronic format.

33 ~~(d)~~

34 (e) Nothing in this section shall be construed to
35 require the public agency to release an electronic record
36 in the electronic form in which it is held by the agency if
37 its release would jeopardize or compromise the security
38 or integrity of the original record or of any proprietary
39 software in which it is maintained.



1 (f) Nothing in this section shall be construed to permit
2 public access to records held by the Department of Motor
3 Vehicles to which access is otherwise restricted by statute.

4 SEC. 3. Section 6255 of the Government Code is
5 amended to read:

6 6255. (a) The agency shall justify withholding any
7 record by demonstrating that the record in question is
8 exempt under express provisions of this chapter or that on
9 the facts of the particular case the public interest served
10 by not disclosing the record clearly outweighs the public
11 interest served by disclosure of the record.

12 (b) A response to a written request for inspection or
13 copies of public records that includes a determination
14 that the request is denied, in whole or in part, shall be in
15 writing.

16 SEC. 4. Notwithstanding Section 17610 of the
17 Government Code, if the Commission on State Mandates
18 determines that this act contains costs mandated by the
19 state, reimbursement to local agencies and school
20 districts for those costs shall be made pursuant to Part 7
21 (commencing with Section 17500) of Division 4 of Title
22 2 of the Government Code. If the statewide cost of the
23 claim for reimbursement does not exceed one million
24 dollars (\$1,000,000), reimbursement shall be made from
25 the State Mandates Claims Fund.

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AMENDED IN SENATE JULY 6, 2000
AMENDED IN SENATE JUNE 22, 2000
AMENDED IN ASSEMBLY MAY 23, 2000
AMENDED IN ASSEMBLY APRIL 27, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2799

Introduced by Assembly Member Shelley
(Principal coauthor: Senator Bowen)
(Coauthors: Assembly Members Alquist and Romero)

February 28, 2000

An act to amend Sections 6253 and 6255 of, and to add Section 6253.9 to, the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 2799, as amended, Shelley. Public records: disclosure.

(1) The California Public Records Act provides that any person may receive a copy of any identifiable public record from any state or local agency upon payment of fees covering direct costs of duplication or a statutory fee if applicable. The act provides that it shall not be construed to permit an agency to obstruct the inspection or copying of public records and requires any notification of denial of any request for records pursuant to the act to set forth the names and titles or positions of each person responsible for the denial. The act also requires



computer data to be provided in a form determined by the agency.

This bill would provide that nothing in the act shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. This bill would delete the requirement that computer data be provided in a form determined by the agency and would require any agency that has information that constitutes an identifiable public record not otherwise exempt from disclosure that is in an electronic format to make that information available in an electronic format when requested by any person. The bill would require the agency to make the information available in any electronic format in which it holds the information, but would not require release of a record in the electronic form in which it is held if its release would jeopardize or compromise the security or integrity of the original record or any proprietary software in which it is maintained. Because these requirements would apply to local agencies as well as state agencies, this bill would impose a state-mandated local program.

Regarding payment of fees for records released in an electronic format, the bill would require that the requester bear the cost of programming and computer services necessary to produce a record not otherwise readily produced, as specified.

(2) The act requires the agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the act or that, on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

This bill would require a response to a written request for public records that includes a denial of the request in whole or in part to be in writing. By imposing this new duty on local public officials, the bill would create a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the



creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6253 of the Government Code is
2 amended to read:

3 6253. (a) Public records are open to inspection at all
4 times during the office hours of the state or local agency
5 and every person has a right to inspect any public record,
6 except as hereafter provided. Any reasonably segregable
7 portion of a record shall be available for inspection by any
8 person requesting the record after deletion of the
9 portions that are exempted by law.

10 (b) Except with respect to public records exempt
11 from disclosure by express provisions of law, each state or
12 local agency, upon a request for a copy of records that
13 reasonably describes an identifiable record or records,
14 shall make the records promptly available to any person
15 upon payment of fees covering direct costs of duplication,
16 or a statutory fee if applicable. Upon request, an exact
17 copy shall be provided unless impracticable to do so.

18 (c) Each agency, upon a request for a copy of records,
19 shall, within 10 days from receipt of the request,
20 determine whether the request, in whole or in part, seeks
21 copies of disclosable public records in the possession of
22 the agency and shall promptly notify the person making
23 the request of the determination and the reasons
24 therefor. In unusual circumstances, the time limit
25 prescribed in this section may be extended by written
26 notice by the head of the agency or his or her designee to
27 the person making the request, setting forth the reasons



1 for the extension and the date on which a determination
2 is expected to be dispatched. No notice shall specify a date
3 that would result in an extension for more than 14 days.
4 As used in this section, "unusual circumstances" means
5 the following, but only to the extent reasonably necessary
6 to the proper processing of the particular request:

7 (1) The need to search for and collect the requested
8 records from field facilities or other establishments that
9 are separate from the office processing the request.

10 (2) The need to search for, collect, and appropriately
11 examine a voluminous amount of separate and distinct
12 records that are demanded in a single request.

13 (3) The need for consultation, which shall be
14 conducted with all practicable speed, with another
15 agency having substantial interest in the determination
16 of the request or among two or more components of the
17 agency having substantial subject matter interest therein.

18 (4) The need to compile data, to write programming
19 language or a computer program, or to construct a
20 computer report to extract data.

21 (d) Nothing in this chapter shall be construed to
22 permit an agency to delay or obstruct the inspection or
23 copying of public records. The notification of denial of
24 any request for records required by Section 6255 shall set
25 forth the names and titles or positions of each person
26 responsible for the denial.

27 (e) Except as otherwise prohibited by law, a state or
28 local agency may adopt requirements for itself that allow
29 for faster, more efficient, or greater access to records than
30 prescribed by the minimum standards set forth in this
31 chapter.

32 SEC. 2. Section 6253.9 is added to the Government
33 Code, to read:

34 6253.9. (a) Unless otherwise prohibited by law, any
35 agency that has information that constitutes an
36 identifiable public record not exempt from disclosure
37 pursuant to this chapter that is in an electronic format
38 shall make that information available in an electronic
39 format when requested by any person and, when
40 applicable, shall comply with the following:



1 (1) The agency shall make the information available in
2 any electronic format in which it holds the information.

3 (2) Each agency shall provide a copy of an electronic
4 record in the format requested if the requested format is
5 one that has been used by the agency to create copies for
6 its own use or for provision to other agencies. The cost of
7 duplication shall be limited to the direct cost of producing
8 a copy of a record in an electronic format.

9 (b) Notwithstanding paragraph (2) of subdivision (a),
10 the requester shall bear the cost of producing a copy of
11 the record, including the cost to construct a record, and
12 the cost of programming and computer services
13 necessary to produce a copy of the record when either of
14 the following applies:

15 (1) In order to comply with the provisions of
16 subdivision (a), the public agency would be required to
17 produce a copy of an electronic record and the record is
18 one that is produced only at otherwise regularly
19 scheduled intervals.

20 (2) The request would require data compilation,
21 extraction, or programming to produce the record.

22 (c) Nothing in this section shall be construed to
23 require the public agency to reconstruct a record in an
24 electronic format if the agency no longer has the record
25 available in an electronic format.

26 (d) *If the request is for information in other than*
27 *electronic format, and the information also is in*
28 *electronic format, the agency may inform the requester*
29 *that the information is available in electronic format.*

30 (e) Nothing in this section shall be construed to permit
31 an agency to make information available only in an
32 electronic format.

33 ~~(e)~~

34 (f) Nothing in this section shall be construed to require
35 the public agency to release an electronic record in the
36 electronic form in which it is held by the agency if its
37 release would jeopardize or compromise the security or
38 integrity of the original record or of any proprietary
39 software in which it is maintained.

40 ~~(f)~~



1 (g) Nothing in this section shall be construed to permit
2 public access to records held by ~~the Department of Motor~~
3 ~~Vehicles~~ any agency to which access is otherwise
4 restricted by statute.

5 SEC. 3. Section 6255 of the Government Code is
6 amended to read:

7 6255. (a) The agency shall justify withholding any
8 record by demonstrating that the record in question is
9 exempt under express provisions of this chapter or that on
10 the facts of the particular case the public interest served
11 by not disclosing the record clearly outweighs the public
12 interest served by disclosure of the record.

13 (b) A response to a written request for inspection or
14 copies of public records that includes a determination
15 that the request is denied, in whole or in part, shall be in
16 writing.

17 SEC. 4. Notwithstanding Section 17610 of the
18 Government Code, if the Commission on State Mandates
19 determines that this act contains costs mandated by the
20 state, reimbursement to local agencies and school
21 districts for those costs shall be made pursuant to Part 7
22 (commencing with Section 17500) of Division 4 of Title
23 2 of the Government Code. If the statewide cost of the
24 claim for reimbursement does not exceed one million
25 dollars (\$1,000,000), reimbursement shall be made from
26 the State Mandates Claims Fund.

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Assembly Bill No. 2799

CHAPTER 982

An act to amend Sections 6253 and 6255 of, and to add Section 6253.9 to, the Government Code, relating to public records.

[Approved by Governor September 29, 2000. Filed with Secretary of State September 30, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2799, Shelley. Public records: disclosure.

(1) The California Public Records Act provides that any person may receive a copy of any identifiable public record from any state or local agency upon payment of fees covering direct costs of duplication or a statutory fee if applicable. The act provides that it shall not be construed to permit an agency to obstruct the inspection or copying of public records and requires any notification of denial of any request for records pursuant to the act to set forth the names and titles or positions of each person responsible for the denial. The act also requires computer data to be provided in a form determined by the agency.

This bill would provide that nothing in the act shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. This bill would delete the requirement that computer data be provided in a form determined by the agency and would require any agency that has information that constitutes an identifiable public record not otherwise exempt from disclosure that is in an electronic format to make that information available in an electronic format when requested by any person. The bill would require the agency to make the information available in any electronic format in which it holds the information, but would not require release of a record in the electronic form in which it is held if its release would jeopardize or compromise the security or integrity of the original record or any proprietary software in which it is maintained. Because these requirements would apply to local agencies as well as state agencies, this bill would impose a state-mandated local program.

Regarding payment of fees for records released in an electronic format, the bill would require that the requester bear the cost of programming and computer services necessary to produce a record not otherwise readily produced, as specified.

(2) The act requires the agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the act or that, on the facts of the particular case, the



public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

This bill would require a response to a written request for public records that includes a denial of the request in whole or in part to be in writing. By imposing this new duty on local public officials, the bill would create a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 6253 of the Government Code is amended to read:

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. As used in this section, "unusual circumstances" means the following, but only to the extent



reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

SEC. 2. Section 6253.9 is added to the Government Code, to read:

6253.9. (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision (a), 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.



(2) The request would require data compilation, extraction, or programming to produce the record.

(c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

(d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.

(e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

SEC. 3. Section 6255 of the Government Code is amended to read:

6255. (a) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

(b) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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VOLUME 2
CALIFORNIA LEGISLATURE
AT SACRAMENTO
1999-2000 REGULAR SESSION

ASSEMBLY FINAL HISTORY

ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS,
CONCURRENT RESOLUTIONS,
JOINT RESOLUTIONS, AND HOUSE RESOLUTIONS

Assembly Convened December 7, 1998

Recessed December 8, 1998	Reconvened January 4, 1999
Recessed March 25, 1999	Reconvened April 5, 1999
Recessed July 15, 1999	Reconvened August 16, 1999
Recessed September 10, 1999	Reconvened January 3, 2000
Recessed April 13, 2000	Reconvened April 24, 2000
Recessed July 6, 2000	Reconvened August 7, 2000

Adjourned September 1, 2000
Adjourned Sine Die November 30, 2000

Legislative Days	225
Calendar Days	725

HON. ROBERT M. HERTZBERG
Speaker

HON. FRED KEELEY
Speaker pro Tempore

HON. KEVIN SHELLEY
Majority Floor Leader

HON. HELEN THOMSON
Assistant Speaker pro Tempore

HON. SCOTT R. BAUGH
Minority Floor Leader

Compiled Under the Direction of
E. DOTSON WILSON
Chief Clerk

AMY LEACH
History Clerk

LEGISLATIVE INTENT SERVICE (800) 666-1917

A.B. No. 2798—Thomson.

An act to amend Section 4027 of, and to add Article 3.5 (commencing with Section 7260) to Chapter 2 of Division 7 of, the Welfare and Institutions Code, relating to mental health, and declaring the urgency thereof, to take effect immediately.

2000

- Feb. 28—Joint Rule 54 suspended. Assembly Rule 49(a) suspended. Read first time. To print.
 Feb. 29—From printer. May be heard in committee March 30.
 Mar. 16—Referred to Coms. on HEALTH and JUD.
 April 12—In committee: Set, first hearing. Hearing canceled at the request of author.
 Nov. 30—From committee without further action.

A.B. No. 2799—Shelley (Principal coauthor: Senator Bowen) (Coauthors: Alquist and Romero).

An act to amend Sections 6253 and 6255 of, and to add Section 6253.9 to, the Government Code, relating to public records.

2000

- Feb. 28—Joint Rule 54 suspended. Assembly Rule 49(a) suspended. Read first time. To print.
 Feb. 29—From printer. May be heard in committee March 30.
 Mar. 16—Referred to Com. on G.O.
 April 10—In committee: Set, first hearing. Hearing canceled at the request of author.
 April 24—In committee: Set second hearing. Failed passage. Reconsideration granted.
 April 27—From committee chair, with author's amendments: Amend, and re-refer to Com. on G.O. Read second time and amended.
 April 27—Joint Rule 61 (b)(5) suspended.
 May 2—Re-referred to Com. on G.O.
 May 8—From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 12. Noes 2.) (May 8).
 May 22—From committee: Amend, and do pass as amended. (Ayes 17. Noes 2.) (May 17).
 May 23—Read second time and amended. Ordered returned to second reading.
 May 24—Read second time. To third reading.
 May 25—Read third time, passed, and to Senate. (Ayes 70. Noes 4. Page 6573.)
 May 25—In Senate. Read first time. To Com. on RLS. for assignment.
 June 8—Referred to Com. on JUD.
 June 22—From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.
 July 5—From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 5. Noes 0.)
 July 6—Read second time, amended, and re-referred to Com. on APPR.
 Aug. 18—From committee: Be placed on second reading file pursuant to Senate Rule 28.8. Read second time. To third reading.
 Aug. 25—Read third time, passed, and to Assembly. (Ayes 34. Noes 0. Page 5992.)
 Aug. 25—In Assembly. Concurrence in Senate amendments pending. May be considered on or after August 27 pursuant to Assembly Rule 77. Assembly Rule 77 suspended. Senate amendments concurred in. To enrollment. (Ayes 72. Noes 2. Page 8364.)
 Sept. 7—Enrolled and to the Governor at 9:30 a.m.
 Sept. 29—Approved by the Governor.
 Sept. 30—Chaptered by Secretary of State - Chapter 982, Statutes of 2000.

LEGISLATIVE INTENT SERVICE (866) 868-1917

Date of Hearing: April 10, 2000

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Herb Wesson, Chair

AB 2799 (Shelley) – As introduced: February 28, 2000

SUBJECT: Public records

SUMMARY: Provides for the release of public records in an electronic format and authorizes the release of records that are exempt from the Public Records Act (the PRA) in specified circumstances. Specifically, this bill:

- 1) Deletes the requirement that public records kept on computer be disclosed in a form determined by the public agency. Requires a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following guidelines:
 - a) The agency must make the information available in any electronic format in which it holds the information.
 - b) Each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.
 - c) An agency may not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- 2) Authorizes an agency, or the superior court in an action brought under the PRA, to disclose or order to be disclosed any record exempted from the PRA if, on the facts of the particular case, the public interest served in disclosing the record clearly outweighs the public interest served by not disclosing the record.
- 3) Requires an agency that withholds a public record to justify its withholding in writing.
- 4) Specifies that the requirements of the bill shall not be construed to permit an agency to make information available only in an electronic format nor shall they be construed to permit access to records held by the Department of Motor Vehicles that are otherwise restricted under the PRA.
- 5) Specifies that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

EXISTING LAW

- 1) Defines "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 characteristics.



- 2) Requires public records to be open to inspection at all times during the office hours of a state or local agency and affords every person the right to inspect any public record, except as specifically provided.
- 3) Requires a public agency to justify withholding a public record by demonstrating that the record in question is exempt under express provisions of the PRA *or* that on the facts of a particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosing the record.
- 4) Requires a court, when it finds that a public official's decision not to disclose a public record is unjustified, to order the public official to make the record public.

FISCAL EFFECT: Unknown.

COMMENTS:

1. Need for the bill. The PRA permits a state or local agency to provide computer records in any format determined by the agency. This bill would require an agency to provide computer records in any format that it currently uses. According to the sponsor, the California Newspaper Publishers Association, this bill is intended to ensure quicker, more useful access to public records. The sponsor also notes that the bill seeks to provide reasonable guidelines for public access to electronically held records. The sponsor claims that this bill will balance the ability of private citizens to access public records with the discretion of public agencies to deny such records requests.

2. Reverse balancing test. The PRA generally establishes broad guidelines about the types of documents that may not be subject to public disclosure and affords state agencies discretion to apply a balancing test when determining whether or not to release a record. In applying the test, the agency must determine that the "public interest served by not making the record public clearly outweighs the public interest served by disclosing the record." This bill attempts to apply a reverse balancing test by giving courts and state agencies the authority to disclose any public record if the agency or superior court determines that, depending on the facts of a particular case, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record. The reverse balancing test disclosure would apply even when a court finds that the record is exempted from disclosure under the PRA.

3. Opposition. Opponents argue that the bill subjects confidential records to a "vague" balancing test. Opponents claim that the test undermines key provisions of the PRA which protects proprietary information such as applications for the issuance of securities or of financial institutions, including banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.



4. County concerns. The California State Association of Counties (CSAC) is also concerned that the bill would permit a court or other agency, despite any other exemption in the PRA, to order disclosure of a record it found to pass the reverse balancing test. CSAC is concerned that this provision would permit the release of specifically exempted information such as preliminary drafts or notes, geological and utility systems data, or complaint or investigation of records of local law enforcement agencies.

5. Policy consideration. The committee may wish to consider whether the courts should have the discretion, even when they find that a record is generally exempt from disclosure under the PRA, to require disclosure of that record if it meets the reverse balancing test. The committee may also wish to consider whether the reverse balancing test gives courts and agencies too much discretionary authority to release records that are *specifically* prohibited from release under the PRA or any other provision of law.

REGISTERED SUPPORT / OPPOSITION:

Support

California Newspaper Publishers Association
First Amendment Coalition

Opposition

Association of California Insurance Companies
Personal Insurance Federation of California

Analysis Prepared by: Richard Rios / G. O. / (916) 319-2531



Date of Hearing: April 24, 2000

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Herb Wesson, Chair

AB 2799 (Shelley) – As introduced: February 28, 2000

SUBJECT: Public records

SUMMARY: Provides for the release of public records in an electronic format and authorizes the release of records that are exempt from the Public Records Act (the PRA) in specified circumstances. Specifically, this bill:

- 1) Deletes the requirement that public records kept on computer be disclosed in a form determined by the public agency. Requires a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following guidelines:
 - a) The agency must make the information available in any electronic format in which it holds the information.
 - b) Each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.
 - c) An agency may not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- 2) Authorizes an agency, or the superior court in an action brought under the PRA, to disclose or order to be disclosed any record exempted from the PRA if, on the facts of the particular case, the public interest served in disclosing the record clearly outweighs the public interest served by not disclosing the record.
- 3) Requires an agency that withholds a public record to justify its withholding in writing.
- 4) Specifies that the requirements of the bill shall not be construed to permit an agency to make information available only in an electronic format nor shall they be construed to permit access to records held by the Department of Motor Vehicles that are otherwise restricted under the PRA.
- 5) Specifies that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

EXISTING LAW

- 1) Defines "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 characteristics.



- 2) Requires public records to be open to inspection at all times during the office hours of a state or local agency and affords every person the right to inspect any public record, except as specifically provided.
- 3) Requires a public agency to justify withholding a public record by demonstrating that the record in question is exempt under express provisions of the PRA or that on the facts of a particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosing the record.
- 4) Requires a court, when it finds that a public official's decision not to disclose a public record is unjustified, to order the public official to make the record public.

FISCAL EFFECT: Unknown.

COMMENTS:

1. Need for the bill. The PRA permits a state or local agency to provide computer records in any format determined by the agency. This bill would require an agency to provide computer records in any format that it currently uses. According to the sponsor, the California Newspaper Publishers Association, this bill is intended to ensure quicker, more useful access to public records. The sponsor also notes that the bill seeks to provide reasonable guidelines for public access to electronically held records. The sponsor claims that this bill will balance the ability of private citizens to access public records with the discretion of public agencies to deny such records requests.

2. Reverse balancing test. The PRA generally establishes broad guidelines about the types of documents that may not be subject to public disclosure and affords state agencies discretion to apply a balancing test when determining whether or not to release a record. In applying the test, the agency must determine that the "public interest served by not making the record public clearly outweighs the public interest served by disclosing the record." This bill attempts to apply a reverse balancing test by giving courts and state agencies the authority to disclose any public record if the agency or superior court determines that, depending on the facts of a particular case, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record. The reverse balancing test disclosure would apply even when a court finds that the record is exempted from disclosure under the PRA.

3. Opposition. Opponents argue that the bill subjects confidential records to a "vague" balancing test. Opponents claim that the test undermines key provisions of the PRA which protect proprietary information such as applications for the issuance of securities or of financial institutions, including banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies. Opponents also contend that the bill would permit a court or other agency, despite an exemption in the PRA, to order disclosure of a record it found to pass the reverse balancing test. Opponents are concerned that this provision would permit the release of specifically exempted information such as preliminary drafts or notes, geological and utility systems data, or complaint or investigation of records of local law enforcement agencies.



4. Policy consideration. The committee may wish to consider whether the courts should have the discretion, even when they find that a record is generally exempt from disclosure under the PRA, to require disclosure of that record if it meets the reverse balancing test. The committee may also wish to consider whether the reverse balancing test gives courts and agencies too much discretionary authority to release records that are *specifically* prohibited from release under the PRA or any other provision of law.

REGISTERED SUPPORT / OPPOSITION:

Support

California Newspaper Publishers Association
First Amendment Coalition

Opposition

Association of California Insurance Companies
California Association of Sanitation Agencies
California Chamber of Commerce
California Manufacturers & Technology Association
California Municipal Utilities Association
California State Association of Counties
California State Sheriffs Association
Civil Justice Association of California
Office of the State Attorney General
Personal Insurance Federation of California
San Bernardino County Sheriff's Department
Wine Institute

Analysis Prepared by: Richard Rios / G. O. / (916) 319-2531



Date of Hearing: May 8, 2000

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Herb Wesson, Chair

AB 2799 (Shelley) – As amended: April 27, 2000

SUBJECT: Public records

SUMMARY: Provides for the release of public records in an electronic format and requires a public agency that withholds a public record to justify its withholding in writing.

- 1) Deletes the requirement that public records kept on computer be disclosed in a form determined by the public agency. Requires a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following guidelines:
 - a) The agency must make the information available in any electronic format in which it holds the information.
 - b) Each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.
 - c) An agency may not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- 2) Requires an agency that withholds a public record to justify its withholding in writing.
- 3) Specifies that the requirements of the bill shall not be construed to permit an agency to make information available only in an electronic format nor shall they be construed to permit access to records held by the Department of Motor Vehicles that are otherwise restricted under the PRA.
- 4) Specifies that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

EXISTING LAW

- 1) Defines "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 characteristics.
- 2) Requires public records to be open to inspection at all times during the office hours of a state or local agency and affords every person the right to inspect any public record, except as specifically provided.



- 3) Requires state and local agencies to make an exact copy of a public record available to any person upon payment of fees covering direct costs of duplication, or a statutory fee, if applicable.
- 4) Requires that computer data be provided in a form determined by the agency.

FISCAL EFFECT: Unknown.

COMMENTS:

1. Need for the bill. The PRA permits a state or local agency to provide computer records in any format determined by the agency. This bill would require an agency to provide computer records in any format that it currently uses. According to the sponsor, the California Newspaper Publishers Association, this bill is intended to ensure quicker, more useful access to public records. The sponsor also notes that the bill seeks to provide reasonable guidelines for public access to electronically held records.
2. Substantive amendments. This bill was heard by this committee on April 24, 2000 and failed passage. Since the April 24 hearing, the author has substantially amended the bill to remove a controversial provision which would have authorized courts and state agencies to release records exempted from the PRA if the court or agency determined that the "public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record." This provision is referred to as the "reverse balancing test" and was the primary issue of discussion during the bill's hearing.
3. Remaining opposition. Although some opponents have removed their opposition in response to the most recent amendments, some remain concerned with the bill's requirement that public records be released in any electronic format that the agency uses to hold public records. Opponents point out that state and local agencies retain massive databases which may include nondisclosable public records. They claim that redacting the nondisclosable information from the electronic records could be a costly and time-consuming process that is more vulnerable to error, which may result in the unintentional release of nondisclosable information. Opponents note that the bill does not contain a provision authorizing agencies to charge fees covering the cost of preparing the electronic record for public release. It is unclear how local agencies currently account for public records that are required to be redacted but that are disclosed in a paper format.
4. Similar legislation. AB 1099 (Shelley) of this legislative session would have required state and local agencies to provide copies of public records in any form requested, including in a computer format, as long as the form was already used by the agency in the conduct of its business. AB 1099 passed this committee by a 15-0 vote but was later amended to contain a subject matter different from that which this committee considered.



REGISTERED SUPPORT / OPPOSITION:

Support

California Newspaper Publishers Association
First Amendment Coalition

Opposition

California Association of Sanitation Agencies
California Municipal Utilities Association
California State Sheriffs Association
Office of the State Attorney General
San Bernardino County Sheriff's Department

Analysis Prepared by: Richard Rios / G. O. / (916) 319-2531



Governmental Organization

Date of Hearing: 05/08/2000

BILL NO.	AB 2788	AB 2792	AB 2799	
ACTION VOTED ON	Do pass and re-refer to the Com on Appr.	Do pass and re-refer to the Com on Appr.	Do pass and re-refer to the Com on Appr.	
	Aye : No	Aye : No	Aye : No	Aye : No
Wesson (Chair)	X :	X :	X :	
Granlund (V. Chair)	X :	X :	X :	
Battin	X :	: X	X :	
Brewer	X :	: X	: X	
Briggs	X :	: X	X :	
Calderon	Absent	Absent	Absent	
Cardenas	X :	X :	X :	
Cardoza	X :	X :	Not Voting	
Floyd	X :	X :	: X	
Lempert	X :	X :	X :	
Longville	X :	X :	X :	
Machado	X :	Not Voting	X :	
Maldonado	X :	Not Voting	X :	
Margett	X :	: X	Not Voting	
Reyes	X :	X :	Not Voting	
Strickland	X :	: X	X :	
Vincent	Absent	Absent	Absent	
Wiggins	X :	X :	X :	
Wright, Roderick	X :	X :	X :	
	Ayes: 17 Noes: 0	Ayes: 10 Noes: 5	Ayes: 12 Noes: 2	Ayes: 0 Noes: 0

LEGISLATIVE INTENT SERVICE (800) 666-1917

RECEIVED: _____

_____, Chair

(2) REPORTS OF STANDING COMMITTEES<c2>

¶(2) Committee on Governmental Organization

¶ Date of Hearing: May 08, 2000 [_]<r>

¶ Mr. Speaker: Your Committee on Governmental Organization reports:

- ¶ Assembly Bill No. 2777 (15-0)
- ¶ Assembly Bill No. 2788 (17-0)
- ¶ Assembly Bill No. 2792 (10-5)
- ¶ Assembly Bill No. 2799 (12-2)

LEGISLATIVE INTENT SERVICE (800) 666-1917



(1) With the recommendation: Do pass, and be re-referred to the Committee on Appropriations. <1>

_____, Chair
WESSON

(5) Above bill re-referred to the Committee on Appropriations.

Governmental Organization

Date of Hearing: 04/24/2000

BILL NO.	AB 2753	AB 2799	AB 2799	AB 2847
ACTION VOTED ON	Do pass and re-refer to the Com on Appr.	Do pass as amended and re-refer to the Com on Appr.	Reconsideration granted.	Do pass as amended and re-refer to the Com on Appr.
		FAIL PASSAGE		
	Aye : No	Aye : No	Aye : No	Aye : No
Wesson (Chair)	X :	X :	X :	X :
Granlund (V. Chair)	X :	: X	X :	X :
Battin	X :	Not Voting	X :	X :
Brewer	X :	: X	X :	X :
Briggs	X :	Not Voting	X :	X :
Cardenas	Absent	Absent	Absent	Absent
Cardoza	X :	Not Voting	X :	X :
Floyd	Absent	Absent	Absent	: X
Lempert	: X	X :	X :	X :
Longville	X :	X :	X :	X :
Machado	X :	X :	X :	X :
Maldonado	X :	Not Voting	X :	X :
Margett	X :	: X	X :	X :
Villaraigosa	Absent	Absent	Absent	Absent
Vincent	Absent	Absent	Absent	Absent
Wiggins	Absent	X :	X :	Absent
Wright, Roderick	X :	X :	X :	X :
Vacancy				
	Ayes: 11 Noes: 1	Ayes: 6 Noes: 3	Ayes: 13 Noes: 0	Ayes: 12 Noes: 1

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RECEIVED: _____

Herb J. Wesson, Jr. Chair

(2)REPORTS OF STANDING COMMITTEES<c2>

¶(2) Committee on Governmental Organization

¶ Date of Hearing: April 24, 2000 [_]<r>

¶ Mr. Speaker: Your Committee on Governmental Organization reports:

¶ Assembly Bill No. 2520 (12-2)


¶ Assembly Bill No. 2572 (11-1)

¶ Assembly Bill No. 2847 (12-1)

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(1)With amendments with the recommendation: Amend, do pass, as amended, and be re-referred to the Committee on Appropriations. <l>

 Chair
WESSON

(5)Above bill ordered to second reading.

CONFLICT NOTIFICATION

March 29, 2000



BION M. GREGORY

A.B. 2799

The above measure, introduced by Assembly Member Shelley, which is now set for hearing in the

Assembly Governmental Organization Committee

appears to be in conflict with

S.B. 2027 - Sher

The enactment of these measures in their present form may give rise to a serious legal problem which possibly can be avoided by appropriate amendments.

We urge you to consult our Corrections Section at Corrections.Unit@lc.ca.gov or 916-445-0430 at your earliest convenience.

(800) 666-1917

LEGISLATIVE INTENT SERVICE



16072

04/26/00 12:55 PM
RN0009197 PAGE 1
Substantive

AMENDMENTS TO ASSEMBLY BILL NO. 2799

Amendment 1

On page 5, line 9, strike out "(a)"

Amendment 2

On page 5, strike out lines 16 to 23, inclusive

- 0 -

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L53





Fax Cover Sheet

California Newspaper Publishers Association
Legislative/Legal Department

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To: Richard Rios
Company:
Phone:

Fax: 916/319-3979

From: *Tom Newton*

fax # 916.288.6005

Date: 4/4/00

Pages including cover: 19

COMMENTS:

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Term 

West's Ann. Cal. Penal Code § 11167.5

WEST'S ANNOTATED CALIFORNIA CODES
PENAL CODE

PART 4. PREVENTION OF CRIMES AND APPREHENSION OF CRIMINALS

TITLE 1. INVESTIGATION AND CONTROL OF CRIMES AND CRIMINALS

CHAPTER 2. CONTROL OF CRIMES AND CRIMINALS

ARTICLE 2.5. CHILD ABUSE AND NEGLECT REPORTING ACT

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Current through 1999 portion of 1999-2000 Reg. Sess. and 1st Ex. Sess.

§ 11167.5. Confidentiality of reports; violations; disclosure

- (a) The reports required by Sections 11166 and 11166.2 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality provided by this article is a misdemeanor punishable by imprisonment in a county jail not to exceed six months, by a fine of five hundred dollars (\$500), or by both that imprisonment and fine.
- (b) Reports of suspected child abuse and information contained therein may be disclosed only to the following:
- (1) Persons or agencies to whom disclosure of the identity of the reporting party is permitted under Section 11167.
 - (2) Persons or agencies to whom disclosure of information is permitted under subdivision (b) of Section 11170.
 - (3) Persons or agencies with whom investigations of child abuse are coordinated under the regulations promulgated under Section 11174.
 - (4) Multidisciplinary personnel teams as defined in subdivision (d) of Section 18951 of the Welfare and Institutions Code.
 - (5) Persons or agencies responsible for the licensing of facilities which care for children, as specified in Section 11165.7.
 - (6) The State Department of Social Services or any county licensing agency which has contracted with the state, as specified in paragraph (3) of subdivision (b) of Section 11170, when an individual has applied for a community care license or child day care license, or for employment in an out-of-home care facility, or when a complaint alleges child abuse by an operator or employee of an out-of-home care facility.
 - (7) Hospital scan teams. As used in this paragraph, "hospital scan team" means a team of three or more persons established by a hospital, or two or more hospitals in the same county, consisting of health care professionals and representatives of law enforcement and child protective services, the members of which are engaged in the identification of child abuse. The disclosure authorized by this section includes disclosure among all hospital scan teams.
 - (8) Coroners and medical examiners when conducting a postmortem examination of a child.
 - (9) The Board of Prison Terms, who may subpoena an employee of a county welfare department who can provide relevant evidence and reports that both (A) are not unfounded, pursuant to Section 11165.12, and (B) concern only the current incidents upon which parole revocation proceedings are pending against a parolee charged with child abuse. The reports and information shall be confidential pursuant to subdivision (d) of Section 11167.
 - (10) Personnel from a child protective agency responsible for making a placement of a child pursuant to Section 361.3 of, and Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of, the Welfare and Institutions Code.
 - (11) Persons who have been identified by the Department of Justice as listed in the Child Abuse Central Index pursuant to subdivision (c) of Section 11170. Nothing in this paragraph shall preclude a submitting agency prior to disclosure from redacting the name, address, and telephone number of a witness, person who reports under this article, or victim in order to maintain confidentiality as required by law.
 - (12) Out-of-state law enforcement agencies conducting an investigation of child abuse only when an



agency makes the request for reports of suspected child abuse in writing and on official letterhead, identifying the suspected abuser or victim by name. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written request shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports is to be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the criminal penalties for unlawful disclosure provided by the requesting state or the applicable interstate compact provision. In the absence of both (1) a specific out-of-state statute or interstate compact provision that requires that the information contained within these reports be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and (2) criminal penalties equivalent to the penalties in California for unlawful disclosure, access shall be denied.

(13) Persons who have verified with the Department of Justice that they are listed in the Child Abuse Central Index as provided by subdivision (e) of Section 11170. Disclosure under this section shall be subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). Nothing in this section prohibits a submitting agency prior to disclosure from redacting the name, address, and telephone number of a witness, person who reports under this article, or victim to maintain confidentiality as required by law.

(14) Each chairperson of a county child death review team, or his or her designee, to whom disclosure of information is permitted under this article, relating to the death of one or more children and any prior child abuse investigation reports maintained involving the same victim, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(c) Authorized persons within county health departments shall be permitted to receive copies of any reports made by health practitioners, as defined in Section 11165.8, pursuant to Section 11165.13, and copies of assessments completed pursuant to Sections 123600 and 123605 of the Health and Safety Code, to the extent permitted by federal law. Any information received pursuant to this subdivision is protected by subdivision (e).

(d) Nothing in this section requires the Department of Justice to disclose information contained in records maintained under Section 11169 or under the regulations promulgated pursuant to Section 11174, except as otherwise provided in this article.

(e) This section shall not be interpreted to allow disclosure of any reports or records relevant to the reports of child abuse if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of child abuse.

CREDIT(S)

1992 Main Volume

(Added by Stats.1983, c. 1082, § 1. Amended by Stats.1985, c. 1593, § 4, eff. Oct. 2, 1985; Stats.1985, c. 1598, § 7.5; Stats.1987, c. 167, § 1; Stats.1987, c. 1459, § 22; Stats.1988, c. 1580, § 5; Stats.1989, c. 153, § 1; Stats.1989, c. 1169, § 2.)

2000 Electronic Update

(Amended by Stats.1995, c. 391 (A.B.1440), § 1; Stats.1997, c. 24 (A.B.1536), § 1; Stats.1997, c. 842 (S.B.644), § 4; Stats.1997, c. 844 (A.B.1065), § 1.5; Stats.1998, c. 485 (A.B.2803), § 135.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

2000 Electronic Update



1995 Legislation

The 1995 amendment added a new subd. (c), relating to disclosure to authorized persons in county health departments; and redesignated as subds. (d) and (e) former subds. (c) and (d).

1997 Legislation

Stats.1997, c. 844, in subd. (a), substituted "is" for "shall be", substituted "imprisonment in a county jail not to exceed six months" for "up to six months in jail or" and inserted "that imprisonment and fine"; in subd. (b), in par. (7), substituted "all hospital scan teams" for "hospital scan teams located in the same county", in par. (9), substituted "who may subpoena an employee of a county welfare department who can provide relevant evidence and" for "may subpoena", and added pars. (10) to (14), relating to child protection agency personnel, persons listed in the Child Abuse Central Index as provided in subds. (c) and (e) of § 11170, out-of-state law enforcement agencies, and each county's child death review team's chairperson; and in subd. (c), substituted "Sections 123600 and 123605" for "Sections 10900 and 10901".

Under the provisions of § 3 of Stats.1997, c. 844, the 1997 amendments of this section by c. 844 (A.B.1065) and c. 842 (S.B.644) were given effect and incorporated in the form set forth in § 1.5 of c. 844.

An amendment of this section by § 1 of Stats.1997, c. 844, failed to become operative under the provisions of § 3 of that Act.

Section 1 of Stats.1997, c. 842 (S.B.644), provides:

"This act shall be known and may be cited as Lance's Law Child Safety Reform Act of 1997."

Amendment of this section by § 4.5 of Stats.1997, c. 842 (S.B.644), failed to become operative under the provisions of § 8 of that Act.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

1998 Legislation

Stats.1998, c. 485, made nonsubstantive changes to maintain the code.

Subordination of legislation by Stats.1998, c. 485 (A.B.2803), to other 1998 legislation, see Historical and Statutory Notes under Business and Professions Code § 4840.

1992 Main Volume

The 1985 amendment by c. 1593 added subd. (b)(5).

The 1985 amendment by c. 1598, in subd. (a), substituted "Sections 11166 and 11166.2" for "Section 11166"; substituted, in subd. (b)(5), "subdivision (h) of Section 11166" for "Section 11166.1"; and added subd. (b)(6).

Section 12 of Stats.1985, c. 1598, provides:

"Section 7.5 of this bill incorporates amendments to Section 11167.5 of the Penal Code proposed by both this bill and AB 2337 [Stats.1985, c. 1593]. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1986, (2) each bill amends Section 11167.5 of the Penal Code Section 11167.5 was so amended], and (3) this bill is enacted after AB 2337, in which case Section 11167.5 of the Penal Code, as amended by AB 2337, shall remain operative only until the operative date of this bill [Jan. 1, 1986], at which time Section 7.5 of this bill shall become operative, and Section 7 of this bill shall be



become operative."

The amendment by Stats 1987, c. 1459, in subd. (b)(5) substituted "Section 11165.7" for "subdivision (h) of Section 11166"; and inserted subd. (b)(7) relating to hospital scan teams.

Effect of amendment of section by two or more acts at the same session of the legislature, see Government Code § 9605.

The 1988 amendment added, to the list in subd. (b) of persons or agencies to whom reports may be disclosed, subd. (b) (8) regarding coroners and medical examiners.

The 1989 amendment inserted "or any county licensing agency which has contracted with the state" in subd. (b)(6), and added subd. (b)(9).

The 1989 amendment by c. 1169 of this section explicitly amended the 1989 amendment of this section by c. 153.

LAW REVIEW AND JOURNAL COMMENTARIES

Child sexual abuse and the law. B. Kay Shafer, 12 L.A.Law. 46 (Sept. 1989).

LIBRARY REFERENCES

1992 Main Volume

Words and Phrases (Perm. Ed.)

Legal Jurisprudences
Cal Jur 3d Crim. L. § 46.

Treatises and Practice Aids
Witkin, Summary (9th ed) Torts § 288.
The Rutter Group, Family Law (Hogoboom & King) § 11:166.

NOTES OF DECISIONS

In general 1
District attorneys 2

1. In general

The information in the California department of justice child abuse files, which is to be used in furtherance of investigating suspected child abuse and carrying out the purpose of the Child Abuse Reporting Law (§ 11165 et seq.), namely the protection of children, must be provided to child protective agencies submitting a report, or to a district attorney who has requested notification of a suspected child abuse case, but the department is not obligated to furnish this information to other persons or agencies. 65 Ops.Atty.Gen. 335, 6-1-82.

2. District attorneys

A district attorney, when investigating or prosecuting a case of child abuse where the victim is or has been the subject of juvenile dependency or wardship proceedings in which the district attorney did not participate, has access to the records of the juvenile court only through an order of the juvenile court permitting such access and may not obtain such records by a search warrant or subpoena duces tecum; but, where the victim has been the recipient of public welfare aid or assistance the district attorney, for his investigation or prosecution, has access to the records of the welfare agency pertaining to the victim and may obtain such records by search warrant or subpoena duces tecum. 66 Ops.Atty.Gen. 106, 3-31-83.

West's Ann. Cal. ♦Penal♦ Code § ♦11167.5♦

LH: 53 AP - 11



CA PENAL s 11167.5

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West's Ann. Cal. Welf. & Inst. Code § 4135

WEST'S ANNOTATED CALIFORNIA CODES
WELFARE AND INSTITUTIONS CODE
DIVISION 4. MENTAL HEALTH
PART 2. ADMINISTRATION OF STATE INSTITUTIONS FOR THE MENTALLY
DISORDERED
CHAPTER 1. JURISDICTION AND GENERAL GOVERNMENT

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Current through 1999 portion of 1999-2000 Reg. Sess. and 1st Ex. Sess.

§ 4135. Mentally abnormal sex offender; commitment; discharge; records; inspection

Any person committed to the State Department of Mental Health as a mentally abnormal sex offender shall remain a patient committed to the department for the period specified in the court order of commitment or until discharged by the medical director of the state hospital in which the person is a patient, whichever occurs first. The medical director may grant such patient a leave of absence upon such terms and conditions as the medical director deems proper. The petition for commitment of a person as a mentally abnormal sex offender, the reports, the court orders and other court documents filed in the court in connection therewith shall not be open to inspection by any other than the parties to the proceeding, the attorneys for the party or parties, and the State Department of Mental Health, except upon the written authority of a judge of the superior court of the county in which the proceedings were had.

Records of the supervision, care and treatment given to each person committed to the State Department of Mental Health as a mentally abnormal sex offender shall not be open to the inspection of any person not in the employ of the department or of the state hospital, except that a judge of the superior court may by order permit examination of such records.

The charges for the care and treatment rendered to persons committed as mentally abnormal sex offenders shall be in accordance with the provisions of Article 4 (commencing with Section 7275) of Chapter 3 of Division 7.

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(Added by Stats.1970, c. 339, p. 734, § 1. Amended by Stats.1971, c. 1593, p. 3332, § 358, operative July 1, 1973; Stats.1977, c. 1252, p. 4497, § 536, operative July 1, 1978.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

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Former § 4135, added by Stats.1957, c. 2411, p. 4156, § 2, was repealed by Stats.1965, c. 1784, p. 3978, § 4. It related to the determination of disability.

Derivation: Former § 5604, added by Stats.1949, c. 1457, p. 2540, § 1.

Former § 5605, added by Stats.1949, c. 1457, p. 2540, § 1.

Former §§ 5704, 5705, added by Stats.1965, c. 391, p. 1678, § 5.

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Former §§ 6454, 6455, added by Stats.1967, c. 1667, p. 4107, § 37.

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Mental Health <->441.
 WESTLAW Topic No. 257A.
 C.J.S. Insane Persons § 248.

NOTES OF DECISIONS

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1. In general

Where district attorney told defendant that only way he could get treatment was by plea of guilty in criminal court to burglary in second degree but, in fact, defendant could have been referred as mentally disordered sex offender whether convicted of felony or misdemeanor and could have been referred without criminal conviction as mentally abnormal sex offender and where district attorney, defendant's attorney, defendant and his mother all believed that ordinary procedures of diagnosis and treatment would be available to defendant though they were not because of defendant's inability to communicate in English, failure to afford promised diagnosis and treatment required setting aside plea of guilty and judgment of conviction thereon. People v. Cortez (App. 1 Dist. 1970) 91 Cal.Rptr. 660, 13 Cal.App.3d 317.

2. Records


New confidentiality provisions of § 5328 do not affect proceedings under the Lanterman-Petris-Short Act as these judicial records are public, but judicial records concerning commitment of mentally abnormal sex offenders under § 6454 (repealed 1970), initial proceedings concerning wards and dependent children in juvenile court (§ 827) and prepetition evaluation reports concerning mentally disordered (§ 5202) are confidential. 53 Ops.Atty.Gen. 25, 1-23-70.

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West's Ann. Cal. Welf. & Inst. Code § 5328

WEST'S ANNOTATED CALIFORNIA CODES
WELFARE AND INSTITUTIONS CODE
DIVISION 5. COMMUNITY MENTAL HEALTH SERVICES
PART 1. THE LANTERMAN-PETRIS-SHORT ACT
CHAPTER 2. INVOLUNTARY TREATMENT

ARTICLE 7. LEGAL AND CIVIL RIGHTS OF PERSONS INVOLUNTARILY DETAINED

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Current through 1999 portion of 1999-2000 Reg. Sess. and 1st Ex. Sess.

§ 5328. Confidential information and records; disclosure; consent

All information and records obtained in the course of providing services under Division 4 (commencing with Section 4000), Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100), to either voluntary or involuntary recipients of services shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

- (a) In communications between qualified professional persons in the provision of services or appropriate referrals, or in the course of conservatorship proceedings. The consent of the patient, or his or her guardian or conservator shall be obtained before information or records may be disclosed by a professional person employed by a facility to a professional person not employed by the facility who does not have the medical or psychological responsibility for the patient's care.
- (b) When the patient, with the approval of the physician, licensed psychologist, or social worker with a master's degree in social work, who is in charge of the patient, designates persons to whom information or records may be released, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him or her in confidence by members of a patient's family.
- (c) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.
- (d) If the recipient of services is a minor, ward, or conservatee, and his or her parent, guardian, guardian ad litem, or conservator designates, in writing, persons to whom records or information may be disclosed, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him or her in confidence by members of a patient's family.
- (e) For research, provided that the Director of Mental Health or the Director of Developmental Services designates by regulation, rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. The rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

Date

As a condition of doing research concerning persons who have received services from _____ (fill in the facility, agency or person), I, _____, agree to obtain the prior informed consent of such persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, and I further agree not to divulge any information obtained in the course of such research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services such that the person who received services is identifiable.

I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

(1) To the courts, as necessary to the administration of justice.

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- (g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.
- (h) To the Committee on Senate Rules or the Committee on Assembly Rules for the purposes of legislative investigation authorized by the committee.
- (i) If the recipient of services who applies for life or disability insurance designates in writing the insurer to which records or information may be disclosed.
- (j) To the attorney for the patient in any and all proceedings upon presentation of a release of information signed by the patient, except that when the patient is unable to sign the release, the staff of the facility, upon satisfying itself of the identity of the attorney, and of the fact that the attorney does represent the interests of the patient, may release all information and records relating to the patient except that nothing in this article shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.
- (k) Upon written agreement by a person previously confined in or otherwise treated by a facility, the professional person in charge of the facility or his or her designee may release any information, except information that has been given in confidence by members of the person's family, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the professional person in charge of the facility determines that the information is relevant to the evaluation. The agreement shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.
- (l) Between persons who are trained and qualified to serve on "multidisciplinary personnel" teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.
- (m) To county patients' rights advocates who have been given knowing voluntary authorization by a client or a guardian ad litem. The client or guardian ad litem, whoever entered into the agreement, may revoke the authorization at any time, either in writing or by oral declaration to an approved advocate.
- (n) To a committee established in compliance with Sections 4070 and 5624.
- (o) In providing information as described in Section 7325.5. Nothing in this subdivision shall permit the release of any information other than that described in Section 7325.5.
- (p) To the county mental health director or the director's designee, or to a law enforcement officer, or to the person designated by a law enforcement agency, pursuant to Sections 5152.1 and 5250.1.
- (q) If the patient gives his or her consent, information specifically pertaining to the existence of genetically handicapping conditions, as defined in Section 341.5 of the Health and Safety Code, may be released to qualified professional persons for purposes of genetic counseling for blood relatives upon request of the blood relative. For purposes of this subdivision, "qualified professional persons" means those persons with the qualifications necessary to carry out the genetic counseling duties under this subdivision as determined by the genetic disease unit established in the State Department of Health Services under Section 309 of the Health and Safety Code. If the patient does not respond or cannot respond to a request for permission to release information pursuant to this subdivision after reasonable attempts have been made over a two-week period to get a response, the information may be released upon request of the blood relative.
- (r) When the patient, in the opinion of his or her psychotherapist, presents a serious danger of violence to a reasonably foreseeable victim or victims, then any of the information or records specified in this section may be released to that person or persons and to law enforcement agencies as the psychotherapist determines is needed for the protection of that person or persons. For purposes of this subdivision, "psychotherapist" means anyone so defined within Section 1010 of the Evidence Code.
- (s) To persons serving on an interagency case management council established in compliance with Section 5606.6 to the extent necessary to perform its duties. This council shall attempt to obtain the consent of the client. If this consent is not given by the client, the council shall justify in the client's chart why these records are necessary for the work of the council.
- (t)(1) To the designated officer of an emergency response employee, and from that designated officer to an emergency response employee regarding possible exposure to HIV or AIDS, but only to the extent necessary to comply with provisions of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).
- (2) For purposes of this subdivision, "designated officer" and "emergency response employee" have the same meaning as those terms are used in the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).
- (3) The designated officer shall be subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV results. Further, the designated officer shall inform the exposed emergency response employee that the employee is also subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV test results.



(u)(1) To a law enforcement officer who personally lodges with a facility, as defined in paragraph (2), a warrant of arrest or an abstract of such a warrant showing that the person sought is wanted for a serious felony, as defined in Section 1192.7 of the Penal Code, or a violent felony, as defined in Section 667.5 of the Penal Code. The information sought and released shall be limited to whether or not the person named in the arrest warrant is presently confined in the facility. This paragraph shall be implemented with minimum disruption to health facility operations and patients, in accordance with Section 5212. If the law enforcement officer is informed that the person named in the warrant is confined in the facility, the officer may not enter the facility to arrest the person without obtaining a valid search warrant or the permission of staff of the facility.

(2) For purposes of paragraph (1), a facility means all of the following:

(A) A state hospital, as defined in Section 4001.

(B) A general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, solely with regard to information pertaining to a mentally disordered person subject to this section.

(C) An acute psychiatric hospital, as defined in subdivision (b) of Section 1250 of the Health and Safety Code.

(D) A psychiatric health facility, as described in Section 1250.2 of the Health and Safety Code.

(E) A mental health rehabilitation center, as described in Section 5675.

(F) A skilled nursing facility with a special treatment program for chronically mentally disordered patients, as described in Sections 51335 and 72445 to 72475, inclusive, of Title 22 of the California Code of Regulations.

The amendment of subdivision (d) enacted at the 1970 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the preexisting law.

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(Added by Stats.1972, c. 1058, p. 1960, § 2, operative July 1, 1973. Amended by Stats.1974, c. 486, p. 1120, § 2, eff. July 11, 1974; Stats.1975, c. 1258, p. 3300, § 6; Stats.1977, c. 1252, p. 4574, § 570, operative July 1, 1978; Stats.1978, c. 69, p. 190, § 5; Stats.1978, c. 432, p. 1502, § 12, eff. July 17, 1978, operative July 1, 1978; Stats.1978, c. 1345, p. 4397, § 1; Stats.1979, c. 373, p. 1396, § 364; Stats.1979, c. 244, p. 529, § 1; Stats.1980, c. 676, p. 2036, § 332; Stats.1981, c. 841, p. 3234, § 6; Stats.1982, c. 234, § 6, eff. June 2, 1982; Stats.1982, c. 1141, § 7; Stats.1982, c. 1415, § 1, eff. Sept. 27, 1982; Stats.1983, c. 755, § 3; Stats.1983, c. 1174, § 1.5; Stats.1985, c. 1121, § 3; Stats.1985, c. 1194, § 1; Stats.1985, c. 1324, § 1.7; Stats.1991, c. 534 (S.B.1088), § 6; Stats.1996, c. 1023 (S.B.1497), § 464, eff. Sept. 29, 1996; Stats.1996, c. 111 (S.B.2082), § 2.)

2000 Electronic Update

(Amended by Stats.1998, c. 148 (A.B.302), § 1.)

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

2000 Electronic Update

1998 Legislation

Stats.1998, c. 148, (A.B.302), in subd. (h), substituted "Committee on Senate Rules or the Committee on Assembly Rules" for "Senate Rules Committee or the Assembly Rules Committee"; added subd. (u); and made nonsubstantive changes.

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As added in 1972, the section read:

"All information and records obtained in the course of providing services under Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7000), to either voluntary or involuntary recipients of services shall be confidential. Information and records may be disclosed only:



"(a) In communications between qualified professional persons in the provision of services or appropriate referrals, or in the course of conservatorship proceedings. The consent of the patient, or his guardian or conservator must be obtained before information or records may be disclosed by a professional person employed by a facility to a professional person not employed by the facility who does not have the medical responsibility for the patient's care.

"(b) When the patient, with the approval of the physician in charge of the patient, designates persons to whom information or records may be released, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him in confidence by members of a patient's family;

"(c) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he may be entitled;

"(d) If the recipient of services is a minor, ward, or conservatee, and his parent, guardian, or conservator designates, in writing, persons to whom records or information may be disclosed, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him in confidence by members of a patient's family;

"(e) For research, provided that the Director of Health designates by regulation, rules for the conduct of research. Such rules shall include, but need not be limited to, the requirement that all researchers must sign an oath of confidentiality as follows:

____ Date

"As a condition of doing research concerning persons who have received services from ____ (fill in the facility, agency or person), I, _____, agree not to divulge any information obtained in the course of such research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services such that the person who received services is identifiable.

"I recognize that unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

_____ Signed

"(f) To the courts, as necessary to the administration of justice.

"(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

"(h) To the Senate Rules Committee or the Assembly Rules Committee for the purposes of legislative investigation authorized by such committee.

"(i) If the recipient of services who applies for life or disability insurance designates in writing the insurer to which records or information may be disclosed.

"The amendment of subdivision (d) of this section enacted at the 1970 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the preexisting law.

"This section shall become operative on the same date as Reorganization Plan No. 1 of 1970 becomes operative."

Section 4 of Stats. 1972, c. 1058, p. 1962, provides:

"It is the intent of the Legislature, that, if Reorganization Plan No. 1 of 1970 becomes operative, Section 5328 of the Welfare and Institutions Code, as amended by Section 1 of this act, shall remain in effect only until Reorganization Plan No. 1 of 1970 becomes operative and on that date Section 5328 of the Welfare and Institutions Code, as added by Section 2 of this act, which includes the changes in Section 5328 made by both Reorganization Plan No. 1 of 1970 and Section 1 of this act, shall become operative."

The 1974 amendment added subd. (j).

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The 1975 amendment added subd. (k).

The 1977 amendment substituted in subd. (e) the "Director of Mental Health" for the "Director of Health" and deleted an operative date provision for this section.

The 1978 amendment by c. 432 inserted in the introductory paragraph "Division 4.5 (commencing with Section 4500)."; and inserted in subd. (e) "or the Director of Developmental Services".

The 1978 amendment by c. 1345, amending c. 432, inserted in the introductory paragraph the references to Division 4 and Division 4.1; inserted the second sentence of the introductory paragraph, substituted in subd. (b) "physician, licensed psychologist, or social worker with a master's degree in social work, who is in charge of the patient" for "psychiatrist, or licensed psychologist in charge of the patient".

Effect of amendment of section by two or more acts at the same session of the legislature, see Government Code § 9605.

The 1979 amendment by c. 244 added subd. (l).

Subordination of amendment by Stats. 1979, c. 373, to other legislation during the 1979 portion of the 1979-80 regular session which affects this section and which takes effect on or before Jan. 1, 1980, see Historical and Statutory Notes under Business and Professions Code § 700.

The 1980 amendment substituted in the first sentence of the first paragraph "Division 4 (commencing with Section 4000)" for "Division 4 (commencing with Section 4001)" and "Division 7 (commencing with Section 7100)" for "Division 7 (commencing with Section 7000)"; substituted a period for a semicolon at the end of subds. (a) to (d); deleted at the end of subd. (i) "of the Welfare and Institutions Code"; and deleted from the last paragraph "of this section" following "subdivision (d)".

The 1981 amendment substituted in the third sentence of the introductory provisions "shall be disclosed only in any of the following cases" for "may be disclosed"; made pronouns sexually neutral throughout the section; inserted in subd. (d) "guardian ad litem"; inserted the remainder of the first sentence of subd. (e) following "conduct of research"; inserted in the oath of confidentiality the provisions relating to prior informed consent; added subd. (m); and made other technical changes.

The 1982 amendment by c. 234 added subd. (n); and inserted "or psychological" in the second sentence of subd. (a).

Legislative findings concerning Stats. 1982, c. 234, see Historical and Statutory Notes under Civil Code § 43.7.

The 1982 amendment by c. 1415, amending c. 234, deleted the signature line from the form for the oath of confidentiality in subd. (e); and added subd. (o).

Effect of amendment of section by two or more acts at the same session of the legislature, see Government Code § 9605.

The 1983 amendment by c. 1174 in subd. (b), substituted "master's" for "masters"; in subd. (e), substituted "The" for "Such" preceding "rules"; in subd. (k), substituted "The" for "Such" preceding "agreement"; and added subds. (p) and (q).

Under the provisions of § 3 of Stats. 1983, c. 1174, the 1983 amendments of this section by c. 755 and c. 1374 were given effect and incorporated in the form set forth in § 1.5 of c. 1374.

Amendment of this section by § 3.5 of Stats. 1983, c. 755, failed to become operative under the provisions of § 4 of that Act.

Amendment of this section by § 1 of Stats. 1983, c. 1174, failed to become operative under the provisions of § 3 of that Act.

Effect of amendment of section by two or more acts at the same session of the legislature, see Government Code § 9605.

Stats. 1985, c. 1324 inserted subds. (r), (s) and (t).

Section 5 of Stats. 1985, c. 1324, provides, in part:



"Section 1.7 of this bill incorporates amendments to Section 5328 of the Welfare and Institutions Code proposed by this bill, SB 1088 (Stats.1985, c. 1121), and AB 1750 (Stats.1985, c. 1194). It shall only become operative if (1) all three bills are enacted and become effective January 1, 1986, (2) all three bills amend Section 5328 of the Welfare and Institutions Code [Section 5328 was so amended], (3) this bill is enacted after SB 1088 and AB 1750, in which case Sections 1, 1.3, and 1.5 of this bill shall not become operative."

Amendment of this section by §§ 4 to 6 of Stats.1985, c. 1121, failed to become operative under the provisions of § 7 of that Act.

Amendment of this section by §§ 2 to 4 of Stats.1985, c. 1194, failed to become operative under the provisions of § 6 of that Act.

Section affected by two or more acts at the same session of the legislature, see Government Code § 9605.

The 1991 amendment deleted former subd. (r) and redesignated as subds. (r) and (s) former subds. (s) and (t). Prior to deletion former subd. (r) read:

"(r) To the agency established in this state to fulfill the requirements and assurances of Section 142 of the federal Developmental Disabilities Act of 1984 for a system to protect and advocate the rights of persons with developmental disabilities, as defined in Section 102(7) of the federal act. The agency shall have access to the records of a person with developmental disabilities who resides in a facility for persons with developmental disabilities when both of the following conditions apply.

"(1) The agency has received a complaint from, or on behalf of, the person and the person consents to the disclosure to the extent of his or her capabilities.

"(2) The person does not have a parent, guardian, or conservator, or the state or the designee of the state is the person's guardian or conservator."

Legislative findings and intent of Stats.1991, c. 534 (S.B.1088), see Historical and Statutory Notes under Civil Code § 1798.24b.

The 1996 amendment inserted subd. (t), relating to notice to designated officers of emergency response employees, and made nonsubstantive changes throughout the section.

Legislative findings, declaration and intent relating to Stats.1996, c. 1023 (S.B.1497), see Historical and Statutory Notes under Business and Professions Code § 690.

Subordination of legislation by Stats.1996, c. 1023 (S.B.1497), see Historical and Statutory Notes under Business and Professions Code § 690.

Former § 5328, added by Stats.1967, c. 1667, p. 4074, § 36, amended by Stats.1968, c. 1374, p. 2659, § 48; Stats.1969, c. 722, p. 1429, § 21.1; Stats.1970, c. 593, p. 1173, § 1; Stats.1970, c. 1291, p. 2386, § 1; Stats.1970, c. 1627, p. 3445, § 21.1; Stats.1971, c. 776, p. 1528, § 3; Stats.1971, c. 1593, p. 3341, § 377; Stats.1972, c. 1058, p. 1958, § 1, relating to similar subject matter, was repealed by force of its own terms on July 1, 1973, the operative date of Reorganization Plan No. 1 of 1970.

Derivation: Former § 5328, added by Stats.1967, c. 1667, p. 4074, § 36, amended by Stats.1968, c. 1374, p. 2659, § 48; Stats.1969, c. 722, p. 1429, § 21.1; Stats.1970, c. 593, p. 1173, § 1; Stats.1970, c. 1291, p. 2386, § 1; Stats.1970, c. 1627, p. 3445, § 21.1; Stats.1971, c. 1593, p. 3341, § 377; Stats.1971, c. 776, p. 1528, § 3; Stats.1972, c. 1058, p. 1958, § 1.

CROSS REFERENCES

Access to records for purposes of appeal, see Welfare and Institutions Code § 4726.

Administrative rules and regulations, see Government Code § 11342 et seq.

Conservatees, change to more restrictive placement, written notice notwithstanding this section, see Welfare and Institutions Code § 5358.



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Inspection of public records, see Government Code § 6250 et seq.
 Mental health services recipients, information about and records of as confidential, see Welfare and Institutions Code § 5540.
 Patient access to health records, see Health and Safety Code § 123110.
 Physician-patient privilege, see Evidence Code § 990 et seq.
 Pre-petition screening, application of this section, see Welfare and Institutions Code § 5202.
 Psychotherapist-patient privilege, see Evidence Code § 1010 et seq.
 Record of disclosures, see Welfare and Institutions Code § 5328.6.
 State hospital records, availability to conservatorship investigator, see Welfare and Institutions Code § 5366.

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Conduct and management of facilities, see 9 Cal. Code of Regs. § 900.

LAW REVIEW AND JOURNAL COMMENTARIES

Confidentiality of genetic information. (1982) 30 UCLA L.Rev. 1283.
 Duty of psychotherapists to warn. (1978) 14 Cal.W.L.Rev. 153.
 Ethical problems for physicians raised by AIDS and HIV infection: Conflicting legal obligations of confidentiality and disclosure. Bruce A. McDonald, 22 U.C.Davis L.Rev. 557 (1989).
 Institutionalizing the rights of mental patients: Committing the Legislature. Grant H. Morris (1974) 62 Cal.L.Rev. 957.
 Out of mind? Out of sight: The uncivil commitment of permanently incompetent criminal defendants. Grant H. Morris and J. Reid Meloy, 27 U.C.Davis L.Rev. 1 (1993).
 Physician-patient privilege: Absent patient. (1975) 27 Hastings L.J. 99.
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 Volunteering children: Parental commitment of minors to mental institutions. James W. Ellis (1974) 62 Cal.L.Rev. 840.

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 Am Jur 2d Administrative Law § 232, Evidence §§ 962 et seq., Mandamus § 204, Records and Recording Laws §§ 12 et seq.

Treatises and Practice Aids

Witkin, Procedure (4th ed) Actions § 35.
 Witkin, Evidence (3d ed) §§ 1053A, 1214.
 Witkin & Epstein, Criminal Law (2d ed) § 1647.

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I. In general

In action by parents against hospital for injuries sustained upon being attacked by their son, who was treated by hospital for mental disorders, disclosure of son's psychiatric record was authorized by this section. Mayroadis v. Superior Court for San Mateo County (App. 1 Dist. 1980) 162 Cal.Rptr. 724, 102 Cal.App.3d 594.

Mental health facility's medical records relating to mother's treatment as an outpatient were subject to psychotherapist-patient privilege in proceeding to have children declared dependent. In re S. W. (App. 2 Dist. 1978) 145 Cal.Rptr. 143, 79 Cal.App.3d 719.

Detailed provisions of the Lanterman-Petris-Short Act regulating disclosure of confidential information do not apply to disclosure of information not governed by the Act; since the legislature did not extend the Act to control all disclosures of confidential matter by psychotherapists, it must be inferred that the legislature did not relieve the courts of their obligation to define by reference to the principles of common law the obligation of a therapist in those situations not governed by the Act. Tarasoff v. Regents of University of California (1976) 131 Cal.Rptr. 14, 17 Cal.3d 425, 551 P.2d 334.

Provision of this section relating to confidentiality of mental patient records, which allowed disclosure of such records to courts when necessary for administration of justice, did not allow superior court to obtain such records for use of state board of chiropractic examiners in determining whether to suspend or revoke license of chiropractor under voluntary treatment for alcoholism. Riverside County v. Superior Court for Riverside County (App. 4 Dist. 1974) 116 Cal.Rptr. 886, 42 Cal.App.3d 478.

Provision of this section relating to confidentiality of mental patient records, which allows disclosure of such records to courts when necessary for administration of justice, does not permit courts to obtain records for use of administrative agencies. Riverside County v. Superior Court for Riverside County (App. 4 Dist. 1974) 116 Cal.Rptr. 886, 42 Cal.App.3d 478.

The workers' compensation appeals board is a court for purposes of this section, which provides that all information and records obtained in the course of providing community services to persons impaired by mental disorders or chronic alcoholism may be disclosed only in specified situations, including disclosure to courts as necessary to the administration of justice; public health service records covered by 42 C.F.R. § 1.104 are available to any adjudicatory body, such as the workers' compensation appeals board, which has the power to compel witnesses to appear before it. 61 Ops.Atty.Gen. 46, 1-31-78.

A hospital is required to make available, if requested, patient records which contain information regarding purchase, sale or disposition of dangerous drugs in addition to hospital pharmacy records, in connection with an official inspection or investigation under Bus. & Prof.C. §§ 4010, 4232, except as otherwise prohibited by this section governing disclosure of records pertaining to mental patients. 59 Ops.Atty.Gen. 186, 3-4-76.

Medical information regarding patients in mental hospitals is confidential and cannot be disclosed by a mental facility to the attorney general, a district attorney or probation officer for the purpose of enforcing child support obligations, but such information may be obtained by court order. 54 Ops.Atty.Gen. 24, 3-19-71.

New confidentiality provisions of this section do not affect proceedings under the Lanterman-Petris-Short Act as these judicial records are public, but judicial records concerning commitment of mentally abnormal sex offenders, initial proceedings concerning wards and dependent children in juvenile court, and prepetition evaluation reports concerning mentally disordered are confidential. 53 Ops.Atty.Gen. 25, 1-23-70.

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2. Construction with other laws

In action by parents against hospital for injuries sustained upon being attacked by their son, who was treated by hospital for mental disorders, psychotherapist-patient privilege under Evid.C. § 1014 was applicable, as son's psychiatric records contained confidential communications between patient and psychotherapist, and privilege had been claimed by party authorized to do so by Evid.C. § 1014, and fact that authorization under this section for disclosure to courts as necessary to administration of justice did not override privilege under Evid.C. § 1014 meant that son's records were not subject to discovery unless privilege had been waived, or exception to privilege applied. Mayroutis v. Superior Court for San Mateo County (App. 1 Dist. 1980) 162 Cal.Rptr. 724, 102 Cal.App.3d 594.

Pen.C. § 11161.5 (repeated) requiring that psychotherapists and others report evidence of child abuse gained by observation of the patient-victim prevails over this section, since it is legislative intent that the child's welfare should control over the confidentiality of his or her communications with the psychotherapist. §§ Ops.Atty.Gen. 824, 11-21-75.

3. Confidentiality of records

Where there is no showing by person claiming confidentiality of records under statute prohibiting disclosure of confidential information pertaining to recipient of specified mental health services that records were generated in course of receiving such services, disclosure is not governed by that statute. Devereaux v. Latham & Watkins (App. 2 Dist. 1995) 38 Cal.Rptr.2d 849, 32 Cal.App.4th 1571, rehearing denied, review denied.

4. Disclosure of records

Civil action by recipient of mental health services for willful and knowing release of confidential information about recipient can be maintained only if information allegedly released pertains to services rendered under statutorily enumerated sections of Welfare and Institutions Code. Devereaux v. Latham & Watkins (App. 2 Dist. 1995) 38 Cal.Rptr.2d 849, 32 Cal.App.4th 1571, rehearing denied, review denied.

Statutory bar against disclosure of confidential information pertaining to recipient of mental health services is not absolute, but, rather, is subject to numerous exceptions. Devereaux v. Latham & Watkins (App. 2 Dist. 1995) 38 Cal.Rptr.2d 849, 32 Cal.App.4th 1571, rehearing denied, review denied.

5. Privileges and immunities

Nothing in either statute prohibiting disclosure of confidential information of recipient of mental health services or statute authorizing civil action for disclosure of such information affects any other privilege or immunity which might apply to disclosure of information. Devereaux v. Latham & Watkins (App. 2 Dist. 1995) 38 Cal.Rptr.2d 849, 32 Cal.App.4th 1571, rehearing denied, review denied.

6. Psychotherapist-patient privilege

Patient-physician and patient-psychotherapist privileges operate wholly independent of the confidentiality provisions of statute governing legal and civil rights of persons involuntarily detained. Albertson v. Superior Court (App. 2 Dist. 2000) 91 Cal.Rptr.2d 749, 27 Cal.App.4th 431, review filed.

Defendant was entitled to have trial court review psychiatric and medical records of five-year-old witness to alleged burglary in order to determine whether records were privileged and whether defendant's constitutional right to a fair trial might overcome any privilege applicable to any particular record. People v. Boyette (App. 6 Dist. 1988) 247 Cal.Rptr. 795, 201 Cal.App.3d 1527.

Psychotherapist-patient privilege for mental health care records contained in Evid.Code § 1014 operates independently of this section. People v. Paek (App. 2 Dist. 1987) 240 Cal.Rptr. 367, 194 Cal.App.3d 1512, review denied, appeal reinstated 248 Cal.Rptr. 240, 201 Cal.App.3d 679.

Trial court was required by Evid.Code § 916 to assert psychotherapist-patient privilege on its own motion on behalf of victim of various crimes where county mental health service released records to court and did not assert that privilege on her behalf, victim had not waived that privilege, and none of the exceptions contained in Evid.Code §§ 1016-1027 applied. People v. Paek (App. 2 Dist. 1987) 240 Cal.Rptr. 367, 194 Cal.App.3d 1512, review denied, appeal reinstated 248 Cal.Rptr. 240, 201 Cal.App.3d 679.



7. Notice

In order for discovery order requiring hospital to produce all records pertaining to decedent in wrongful death case to be valid under this section establishing a general prohibition against disclosure, party seeking disclosure would be required to provide hospital with notice of discovery proceedings addressed to its records. Boling v. Superior Court In and For Santa Clara County (App. 1 Dist. 1980) 164 Cal.Rptr. 432, 105 Cal.App.3d 430.

8. Necessity of information

In this section, subd. (f) contemplates use of information and records as necessary to administration of justice in some pending judicial action or proceeding. Mavroudis v. Superior Court for San Mateo County (App. 1 Dist. 1980) 162 Cal.Rptr. 724, 102 Cal.App.3d 594.

9. Civil tort actions

The general prohibition, subject to defined exceptions, against disclosure of information and records obtained in course of providing services under specified sections of Welfare and Institutions Code extends only to those records specifically described in this section. Mavroudis v. Superior Court for San Mateo County (App. 1 Dist. 1980) 162 Cal.Rptr. 724, 102 Cal.App.3d 594.

In action brought by minor plaintiff to recover damages for the wrongful death of her mother, provision of this section governing disclosure of confidential information and records obtained in the course of providing services to the mentally ill or retarded was inapplicable and did not support disclosure of records held by county welfare department relating to minor plaintiff, in absence of showing that minor plaintiff was receiving treatment under programs for the mentally ill or retarded. Sinacore v. Superior Court In and For Santa Clara County (App. 1 Dist. 1978) 146 Cal.Rptr. 302, 81 Cal.App.3d 223.

10. License revocation proceeding

Use of Welf. & Inst. Code §§ 4514 and 5328 making treatment information and records of developmentally disabled and mentally disabled persons confidential, to prevent disclosure of confidential records to administrative hearing officer, in operator's license revocation proceeding when records had not been used by Department of Social Services in preparation of accusation or at hearing did not violate due process. Gilbert v. Superior Court (Dept. of Social Services) (App. 3 Dist. 1987) 238 Cal.Rptr. 220, 193 Cal.App.3d 161, review denied.

11. Criminal investigations

There was no reasonable probability that former employee of law firm would prevail on her claim, under statute authorizing civil action by recipient of specified mental health services for disclosure of confidential information, against firm for alleged disclosure of her private records, so that trial court could require employee, as vexatious litigant, to furnish security, records pertained to criminal case in which employee was involved which were ordered sealed, order did not cite statute, there was no showing that records pertained to services enumerated in statute, and disclosure of records, by filing in court and by mailing to employee's attorney during course of litigation between firm and employee, arguably fell within exception to statute for disclosure to courts as necessary for administration of justice. Devereaux v. Latham & Watkins (App. 2 Dist. 1995) 38 Cal.Rptr.2d 849, 32 Cal.App.4th 1571, rehearing denied, review denied.

Sheriff's deputies violated neither spirit nor letter of this section guaranteeing confidentiality of records obtained in course of providing methadone maintenance program by using one person enrolled in such program as informant against another enrollee, since information which informant transmitted to deputies and which led to sale of heroin outside clinic had no relation to program and was not obtained by informant under pretext of program relevance. Armenta v. Superior Court of Santa Barbara County (App. 2 Dist. 1976) 132 Cal.Rptr. 586, 61 Cal.App.3d 584.

This section prohibits the department of mental hygiene from supplying movement and identification information, such as fingerprints, concerning patients in state hospitals to the bureau of criminal identification and investigation, except that information concerning firearms in the hands of mental patients, registration of sexual psychopaths, information concerning arsonists, escapees, and statistical data is not confidential and may be released to the bureau. 53 Ops.Atty.Gen. 20, 1-21-70.

12. Child abuse reports



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The duty to report child abuse under the Child Abuse Reporting Law (Pen.C. § 11165 et seq.) supersedes the confidentiality provisions of the Lanterman-Petris Short Act (this section). 65 Ops.Atty.Gen. 345, 6-1-82.

Pen.C. § 11161.5 (repealed) imposed no duty upon a psychotherapist to report that an involuntarily detained patient being treated under the Lanterman-Petris-Short Act (§ 5000 et seq.) has revealed that he has abused his child. 57 Ops.Atty.Gen. 205, 4-30-74.

13. Probation reports

Trial court erred in permitting confidential information received from mental hospital to remain part of probation report, but error did not necessitate remand for purposes of resentencing, as confidential medical records were not basis for court's denial of probation request. People v. Gardner (App. 5 Dist. 1984) 198 Cal.Rptr. 452, 151 Cal.App.3d 134.

14. Warning of patient's propensities

Provisions of the Lanterman-Petris-Short Act governing release of confidential information did not prevent psychotherapists, who were employed by university hospital, from warning plaintiffs' daughter of mental patient's stated intentions to kill daughter; not only did treating therapist's letter to campus police to detain the patient not constitute an "application in writing," absent allegations that the therapists, the hospital or any staff member had been designated by the county to institute an involuntary commitment proceeding, there was no showing that the psychotherapy provided the patient fell under any treatment program authorized by the Act. Tarasoff v. Regents of University of California (1976) 131 Cal.Rptr. 14, 17 Cal.3d 425, 551 P.2d 334.

Treatment facilities may not disclose fact that a person is or was a patient unless authorized by release or court order, nor may patient request release of information without physician's approval, nor disclose presence of patient to one seeking to serve legal process, but warnings of dangerous propensities is authorized by treatment facility. 53 Ops.Atty.Gen. 151, 4-7-70.

15. Patients' advocate

A patients' advocate has a right of access to records in mental treatment facilities to the extent that such facilities participate in a local mental health program under the jurisdiction of the local director who appointed the advocate; as to other facilities, such right of access is limited by requiring patient consent before such records can be released, however, once the required consent is obtained, the right of access is effective in facilities that are operated under a contract with the county and in facilities that are privately operated, other than federal facilities. 62 Ops.Atty.Gen. 57, 2-9-79.

A patient's advocate's right of access to treatment records is not terminated by the discharge of the patient. 62 Ops.Atty.Gen. 57, 2-9-79.

The right of access to the consenting patient's treatment records in treatment facilities outside of the local program, is the same whether a patients' advocate is a county employee or an employee under contract with the county. 62 Ops.Atty.Gen. 57, 2-9-79.

16. Sexually violent predators proceedings

District attorney was not entitled to direct access to all of convicted sex offender's mental health records which were in possession of Department of Mental Health after filing petition against offender under Sexually Violent Predators Act (SVPA), since to extent such records were generated in course of providing mental health services, they were confidential and thus privileged under statute governing legal and civil rights of persons involuntarily detained. Albertson v. Superior Court (App. 2 Dist. 2000) 91 Cal.Rptr.2d 749, 77 Cal.App.4th 431, review filed.

West's Ann. Cal. Wel. & Inst. Code § 5328
CA ♦ WEL & INST § ♦ 5328 ♦
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MAR 20 2000

ASSEMBLY GOVERNMENTAL ORGANIZATION COMMITTEE

HERB J. WESSON, JR., Chairman

Bill Analysis Worksheet

Bill No.: AB 2799
Author: Assemblyman Shelley

Hearing Date: Not set.
Staff: Richard Rios

All committee worksheets must be returned to the committee no later than the Monday of the week preceding the scheduled hearing date. The Chair may refuse to hear a bill, even though it has been set, if the author fails to promptly return a completed worksheet.

1) **Need for the bill.** Please present all the relevant facts (be specific) that demonstrate the need for this bill. What is the problem or deficiency in current law which the bill seeks to remedy?

2) **Origin and background of the bill.**

a) Who is the source of the bill? What person, organization, or entity requested introduction? Please provide phone numbers.

b) Has a similar bill been introduced before? If so, please identify the session, bill number and disposition of bill.

c) Please attach copies of any background material for this bill, or state where such material is available for reference by committee staff.

d) Please list likely support and opposition. Please attach copies of letters of support or opposition received.

3) **Amendments prior to hearing.** If you plan substantive amendments prior to the hearing, please explain briefly the substance of the amendments. Amendments must be submitted to the committee secretary (in Legislative Counsel form) at least five legislative days prior to the hearing.

4) **Witnesses.** Please list the witnesses you plan to have testify.

5) **Staff person to contact.** Please state the name and phone number of the staff contact for the bill.

RETURN THIS FORM TO: ASSEMBLY GOVERNMENTAL ORGANIZATION COMMITTEE
1020 N STREET, ROOM 159
310-2531, FAX 310-3979

(800) 666-1917

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ASSEMBLY GOVERNMENTAL ORGANIZATION COMMITTEE
HERB WESSON, JR., Chairman

Bill Analysis Worksheet

Bill No: AB 2799 – Shelley

1. **Need for the bill:** **AB 2799** addresses three issues in the California Public Records Act (Govt. Code Sec. 6250 et seq).
 - a. **Electronic access** – The bill would require state and local agencies to provide copies of accessible computerized public records in an electronic format. Current law provides virtually no direction on this issue either for the public or agencies governed by the Act. The law merely provides that “Computer data shall be provided in a form determined by the agency (Govt. Code Sec. 6253 (b)).” **AB 2799** would provide reasonable rules for public access to electronically held records, including a provision that these records shall be made available in any form in which the agency holds the information.
 - b. **“Delay”** -- **AB 2799** would reinsert the word “delay” into Sec. 6253 (d), removed unwisely in 1996 legislation, to provide that, notwithstanding the timelines described in the Act, an agency shall not delay access to the inspection or copying of public records.
 - c. **Reverse Balancing Test** – Govt. Code Section 6255 provides for the public interest balancing test, a “catchall” provision that allows the government to withhold access to any record, even if it is not specifically exempt by law, if the public interest warrants it. The provision is a one-way street – if it is used by an agency, it is used only for the purpose of denying access to a records request (E.g., “we admit there is no statutory exemption allowing the agency to withhold the record, but we believe under the facts of this request, the public interest in disclosure is clearly outweighed by the public interest in nondisclosure. Access denied.”) **AB 2799** would level the playing field by giving the same balancing test to the public for records that may be exempt pursuant to statute. The bill would give discretion to an agency or the Superior Court to provide any record exempt by provisions of the law if, “. . . on the facts of the particular case, the public interest served by disclosing the record clearly outweighs the public interest in not disclosing the record.” **AB 2799** would merely give the public the same tool as the government to provide -- rather than deny -- access, when the public interest demands it. The provision dovetails with existing Sec. 6253 (e), which allows agencies to adopt requirements that allow for “faster, more efficient, or greater access to records” than prescribed by the minimum standards set forth in the Act.
2. **Origin and background of the bill.**
 - a. California Newspaper Publishers Association (Tom Newton, General Counsel Ph. (916) 288-6015, fax 288-6005, tom@cnppa.com) and Honorable Debra Bowen (Electronic access provision).

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- b. Yes. AB 1099 (Shelley) and SB 1065 (Bowen). Both bills were introduced in 1999. AB 1099 was amended late last year for another purpose; SB 1065 was vetoed.
- c. Attached are Chapter 2, *Inspection of Public Records*, from CNPA's *Reporter's Handbook on Media Law*, and, *Access to Public Information: The California Public Records Act* from *The California Journalists Legal Notebook*, published by the California First Amendment Coalition.

- 1. **People resources (other than Assemblyman Shelley):**
 Honorable Debra Bowen and her Chief of Staff Evan Goldberg
 Tom Newton
 Terry Francke CFAC General Counsel (916) 974-8888
 Tom Burke, Davis Wright Tremaine (415) 276-6552, drafter of the recent revision to the San Francisco Sunshine Ordinance.
 Barbara Blinderman, (310) 550-1675, CFAC Board member and access attorney.
 James Chadwick, Gray Cary Ware & Freidenrich (650) 833-2293, First Amendment and access counsel to newspapers.
 Ray Herndon and Dan Weikel (800) LATIMES, Southern California Chapter of the Society of Professional Journalists. } strong analogies
 Rachel Boehm, (415) 442-3999 Steinhart & Falconer, Northern California Chapter of the Society of Professional Journalists.
 Richard Mckee, (626) 585-7013, citizen activist and access advocate.

d. **Likely Support and opposition:**

- Support: See c. 1. above, and, in addition, potentially the California Taxpayers Association, League of Women Voters, Planning and Conservation League and others.
- Opposition: Potentially, any agency described in Govt. Code Section 6252 (a) and (b) and their taxpayer-financed trade associations.

- 3. **Amendments prior to Hearing:** none planned.
- 4. **Witnesses:** Tom Newton, Terry Francke.
- 5. **Staff:** Ryan Spencer

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Date of Hearing: May 8, 2000

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Herb Wesson, Chair

AB 2799 (Shelley) - As amended: April 27, 2000

SUBJECT: Public records

SUMMARY: Provides for the release of public records in an electronic format and requires a public agency that withholds a public record to justify its withholding in writing.

- 1) Deletes the requirement that public records kept on computer be disclosed in a form determined by the public agency. Requires a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following guidelines:
 - a) The agency must make the information available in any electronic format in which it holds the information.
 - b) Each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.
 - c) An agency may not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- 2) Requires an agency that withholds a public record to justify its withholding in writing.
- 3) Specifies that the requirements of the bill shall not be construed to permit an agency to make information available only in an electronic format nor shall they be construed to permit access to records held by the Department of Motor Vehicles that are otherwise restricted under the PRA.
- 4) Specifies that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

EXISTING LAW

- 1) Defines "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 characteristics.
- 2) Requires public records to be open to inspection at all times during the office hours of a state or local agency and affords every person the right to inspect any public record, except as specifically provided.



- 3) Requires state and local agencies to make an exact copy of a public record available to any person upon payment of fees covering direct costs of duplication, or a statutory fee, if applicable.
- 4) Requires that computer data be provided in a form determined by the agency.

FISCAL EFFECT: Unknown.

COMMENTS:

1. Need for the bill. The PRA permits a state or local agency to provide computer records in any format determined by the agency. This bill would require an agency to provide computer records in any format that it currently uses. According to the sponsor, the California Newspaper Publishers Association, this bill is intended to ensure quicker, more useful access to public records. The sponsor also notes that the bill seeks to provide reasonable guidelines for public access to electronically held records.
2. Substantive amendments. This bill was heard by this committee on April 24, 2000 and failed passage. Since the April 24 hearing, the author has substantially amended the bill to remove a controversial provision which would have authorized courts and state agencies to release records exempted from the PRA if the court or agency determined that the "public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record." This provision is referred to as the "reverse balancing test" and was the primary issue of discussion during the bill's hearing.
3. Remaining opposition. Although some opponents have removed their opposition in response to the most recent amendments, some remain concerned with the bill's requirement that public records be released in any electronic format that the agency uses to hold public records. Opponents point out that state and local agencies retain massive databases which may include nondisclosable public records. They claim that redacting the nondisclosable information from the electronic records could be a costly and time-consuming process that is more vulnerable to error, which may result in the unintentional release of nondisclosable information. Opponents note that the bill does not contain a provision authorizing agencies to charge fees covering the cost of preparing the electronic record for public release. It is unclear how local agencies currently account for public records that are required to be redacted but that are disclosed in a paper format.
4. Similar legislation. AB 1099 (Shelley) of this legislative session would have required state and local agencies to provide copies of public records in any form requested, including in a computer format, as long as the form was already used by the agency in the conduct of its business. AB 1099 passed this committee by a 15-0 vote but was later amended to contain a subject matter different from that which this committee considered.



REGISTERED SUPPORT / OPPOSITION:

Support

California Newspaper Publishers Association
First Amendment Coalition

Opposition

California Association of Sanitation Agencies
California Municipal Utilities Association
California State Sheriffs Association
Office of the State Attorney General
San Bernardino County Sheriff's Department

Analysis Prepared by: Richard Rios / G. O. / (916) 319-2531



Date of Hearing: May 8, 2000

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Herb Wesson, Chair

AB 2937 (Cedillo) – As introduced: March 23, 2000

SUBJECT: Athletic events: fees

SUMMARY: Establishes \$50,000 as the maximum fee on admission receipts required to be paid to the California State Athletic Commission by promoters of a boxing, kickboxing, martial arts, or wrestling contest or exhibition. This bill contains an urgency clause.

EXISTING LAW

- 1) Establishes within the Department of Consumer Affairs the California State Athletic Commission (the Commission) whose responsibility is to develop rules and regulations governing boxing and martial arts.
- 2) Requires the promoter or other organization conducting a boxing, kickboxing, martial arts, or wrestling contest to pay to the Commission a 5 percent fee of the amount actually paid for admission to a contest, and the fee may never be less than \$1,000 for a professional contest and \$500 for an amateur contest.
- 3) Requires the promoter or other organization conducting a contest, within 72 hours after a contest for which admission is charged and received, to furnish a written report to the Commission showing the number of tickets issued or sold for the contest, the amount of the gross receipts or value of the tickets, and the gross price charged directly or indirectly, for the sale, lease, or other broadcasting or television rights of the contest.

FISCAL EFFECT: Unknown.

COMMENTS:

1. Background. This bill was introduced after several news articles profiled the dissatisfaction of boxing promoters and Staples Arena officials with the 5% fee on boxing event admission receipts. The dissatisfied promoters were in the process of negotiating a championship boxing match at the Staples Arena in Los Angeles. Since the initial news articles appeared, the deal for the championship fight has been finalized and is scheduled to take place on June 17, 2000. The fight is anticipated to generate \$8 million in ticket revenue, which would result in a \$400,000 fee required to be paid to the state. If the Legislature approves and the Governor signs this bill in its current form by June 17, 2000, it would reduce the fee the Staples Arena would be required to pay for the June 17, 2000 event from \$400,000 to \$50,000.



2. Need for the bill. According to the author, establishment of a \$50,000 cap on the fee that the Commission charges for boxing and wrestling events will enable California to compete with other states in attracting and retaining large boxing events. The author claims that without a fee cap, California is at a competitive disadvantage with other states that have implemented a fee cap. The author notes that in addition to the 5% fee required to be paid to the state, a 3% tax is also authorized for boxing gate receipts in the City of Los Angeles. According to the California State Athletic Commission, the State of Nevada has a 4% fee on boxing admissions.

3. The State Athletic Commission. The State Athletic Commission is responsible for regulating professional and amateur boxing and professional and amateur full-contact martial arts. There are approximately 100 professional boxing events, 150 amateur boxing events, and 70 professional/amateur full-contact martial arts events held each year in California. The regulatory process attempts to maximize the health and safety of athletes and ensures that events are fair and competitive.

4. Opposition. The State Athletic Commission is opposed to this bill because the effect of lowering the fee on boxing admission results in a greater dependency of the Commission on the General Fund. The Commission also questions whether this bill is needed on an "urgency" basis. The Commission asserts that lowering the admission fee will not necessarily result in an increase in more boxing and wrestling events in the state.

5. Policy consideration. The committee may wish to consider whether the "urgency" clause in the bill is necessary.

REGISTERED SUPPORT / OPPOSITION:

Support

Central City Association of Los Angeles
 Councilman John Ferraro, City of Los Angeles
 Los Angeles Area Chamber of Commerce
 Los Angeles Convention and Visitors Bureau
 Staples Center
 The Greater Los Angeles African American Chamber of Commerce

Opposition

America Presents Promoting
 California State Athletic Commission
 Center for Public Interest Law

Analysis Prepared by: Richard Rios / G. O. / (916) 319-2531



Date of Hearing: April 24, 2000

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Herb Wesson, Chair

AB 2799 (Shelley) - As introduced: February 28, 2000

SUBJECT: Public records

SUMMARY: Provides for the release of public records in an electronic format and authorizes the release of records that are exempt from the Public Records Act (the PRA) in specified circumstances. Specifically, this bill:

- 1) Deletes the requirement that public records kept on computer be disclosed in a form determined by the public agency. Requires a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following guidelines:
 - a) The agency must make the information available in any electronic format in which it holds the information.
 - b) Each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.
 - c) An agency may not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- 2) Authorizes an agency, or the superior court in an action brought under the PRA, to disclose or order to be disclosed any record exempted from the PRA if, on the facts of the particular case, the public interest served in disclosing the record clearly outweighs the public interest served by not disclosing the record.
- 3) Requires an agency that withholds a public record to justify its withholding in writing.
- 4) Specifies that the requirements of the bill shall not be construed to permit an agency to make information available only in an electronic format nor shall they be construed to permit access to records held by the Department of Motor Vehicles that are otherwise restricted under the PRA.
- 5) Specifies that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

EXISTING LAW

- 1) Defines "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 characteristics.



- 2) Requires public records to be open to inspection at all times during the office hours of a state or local agency and affords every person the right to inspect any public record, except as specifically provided.
- 3) Requires a public agency to justify withholding a public record by demonstrating that the record in question is exempt under express provisions of the PRA *or* that on the facts of a particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosing the record.
- 4) Requires a court, when it finds that a public official's decision not to disclose a public record is unjustified, to order the public official to make the record public.

FISCAL EFFECT: Unknown.

COMMENTS:

1. Need for the bill. The PRA permits a state or local agency to provide computer records in any format determined by the agency. This bill would require an agency to provide computer records in any format that it currently uses. According to the sponsor, the California Newspaper Publishers Association, this bill is intended to ensure quicker, more useful access to public records. The sponsor also notes that the bill seeks to provide reasonable guidelines for public access to electronically held records. The sponsor claims that this bill will balance the ability of private citizens to access public records with the discretion of public agencies to deny such records requests.

2. Reverse balancing test. The PRA generally establishes broad guidelines about the types of documents that may not be subject to public disclosure and affords state agencies discretion to apply a balancing test when determining whether or not to release a record. In applying the test, the agency must determine that the "public interest served by not making the record public clearly outweighs the public interest served by disclosing the record." This bill attempts to apply a reverse balancing test by giving courts and state agencies the authority to disclose any public record if the agency or superior court determines that, depending on the facts of a particular case, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record. The reverse balancing test disclosure would apply even when a court finds that the record is exempted from disclosure under the PRA.

3. Opposition. Opponents argue that the bill subjects confidential records to a "vague" balancing test. Opponents claim that the test undermines key provisions of the PRA which protect proprietary information such as applications for the issuance of securities or of financial institutions, including banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies. Opponents also contend that the bill would permit a court or other agency, despite an exemption in the PRA, to order disclosure of a record it found to pass the reverse balancing test. Opponents are concerned that this provision would permit the release of specifically exempted information such as preliminary drafts or notes, geological and utility systems data, or complaint or investigation of records of local law enforcement agencies.



4. Policy consideration. The committee may wish to consider whether the courts should have the discretion, even when they find that a record is generally exempt from disclosure under the PRA, to require disclosure of that record if it meets the reverse balancing test. The committee may also wish to consider whether the reverse balancing test gives courts and agencies too much discretionary authority to release records that are *specifically* prohibited from release under the PRA or any other provision of law.

REGISTERED SUPPORT / OPPOSITION:

Support

California Newspaper Publishers Association
First Amendment Coalition

Opposition

Association of California Insurance Companies
California Association of Sanitation Agencies
California Chamber of Commerce
California Manufacturers & Technology Association
California Municipal Utilities Association
California State Association of Counties
California State Sheriffs Association
Civil Justice Association of California
Office of the State Attorney General
Personal Insurance Federation of California
San Bernardino County Sheriff's Department
Wine Institute

Analysis Prepared by: Richard Rios / G. O. / (916) 319-2531



Date of Hearing: April 10, 2000

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Herb Wesson, Chair

AB 2799 (Shelley) – As introduced: February 28, 2000

SUBJECT: Public records

SUMMARY: Provides for the release of public records in an electronic format and authorizes the release of records that are exempt from the Public Records Act (the PRA) in specified circumstances. Specifically, this bill:

- 1) Deletes the requirement that public records kept on computer be disclosed in a form determined by the public agency. Requires a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following guidelines:
 - a) The agency must make the information available in any electronic format in which it holds the information.
 - b) Each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.
 - c) An agency may not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- 2) Authorizes an agency, or the superior court in an action brought under the PRA, to disclose or order to be disclosed any record exempted from the PRA if, on the facts of the particular case, the public interest served in disclosing the record clearly outweighs the public interest served by not disclosing the record.
- 3) Requires an agency that withholds a public record to justify its withholding in writing.
- 4) Specifies that the requirements of the bill shall not be construed to permit an agency to make information available only in an electronic format nor shall they be construed to permit access to records held by the Department of Motor Vehicles that are otherwise restricted under the PRA.
- 5) Specifies that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

EXISTING LAW

- 1) Defines "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 characteristics.



- 2) Requires public records to be open to inspection at all times during the office hours of a state or local agency and affords every person the right to inspect any public record, except as specifically provided.
- 3) Requires a public agency to justify withholding a public record by demonstrating that the record in question is exempt under express provisions of the PRA *or* that on the facts of a particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosing the record.
- 4) Requires a court, when it finds that a public official's decision not to disclose a public record is unjustified, to order the public official to make the record public.

FISCAL EFFECT: Unknown.

COMMENTS:

1. **Need for the bill.** The PRA permits a state or local agency to provide computer records in any format determined by the agency. This bill would require an agency to provide computer records in any format that it currently uses. According to the sponsor, the California Newspaper Publishers Association, this bill is intended to ensure quicker, more useful access to public records. The sponsor also notes that the bill seeks to provide reasonable guidelines for public access to electronically held records. The sponsor claims that this bill will balance the ability of private citizens to access public records with the discretion of public agencies to deny such records requests.

2. **Reverse balancing test.** The PRA generally establishes broad guidelines about the types of documents that may not be subject to public disclosure and affords state agencies discretion to apply a balancing test when determining whether or not to release a record. In applying the test, the agency must determine that the "public interest served by not making the record public clearly outweighs the public interest served by disclosing the record." This bill attempts to apply a reverse balancing test by giving courts and state agencies the authority to disclose any public record if the agency or superior court determines that, depending on the facts of a particular case, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record. The reverse balancing test disclosure would apply even when a court finds that the record is exempted from disclosure under the PRA.

3. **Opposition.** Opponents argue that the bill subjects confidential records to a "vague" balancing test. Opponents claim that the test undermines key provisions of the PRA which protects proprietary information such as applications for the issuance of securities or of financial institutions, including banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.



4. County concerns. The California State Association of Counties (CSAC) is also concerned that the bill would permit a court or other agency, despite any other exemption in the PRA, to order disclosure of a record it found to pass the reverse balancing test. CSAC is concerned that this provision would permit the release of specifically exempted information such as preliminary drafts or notes, geological and utility systems data, or complaint or investigation of records of local law enforcement agencies.

5. Policy consideration. The committee may wish to consider whether the courts should have the discretion, even when they find that a record is generally exempt from disclosure under the PRA, to require disclosure of that record if meets the reverse balancing test. The committee may also wish to consider whether the reverse balancing test gives courts and agencies too much discretionary authority to release records that are *specifically* prohibited from release under the PRA or any other provision of law.

REGISTERED SUPPORT / OPPOSITION:

Support

California Newspaper Publishers Association
First Amendment Coalition

Opposition

Association of California Insurance Companies
Personal Insurance Federation of California

Analysis Prepared by: Richard Rios / G. O. / (916) 319-2531





California Newspaper Publishers Association CNPA Services, Inc.

930 G Street, Sacramento, CA 95814-1811
Tel: (916) 288-6000 • Fax: (916) 288-6002

April 26, 2000

Honorable Herb Wesson
California State Assembly
State Capitol Room 2179
Sacramento, California 95814

RE: SPONSOR AB 2799, AS AMENDED

Dear Assembly member ^{Herb}Wesson:

The California Newspaper Publishers Association urges your support of Assembly **Bill 2799** by Assemblyman Kevin Shelley, which was amended in the Assembly Governmental Organization Committee April 23, to remove a provision known as the "Reverse Balancing Test" that was opposed by a large number of diverse interests. **AB 2799** is scheduled to be reheard by the Assembly Committee on Governmental Organization on Monday, April 21.

As amended, **AB 2799** would:

- **Electronic access** – The bill would require state and local agencies to provide copies of accessible computerized public records in an electronic format. Current law provides virtually no direction on this issue either for the public or agencies governed by the Act. The law merely provides that "Computer data shall be provided in a form determined by the agency" (Govt. Code Sec. 6253 (b)). **AB 2799** would provide reasonable rules for public access to electronically held records, including a provision that these records shall be made available in any form in which the agency holds the information.
- **"Delay"** – **AB 2799** would reinsert the word "delay" into Sec. 6253 (d), removed unwisely in 1996 legislation, to provide that, notwithstanding the timelines described in the Act, an agency shall not delay access to the inspection or copying of public records.

The recent amendment to **AB 2799** removes most, if not all of the opposition. Last year, legislation with language identical to the electronic access provisions of **AB 2799** was unanimously approved by the committee, although the bill was vetoed by the Governor

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LEGISLATIVE INTENT SERVICE



Honorable Herb Wesson
California State Assembly
RE: SPONSOR AB 2799, AS AMENDED
April 26, 2000
Page 2

because of the uncertainty surrounding the Y2K problem. On behalf of the nearly 500 newspaper members of CNPA, please vote AYE on **AB 2799** when it comes before you.

Sincerely,



Thomas W. Newton
CNPA General Counsel

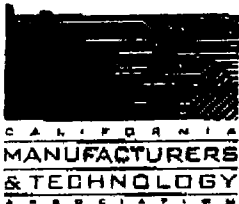
*Herb - Thx for
All your help on
this bill. Hopefully we
can get the amended
bill approved next
Monday. Thx
Again!
Tom*

cc: Honorable Kevin Shelley
Honorable Debra Bowen
George Riggs, CNPA President, Publisher and CEO, Contra Costa Times
Bill Niese, General Counsel, Times Mirror
Jack Bates, CNPA Executive Director
James Ewert, CNPA Legal Counsel
Richard Rios, Senior Consultant to the Assembly Governmental Organization Committee

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LEGISLATIVE INTENT SERVICE





April 26, 2000

Assemblyman Herb Wesson, Chair
 Assembly Governmental Organization Committee
 Room 2179, State Capitol
 Sacramento, CA 95814

Subject: Assembly Bill 2799 (Shelley)
Position: Removal of Opposition
Hearing: April 24, 2000 Assembly Governmental Organization Committee

Dear Assemblyman Shelley,

California Manufacturers and Technology Association is no longer in opposition of this bill as it will be amended to remove the "reverse balancing test" as it would apply to records exempt from disclosure under the Public Records Act.

Respectfully,

A handwritten signature in black ink, appearing to read "Dorothy Rothrock".

Dorothy Rothrock
 Policy Director, Corporate Counsel

cc: Members of the Assembly Governmental Organization Committee
 Assemblyman Kevin Shelley
 Consultants, Assembly Governmental Organization Committee
 Michael Petersen, Assembly Republican Minority

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California Newspaper Publishers Association CNPA Services, Inc.

930 G Street, Sacramento, CA 95814-1811
Tel: (916) 288-6000 • Fax: (916) 288-6002

April 4, 2000

Honorable Herb Wesson
California State Assembly
State Capitol Room 2179
Sacramento, California 95814

RE: SPONSOR AB 2799

Dear Assembly member *Herb* Wesson:

The California Newspaper Publishers Association urges your support of Assembly **Bill 2799** by Assemblyman Kevin Shelley, which would make several important changes to the California Public Records Act. **AB 2799** is scheduled to be heard by the Assembly Committee on Governmental Organization on Monday, April 10. Specifically, **AB 2799** would:

- **Electronic access** – The bill would require state and local agencies to provide copies of accessible computerized public records in an electronic format. Current law provides virtually no direction on this issue either for the public or agencies governed by the Act. The law merely provides that “Computer data shall be provided in a form determined by the agency “(Govt. Code Sec. 6253 (b)).” **AB 2799** would provide reasonable rules for public access to electronically held records, including a provision that these records shall be made available in any form in which the agency holds the information.
- **“Delay”** -- **AB 2799** would reinsert the word “delay” into Sec. 6253 (d), removed unwisely in 1996 legislation, to provide that, notwithstanding the timelines described in the Act, an agency shall not delay access to the inspection or copying of public records.
- **Reverse Balancing Test** – Govt. Code Section 6255 provides for the public interest balancing test, a “catchall” provision that allows the government to withhold access to any record, even if it is not specifically exempt by law, if the public interest warrants it. The provision is a one-way street – if it is used by an agency, it is used only for the purpose of denying access to a records request (E.g., “we admit there is no statutory exemption allowing the agency to withhold the record, but we believe under the facts of this request, the public interest in disclosure is clearly outweighed by the public interest in nondisclosure. Access denied.”) **AB 2799** would level the playing field by giving the same balancing test to the public for records that may be exempt pursuant to statute. The bill would give discretion to an agency or the Superior Court to provide any record exempt by provisions of the law if, “. . . on the facts of the particular case, the public interest served by disclosing the record clearly outweighs the public interest in not disclosing the record.” **AB 2799** would merely give the public the same tool as the

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LEGISLATIVE INTENT SERVICE



Honorable Herb Wesson
California State Assembly
RE: SPONSOR AB 2799
April 4, 2000
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government to provide -- rather than deny -- access, when the public interest demands it. This provision dovetails with existing Sec. 6253 (c), which allows agencies to adopt requirements that allow for "faster, more efficient, or greater access to records" than prescribed by the minimum standards set forth in the Act.

AB 2799 will ensure quicker, more useful access to public records that should be disclosed in the public interest. On behalf of the nearly 500 newspaper members of CNPA, please vote AYE on **AB 2799** when it comes before you.

Sincerely,



Thomas W. Newton
CNPA General Counsel

cc: George Riggs, CNPA President, Publisher and CEO, Contra Costa Times
Bill Niese, General Counsel, Times Mirror
Jack Bates, CNPA Executive Director
James Ewert, CNPA Legal Counsel
Richard Rios, Senior Consultant to the Assembly Governmental Organization Committee

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LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
SACRAMENTO LEGISLATIVE OFFICE

GIL GARCETTI • District Attorney
ROBERT P. HEFLIN • Chief Deputy District Attorney

JAMES R. PROVENZA • Special Assistant

April 20, 2000

The Honorable Herb Wesson
Chair, Assembly Governmental Organization Committee
State Capitol, Room 2179
Sacramento, California 95814

ASSEMBLY BILL 2799 (SHELLEY)
OPPOSE
Assembly Governmental Organization Committee
Hearing Date: April 24, 2000

Dear Assembly Member Wesson:

We regret to inform you that the Los Angeles District Attorney's Office is opposed to Assembly Bill 2799. AB 2799 would add subdivision (b) to Section 6255 of the Government Code which would provide:

Notwithstanding any provision of this chapter, an agency, or the superior court in any action brought pursuant to Section 6259, may disclose or order to be disclosed any record made exempt by express provisions of this chapter if, on the facts of the particular case, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.

The above provision would potentially permit the release of confidential victim and witness information in a criminal case, such as the location and identity of these individuals. It could also require the disclosure of information in a pending investigation. We feel that this could make witnesses and victims more reluctant to come forward and could jeopardize the prosecution of criminal cases.

The above provision could also result in an actionable violation of the right to privacy under Article 1, Sec 1 of the California Constitution.

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April 20, 2000
Page Two

We also object to removing language from existing law which states that "computer data shall be provided in a form determined by the agency." Unfortunately, no standard is set to replace this language. Thus, even where disclosure of computer data is provided, the party seeking disclosure could complain that the format provided is not satisfactory and that the information should be provided in a different format, even if it would be impractical for the agency to provide the information in the requested format.

Thank you for your consideration of our position on Assembly Bill 2799.

Very truly yours,

GIL GARCETTI
District Attorney

By 

JAMES R. PROVENZA
Special Assistant District Attorney
JRP:jk

cc: Consultant/Members, Assembly Government Organization Committee

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California Newspaper Publishers Association CNPA Services, Inc.

930 G Street, Sacramento, CA 95814-1811
Tel: (916) 288-6000 • Fax: (916) 288-6002

March 24, 2000

Honorable Kevin Shelley
California State Assembly
State Capitol Room 3160
Sacramento, California 95814

RE: SPONSOR AB 2799

Dear Assemblyman *Shelley* Shelley:

I am writing on behalf of the California Newspaper Publishers Association to acknowledge the association's sponsorship of your Assembly Bill 2799, which would make several important changes to the California Public Records Act. Specifically, **AB 2799** would:

- **Electronic access** – The bill would require state and local agencies to provide copies of accessible computerized public records in an electronic format. Current law provides virtually no direction on this issue either for the public or agencies governed by the Act. The law merely provides that "Computer data shall be provided in a form determined by the agency" (Govt. Code Sec. 6253 (b)). **AB 2799** would provide reasonable rules for public access to electronically held records, including a provision that these records shall be made available in any form in which the agency holds the information.
- **"Delay"** -- **AB 2799** would reinsert the word "delay" into Sec. 6253 (d), removed unwisely in 1996 legislation, to provide that, notwithstanding the timelines described in the Act, an agency shall not delay access to the inspection or copying of public records.
- **Reverse Balancing Test** – Govt. Code Section 6255 provides for the public interest balancing test, a "catchall" provision that allows the government to withhold access to any record, even if it is not specifically exempt by law, if the public interest warrants it. The provision is a one-way street – if it is used by an agency, it is used only for the purpose of denying access to a records request (E.g., "we admit there is no statutory exemption allowing the agency to withhold the record, but we believe under the facts of this request, the public interest in disclosure is clearly outweighed by the public interest in nondisclosure. Access denied.") **AB 2799** would level the playing field by giving the same balancing test to the public for records that may be exempt pursuant to statute. The bill would give discretion to an agency or the Superior Court to provide any record exempt by provisions of the law if, "... on the facts of the particular case, the public interest served by disclosing the record clearly outweighs the public interest in not disclosing the record." **AB 2799** would merely give the public the same tool as the government to provide -- rather than deny -- access, when the public interest demands it.

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LEGISLATIVE INTENT SERVICE



Honorable Kevin Shelley
California State Assembly
RE: SPONSOR AB 2799
March 24, 2000
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This provision dovetails with existing Sec. 6253 (e), which allows agencies to adopt requirements that allow for "faster, more efficient, or greater access to records" than prescribed by the minimum standards set forth in the Act.

AB 2799 will ensure quicker, more useful access to public records that should be disclosed in the public interest. On behalf of the nearly 500 newspaper member of CNPA, Thank you for introducing **AB 2799**. We look forward to working with you to ensure the governor's signature approval of this important legislation.

Sincerely,



Thomas W. Newton
CNPA General Counsel

cc: George Riggs, CNPA President, Publisher and CEO, Contra Costa Times
Bill Niese, General Counsel, Times Mirror
Jack Bates, CNPA Executive Director
James Ewert, CNPA Legal Counsel
Richard Rios, Senior Consultant to the Assembly Governmental Organization Committee

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LEGISLATIVE INTENT SERVICE



California State Association of Counties

April 3, 2000

APR - 4 2000



The Honorable Kevin Shelley
Member of the Assembly
Room 3160, State Capitol Building
Sacramento, CA 95814

1100 K Street
Suite 101
Sacramento
California
95814

RE: AB 2799 (Shelley) - Concerns
Set for hearing April 11, Assembly Governmental Organization Committee

Telephone
916 327 7500
Facsimile
916 441 5507

Dear Assembly Member Shelley:

The California State Association of Counties (CSAC) writes to express its concerns regarding AB 2799, your measure relating to public records.

As you recall, we were very appreciative that you worked with us last year in discussions on AB 1099 to accommodate the concerns of local governments regarding expanded accessibility to public records in an electronic format. Our review of AB 2799, which contains provisions similar to those in AB 1099 relating to the release of documents in an electronic format, revealed potential new concerns with two specific provisions that may represent a marked shift in existing public record law.

Of greatest concern is the "reverse balancing" provision under Government Code section 6253(b). As we understand this provision, it would permit a court—despite any other exemption in the Public Records Act—to order disclosure of records "if, on the facts of the particular case, the public interested served by disclosing the record outweighs the public interest served by not disclosing the record." It would appear, for example, that preliminary drafts or notes, geological and utility systems data, complaint or investigation records of local law enforcement agencies, and any other records currently exempted could be ordered to be released.

A second area of concern relates to the proposed reinsertion of the word "delay" under section 6253(d) so that the provision reads: "Nothing in this chapter shall be construed to *delay or* obstruct the inspection of copying of public records." We currently are soliciting county input on this proposed revision to determine the significance of the amendment.

We would welcome the opportunity to work with you on addressing concerns of local government on AB 2099. As soon as we receive specific input on the provisions highlighted above, we will contact you. In the meantime, please do not hesitate to contact me at 916/327-7500, ext. 513, or Elizabeth Howard at 916-327-7500, ext. 537 to discuss this matter further. Thank you.

Sincerely,

Rubin R. Lopez
Legislative Representative

cc: The Honorable Herb Wesson, Chair, Assembly Governmental Organization Committee
Members and Consultants, Assembly Governmental Organization Committee

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Confidential

DEPARTMENT OF JUSTICE
BILL ANALYSIS

RECOMMENDED POSITION: Oppose

AMENDMENTS: No

FISCAL: Possible Substantial Costs

BILL NO. AB 1099

AUTHOR: Shelley

DATE LAST AMENDED: Jan. 2/25/99

I. SUMMARY OF BILL AND EXISTING LAW

The California Public Records Act ("PRA") requires state and local agencies to permit persons to inspect records and to provide copies of identifiable records to persons upon request. The agency may only charge the costs of duplication for the copies. Computer data may be provided to a requestor in the form determined by the agency. This bill requires an agency to provide computer data "in any form that is requested from among any of the forms used by the agency for the conduct of its business of the making of copies for its own use or the use of any another agency." The bill also prohibits every state and local agency from purchasing, creating, or otherwise acquiring any electronic data system that impairs or impedes the ability of an agency to provide access to public records or to provide electronic copies of records.

II. POLICY IMPACT

The PRA is premised on the concept that since government is the people's business, the people have the right to be informed as to government activity by means of inspection of records of government agencies. (See 53 Ops Cal. Atty. Gen. 136, 143 (1970)) However, there is and should be no policy in favor of determining government functions on the basis of whether the people's right of access to records of those activities is unrestricted. In other words, the right of access to government records should not control what information is recorded or how it is recorded. Such a policy subordinates the effectiveness and efficiency of operations of the people's government to the right of the public to have access to public records. In 53 Ops. Cal. Atty Gen. 136, 150-151, *supra*, one of the first opinions to explain the purposes and requirements of the PRA, this office recognized the pronouncement of the California Supreme Court in *Bruce v. Gregory* (1967) 65 Cal.2d 666, 676 that the custodian of public records should be permitted "to prevent inspection from interfering with the orderly function of the office and its

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DEPARTMENT OF JUSTICE
BILL ANALYSIS
Page 2

BILL NO. AB 1099

employees." This sound policy should be reflected in the provisions of the PRA. The proposed amendments undermine this policy.

The first change made by the bill, requiring an agency to provide computer data in any format that is used by the agency, at first blush would not appear to be onerous. However, in reality it presents both privacy and security problems. State agencies retain massive data bases, many of which include personal information on individuals. They are able to transfer, and may on occasion produce, information from those data bases in formats that include both non-exempt and exempt information. The information may be handled in electronic data form internally.

The PRA already requires agencies to provide access to computer information. The public has a right to this information. This bill arguably would require agencies to provide in data form entire data bases of information to private persons. The data would be in a form that could possibly be manipulated by the private persons for untold uses. The possibility that exempt information may be released through a programming error or oversight is greatly enhanced. Additionally, the party receiving the information could have the means of altering information to produce false results or statistics which would have an appearance of official information.

Under current law agencies have the discretion to provide the information in a way that protects against unintentional releases of exempt information and distortion of data that appears to be official.

The second change made by the bill, the requirement that an agency must determine that a new data processing system will or will not impair or impede an agency's ability to permit access to records, subjects state and local procurement decisions to legal challenges on the grounds involving the vague and relative standard of whether access to public records will be impaired or impeded. If one proposed system allows greater and easier access than another, then the second system arguably must be rejected regardless of cost or efficiency. Competing vendors will be attacking each others systems not on the cost and effectiveness, but on accessibility of data.

It is hard to imagine a system of data processing that would not allow access to the information in the system for purposes of reviews and audits of its operation. If such access is available, then the information is available for public inspection in some form. This change does not define the problem that it is intended to cure. If the change is intended to require agencies to all use the most popular commercially available software, rather than custom software which may be more efficient and functional, then the

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DEPARTMENT OF JUSTICE
BILL ANALYSIS
Page 3

BILL NO. AB 1099

proposal is an unwarranted interference with the operation of government. Absent a focus on a particular problem, the bill should be opposed.

III. DATA PROCESSING SUPPORT

There could be substantial data processing support requirements both on this department and state and local agencies since this measure directly impacts data processing projects.

IV. FISCAL IMPACT

The fiscal impact to state and local agencies, including the Department of Justice, could be substantial. The exact costs cannot be estimated.

V. AMENDMENTS

None.

VI. RECOMMENDATION

- Support
- Support if amended
- Neutral
- Oppose
- Oppose unless amended

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CIVIL JUSTICE
ASSOCIATION OF CALIFORNIA
MEMORANDUM



April 18, 2000

TO: Hon. Herb Wesson, Chair
Hon. Brett Granlund, Vice Chair
Members, Assembly Governmental Organization Committee

FROM: Barbara M. Wheeler, Vice President-Legislation
Jeff Sievers, Legislative Advocate
John H. Sullivan, President

RE: **AB 2799 (Shelley)**
Status: Assembly GO Committee
Hearing Date: April 24, 2000

CJAC POSITION: OPPOSE

The Civil Justice Association of California (CJAC) regrets to advise that it has adopted an oppose position on AB 2799 (Shelley).

AB 2799 would allow a state agency or a superior court to order disclosure of a record, already made exempt from disclosure under the express and detailed provisions of the California Public Records Act (Government Code Section 6254), if the agency or the court determines that "the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record."

We are concerned that if this bill becomes law, the public's trust in the civil justice system and government in general will erode as citizens lose the relative certainty that information they provide to a state or local agency on the assurance of confidentiality will remain confidential. Additionally, enactment of the bill would effectively eliminate the safeguards which exist for protecting both confidential and proprietary information by allowing any individual, regardless of motivation, to use the civil justice system to invade personal privacy and reveal confidential information or at least harass people and organizations with litigation.

After meeting with the sponsors of the bill (the California Newspaper Publishers' Association) and reading the committee analysis of AB 2799, we do not see any backup evidence of this bill's need. The sponsor states this bill is necessary to balance the ability of private citizens to obtain information in government records with the ability of public agencies to maintain confidentiality. However, a thorough reading of the lengthy Public Records Act exemption section (Government

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Code Section 6254) reveals the Legislature's deliberate crafting of the very balancing the sponsors say is needed. For example:

1. Gov. Code Sec. 6254 (c): personnel, medical, or similar files, the disclosure of which would constitute an *unwarranted* invasion of personal privacy.
2. Gov. Code Sec. 6254 (f): *...unless* the disclosure would endanger the safety of a witness or other person.

The court's current role under the Public Records Act is to determine whether the information being kept from public view falls into one of the categories detailed in Section 6254. There is no reason to require judges to undertake a broad balancing review to determine whether to override express privacy protections enacted by the Legislature. Why should a company be forced into court to establish the value of its "geological and geophysical data, plant production data...or market or crop reports" (Gov. Code Sec. 6254 (e))? Why should Native Americans be forced to go into court to fight challenges to the secrecy of the records of their graves, cemeteries, and sacred places (Gov. Code Sec. 6254 (r))?

Although primarily a criminal law consideration, we must point out that AB 2799's threat to the security of information obtained in confidence would seriously deter investigations which benefit the public. Why would crime victims come forward to testify or further assist law enforcement agencies if they cannot be guaranteed that information they give to the law enforcement agency will not be disclosed to the public?

We believe California's civil justice system -- and the public's already eroding trust in it -- would be substantially harmed by the enactment of AB 2799. The amendments to the Public Records Act provided in AB 2799 would create undue confusion and muddy the balance the Legislature has achieved in protecting competing public interests. The amendments appear even to allow any state agency to independently override the Public Records Act's privacy protections without going near a courtroom! (Sec. 6255).

We urge your no vote on this measure.

cc: Assemblyman Kevin Shelley
Senator Debra Bowen
Richard Rios, Assembly Governmental Organization
Michael Peterson, Assembly Republican Caucus
Ann Richardson, Deputy Legislative Secretary, Governor's Office





County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2159



LEROY D. BACA, SHERIFF

April 21, 2000

The Honorable Herb Wesson
Chair, Assembly Governmental Organization
State Capitol, Room 2179
Sacramento, California 95814

Dear Assemblymember Wesson:

ASSEMBLY BILL 2799 (SHELLEY) - OPPOSE
ASSEMBLY GOVERNMENTAL ORGANIZATION COMMITTEE

The Los Angeles County Sheriff's Department opposes Assembly Bill 2799, by Assemblymember Kevin Shelley. The bill vests discretion in public agencies or the courts to override express provisions of the Public Records Act which otherwise prohibit disclosure of certain records. Additionally, the bill requires that public records which exist in an electronic format be produced in that format rather than having a "hard-copy" printed.

By vesting discretion in public agencies or the courts, this bill effectively swallows the rule which has identified specific types of sensitive records which should not be disclosed. Under the provisions of this bill, even the names of sex crime victims and information contained in on-going criminal investigations become subject to discretionary disclosure.

Additionally, by requiring records which exist in an electronic format to be produced in the same electronic format, the agency holding the record is prevented from redacting information contained in the record which is confidential and not otherwise subject to disclosure.

Based upon the foregoing reasons, the Los Angeles County Sheriff's Department opposes Assembly Bill 2799.

If I can be of any assistance in this matter, please feel free to contact me or my Legislative Advocates, Sergeant Wayne Bilowit and Sergeant Gerald Cooper at (323) 526-5228.

Sincerely,

LEROY D. BACA
SHERIFF

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President
Mendocino County
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(707) 463-4375
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CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS

April 27, 2000

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The Honorable Kevin Shelley
State Capitol, Room 3160
Sacramento, CA 95814

Dear Assembly Member Shelley:

Assembly Bill 2799 (Shelley) Public Records: Disclosure OPPOSE, UNLESS AMENDED

Regretfully, the Clerk of the Board of Supervisors Section of the California Association of Clerks and Election Officials opposes AB 2799, unless amended to remove language contained in Section 3 that would fundamentally change the "balancing test" regarding a public agency's decision to disclose or not to disclose a record.

The Public Records Act requires public agencies to make records available for inspection and copying at all times during normal business hours. The Act exempts certain public records from such disclosure. Further, the Act requires a public agency to justify its decision not to disclose a record that is not specifically exempted from disclosure by the Act, by showing that the public interest in not disclosing the record clearly outweighs the public interest in disclosing the record (the "balancing test").

Your bill would permit an agency to ignore even specific exemptions contained in the Act and disclose a record. It would also permit a superior court to order such a record disclosed and would, in effect shift the burden to a public agency in a court proceeding to show that a decision to withhold the record was justified. This would turn the Act's balancing test on its head. Moreover, it would eviscerate all of the privacy protections afforded to citizens currently contained in the Act.

Although we recognize that most records in the possession of clerks of the board of supervisors are public records and that they are clearly subject to disclosure, we are very concerned about the effects this bill would have on sensitive records that are appropriately exempted from disclosure by the Act and by other sections of state law. We believe that placing public agencies in the position of bearing a burden in court to justify nondisclosure of such records is nonsensical and is poor public policy.



The Honorable Kevin Shelley
April 27, 2000
Page 2

The bill would also add the word "delay" to subdivision (d) of Section 6253 (Section 1 of the bill). We question the necessity and advisability of adding this word since the current language of the Public Records Act is quite clear with respect to the time limit by which an agency must produce a record. Addition of this word merely creates confusion where currently none exists.

Again, we must oppose your bill unless amended to address our concerns. If you require any additional information, please call Legislative Committee member John McKibben at (213) 974-1405 or our legislative advocate Bill Siverling at (916) 444-7592.

Very truly yours,



Violet Varona-Lukens, Co-Chair
Clerks of the Board of Supervisors
Legislative Committee

c: Each Member and Consultant,
Assembly Committee on Governmental Organization
William Siverling, Legislative Advocate

J:\Legislation\Legislation 2000\AB 2799 ago.doc

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FIRST AMENDMENT COALITION

TO PROMOTE AND DEFEND
THE PEOPLE'S RIGHT TO KNOW

April 5, 2000

Assemblyman Kevin Shelley
Room 3160
State Capitol
10th & L Streets
Sacramento, CA 9814

RE: **AB 2799 SUPPORT**

Dear Assemblyman Shelley:

The California First Amendment Coalition strongly supports AB 2799 because it would create an overdue balance in how the discretion to withhold significant information from the public operates in California law.

Presently a public agency may, under the California Public Records Act, deny citizens' access to a document which has not been made exempt from disclosure by any of the hundreds of express confidentiality provisions of state or federal statute. Government Code Section 6255, the notorious "catchall" exemption, allows withholding of a record if the agency demonstrates that on the basis of the particular facts and circumstances, the public interest in not making the information public outweighs the public interest in disclosure.

This provision acts too often as a "secrecy wild card" permitting ad hoc decisions to withhold a record that the Legislature has never seen fit to consider sensitive or confidential.

AB 2799 would give the public a reciprocal chance to argue the effects of unforeseen circumstances by providing that a court could conclude that, based on such circumstances, the public interest in disclosure outweighed any public interest in secrecy.

This provision would not operate on records where disclosure is flatly prohibited. It would govern only those records where the public agency has the discretion to release or not -- and has opted against release.

It is indisputable that most public agencies, virtually without exception, always exercise such discretion in favor of concealment. So "permissive" exemptions are, in practice, treated as secrecy mandates.

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FAX: (916) 974-8880
E-mail: cfac@cfac.org
<http://www.cfac.org>

LH: 100 AP - 58



CIVIL JUSTICE
ASSOCIATION OF CALIFORNIA
MEMORANDUM



April 18, 2000

TO: Hon. Herb Wesson, Chair
Hon. Brett Granlund, Vice Chair
Members, Assembly Governmental Organization Committee

FROM: Barbara M. Wheeler, Vice President-Legislation
Jeff Sievers, Legislative Advocate
John H. Sullivan, President

RE: **AB 2799 (Shelley)**
Status: Assembly GO Committee
Hearing Date: April 24, 2000

CJAC POSITION: OPPOSE

The Civil Justice Association of California (CJAC) regrets to advise that it has adopted an oppose position on AB 2799 (Shelley).

AB 2799 would allow a state agency or a superior court to order disclosure of a record, already made exempt from disclosure under the express and detailed provisions of the California Public Records Act (Government Code Section 6254), if the agency or the court determines that "the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record."

We are concerned that if this bill becomes law, the public's trust in the civil justice system and government in general will erode as citizens lose the relative certainty that information they provide to a state or local agency on the assurance of confidentiality will remain confidential. Additionally, enactment of the bill would effectively eliminate the safeguards which exist for protecting both confidential and proprietary information by allowing any individual, regardless of motivation, to use the civil justice system to invade personal privacy and reveal confidential information or at least harass people and organizations with litigation.

After meeting with the sponsors of the bill (the California Newspaper Publishers' Association) and reading the committee analysis of AB 2799, we do not see any backup evidence of this bill's need. The sponsor states this bill is necessary to balance the ability of private citizens to obtain information in government records with the ability of public agencies to maintain confidentiality. However, a thorough reading of the lengthy Public Records Act exemption section (Government

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Your bill would allow the agency, of course, to defend its option favoring secrecy. But it would also allow a judge, based on the totality of the circumstances, to rule that there is an extraordinary public interest in making the information available to the community.

If agencies can, as they clearly can under the law as it stands, improvise a calculus of the public interest to withhold normally public records, fairness and good government dictates that a court should have the same power, at least where the agency could have said "Yes" in the first place, but chose for its own reasons not to do so.

Sincerely,



Terry Francke
General Counsel

cc: Richard Rios, Consultant
Assembly Committee on Governmental Organization
1020 N St., Room 159



WINE INSTITUTE

April 26, 2000

1127 Eleventh Street

Suite 900

Sacramento

California 95811

(916) 411-6974

Fax (916) 411-7390

Assemblymember Kevin Shelley
Room 3152, State Capitol

Dear Kevin:

As requested by your staff, this letter is to advise you that the Wine Institute is withdrawing its opposition to your AB 2799. This is because the bill's SEC. 3 relative to reversing the balancing test will be formally deleted in the next set of amendments.

Respectfully,

Mike Falasco
Legislative Representative

cc: Assembly G.O. Committee Chair Herb Wesson
Assembly G.O. Committee Vice Chair Brett Granlund

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LEGISLATIVE INTENT SERVICE





Personal Insurance Federation of California *Committee*

California's Personal Lines Trade Association
REPRESENTING THE LEADING AUTOMOBILE AND HOMEOWNERS INSURERS

*1020 NSt
#159*

MEMORANDUM

Date: May 2, 2000

To: Honorable Herb Wesson, Chairman
Members of the Governmental Organization Committee

From: Dan C. Dunmoyer, President
Phyllis A. Marshall, Vice President of Legislative and Regulatory Affairs *AMJ*
G. Diane Colborn, Senior Legislative Advocate and Counsel

Re: AB 2799 (Shelley): Public Records: disclosure
Assembly Governmental Organization Committee: May 8, 2000
PIFC Position: Neutral

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Director of Communications

The Personal Insurance Federation of California (PIFC), representing insurers selling 40% of the personal lines insurance sold in California, including State Farm, Farmers, 21st Century, SAFECO, and Progressive Insurance Companies is neutral on AB 2799 by Assemblyman Shelley as a result of the April 27, 2000 amendments.

If you have any questions regarding our position, please feel free to contact Phyllis Marshall at (916) 442-6646.

cc:
Honorable Kevin Shelley
Ann Richardson, Deputy Legislative Secretary, Governor's Office
Richard Rios, Assembly Governmental Organization
Michael Peterson, Assembly Republican Caucus

4 AB 2799 a gov2

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LEGISLATIVE INTENT SERVICE





Personal Insurance Federation of California

California's Personal Lines Trade Association
REPRESENTING THE LEADING AUTOMOBILE AND HOMEOWNERS INSURERS

MEMORANDUM

Date: May 2, 2000

To: Honorable Herb Wesson, Chairman
Members of the Governmental Organization Committee

From: Dan C. Dunmoyer, President
Phyllis A. Marshall, Vice President of Legislative and Regulatory Affairs *AM*
G. Diane Colborn, Senior Legislative Advocate and Counsel

Re: AB 2799 (Shelley): Public Records: disclosure
Assembly Governmental Organization Committee: May 8, 2000
PIFC Position: Neutral

The Personal Insurance Federation of California (PIFC), representing insurers selling 40% of the personal lines insurance sold in California, including State Farm, Farmers, 21st Century, SAFECO, and Progressive Insurance Companies is neutral on AB 2799 by Assemblyman Shelley as a result of the April 27, 2000 amendments.

If you have any questions regarding our position, please feel free to contact Phyllis Marshall at (916) 442-6646.

CC:
Honorable Kevin Shelley
Ann Richardson, Deputy Legislative Secretary, Governor's Office
Richard Rice, Assembly Governmental Organization
Michael Peterson, Assembly Republican Caucus

4.AB 2799 a gov2

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CALIFORNIA CHAMBER of COMMERCE

April 26, 2000

The Honorable Kevin Shelley
California State Assembly
State Capitol, Room 3160
Sacramento, CA 95814

**SUBJECT: AB 2799 (SHELLEY) DISCLOSURE OF RECORDS
NEUTRAL WITH AMENDMENTS**

Kevin
Dear Assemblyman Shelley:

On behalf of the members of the California Chamber of Commerce I would like to thank you for agreeing to amend AB 2799 (Shelley) to remove the so-called "reverse presumption" language. Your agreement to strike lines 16 through 23 on page five; (Section 3, sub-section (b)) enables us to remove our opposition to the bill.

We remove our opposition to AB 2799 (Shelley) with the adoption of the amendments described above.

I appreciate your willingness and that of your staff to address our concerns through the amendments.

Sincerely,

Dominic DiMare, Legislative Advocate
Telecommunications, Utilities, Worker's Compensation

DD:kp

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Better Cities - A Better Life

League of California Cities

www.cacities.org

May 1, 2000

Assembly Member Kevin Shelley
State Capitol, Room 3160
Sacramento, CA 95814

RE: AB 2799 (Shelley). Public Records: Disclosure.
NOTICE OF NEUTRAL POSITION.

Dear Assembly Member Shelley:

I would like to inform you that the League of California Cities has removed its opposition to AB 2799. The League is satisfied with recent amendments to the bill which eliminate the provision that denials for public records disclosure may be overturned if the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.

Thank you for your consideration of our concerns and for responding with appropriate amendments. Should you require additional information, please feel free to contact me at 658-8279.

Sincerely,

Amy Brown
Legislative Representative

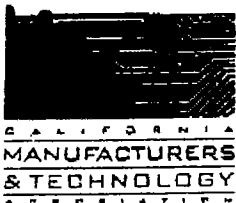
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FAX 925.283.7833

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916.658.8200
FAX 916.658.8240

Southern California Office
602 East Huntington Dr., Suite C
Monrovia, CA
626.365.107 AP - 65
FAX 626.365.107



April 26, 2000

Assemblyman Herb Wesson, Chair
 Assembly Governmental Organization Committee
 Room 2179, State Capitol
 Sacramento, CA 95814

Subject: Assembly Bill 2799 (Shelley)
Position: Removal of Opposition
Hearing: April 24, 2000 Assembly Governmental Organization Committee

Dear Assemblyman Shelley,

California Manufacturers and Technology Association is no longer in opposition of this bill as it will be amended to remove the "reverse balancing test" as it would apply to records exempt from disclosure under the Public Records Act. -

Respectfully,

A handwritten signature in cursive script, appearing to read "Dorothy Rothrock".

Dorothy Rothrock
 Policy Director, Corporate Counsel

cc: Members of the Assembly Governmental Organization Committee
 Assemblyman Kevin Shelley
 Consultants, Assembly Governmental Organization Committee
 Michael Petersen, Assembly Republican Minority

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WINE INSTITUTE

April 26, 2000

1127 Eleventh Street

Suite 900

Sacramento

California 95814

Phone (916) 441-6971

Fax (916) 441-5399

Assemblymember Kevin Shelley
Room 3152, State Capitol

Dear Kevin:

As requested by your staff, this letter is to advise you that the Wine Institute is withdrawing its opposition to your AB 2799. This is because the bill's SEC. 3 relative to reversing the balancing test will be formally deleted in the next set of amendments.

Respectfully,

Mike Falasco
Legislative Representative

cc: Assembly G.O. Committee Chair Herb Wesson
Assembly G.O. Committee Vice Chair Brett Granlund

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LEGISLATIVE INTENT SERVICE





April 26, 2000

Assemblyman Kevin Shelley
State Capitol, Room 3160
Sacramento, CA 95814

RE: AB 2799 (Shelley)

Dear Mr. Shelley:

This letter is to advise that the Civil Justice Association of California has moved from a Oppose to a Neutral position on your bill, AB 2799.

As you know, our opposition stemmed from Section 3, subsection (b) of your bill which allowed for a reverse balancing test to be conducted for documents already listed exempt under the California Public Records Act. Our concern was that this subsection would have effectively eliminated the safeguards which currently exist for protecting both confidential and proprietary information.

We are pleased that during the Assembly Governmental Organization Committee on Monday you took an author's amendment to remove Section 3, subsection (b) from your bill. We thank you for the attention you gave to our and others' concerns with the reverse balancing test and for taking an amendment to remove same from your bill.

Sincerely,

Barbara M. Wheeler, Esq.
Vice President-Legislation

bmw

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90 Years
of Water Leadership

April 20, 2000

The Honorable Kevin Shelley
Assembly Member, 12th District
State Capitol, Room 3160
Sacramento, CA 95814

RE: AB 2799 – public records: Request for Amendment

Dear Assembly Member Shelley:

The Association of California Water Agencies (ACWA) has reviewed AB 2799 and respectfully requests that an amendment be made to the bill. Our current position is "Watch-Amend" pending the outcome of this request.

Currently, the Public Records Act (Gov't Code S6250 *et. seq.*) allows an agency to withhold public records from disclosure in two situations:

1. If the records fall within one of the specific exemptions listed in the Act (6254 – 6254.14); or
2. If the agency determines that, although not specifically exempt, the public interest in withholding the record outweighs the public interest in disclosure (S6259).

A plaintiff who proves that an agency's refusal to disclose a record was not justified under any of the sections noted above is entitled to an award of attorney's fees and costs (S6255).

As a result, an agency that properly relies upon a specific exemption (i.e. the first situation above) is not vulnerable to court-ordered disclosure. AB 2799, however, would significantly alter current practice. It would allow a disgruntled party to file an action asking the court to order disclosure notwithstanding the agency's reliance on a specific statutory exemption. If successful, the plaintiff would be entitled to attorney's fees and costs under section 6259.

Until now, the existence of specific exemptions has provided certainty to local agencies responding to requests under the Public Records Act. AB 2799, on the other hand, would create considerable uncertainty in such cases. In each case,

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Water Agencies
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Suite 357 South
Washington, D.C.
20001-4512
202/434-4760
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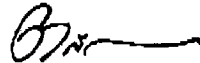


local agencies would have to gamble whether a decision to rely upon a specific exemption would be overruled by a court – at the agency’s expense.

The Public Records Act is already subject to some abuse by parties who file broad-brush requests that require large amounts of staff time and resources for which an agency must absorb the costs (only the direct costs of duplication may be charged the requesting party). Section 3 of the bill would compound this problem. Therefore, we respectfully request that it be removed.

Thank you for your consideration of these remarks. I look forward to working with you and your sponsor on this issue. In the meantime, should you or your staff have questions concerning ACWA’s position on this measure, please contact me at 441-4545 ext. 125.

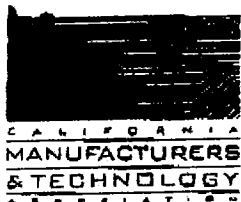
Sincerely,



Brett McFadden
Legislative Advocate

cc: The Honorable Herb Wesson
Consultant, Assembly Governmental Organization Committee
Consultant, Republican Caucus
Office of the Governor





April 26, 2000

Assemblyman Herb Wesson, Chair
 Assembly Governmental Organization Committee
 Room 2179, State Capitol
 Sacramento, CA 95814

Subject: Assembly Bill 2799 (Shelley)
Position: Removal of Opposition
Hearing: April 24, 2000 Assembly Governmental Organization Committee

Dear Assemblyman Shelley,

California Manufacturers and Technology Association is no longer in opposition of this bill as it will be amended to remove the "reverse balancing test" as it would apply to records exempt from disclosure under the Public Records Act.

Respectfully,

A handwritten signature in cursive script, appearing to read "Dorothy Rothrock".

Dorothy Rothrock
 Policy Director, Corporate Counsel

cc: Members of the Assembly Governmental Organization Committee
 Assemblyman Kevin Shelley
 Consultants, Assembly Governmental Organization Committee
 Michael Petersen, Assembly Republican Minority

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WINE INSTITUTE

April 26, 2000

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Fax (916) 441-7090

Assemblymember Kevin Shelley
Room 3152, State Capitol

Dear Kevin:

As requested by your staff, this letter is to advise you that the Wine Institute is withdrawing its opposition to your AB 2799. This is because the bill's SEC. 3 relative to reversing the balancing test will be formally deleted in the next set of amendments.

Respectfully,

Mike Falasco
Legislative Representative

cc: Assembly G.O. Committee Chair Herb Wesson
Assembly G.O. Committee Vice Chair Brett Granlund

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CALIFORNIA
ASSOCIATION OF
HEALTH FACILITIES

CAHF

*Supporting People,
Health and
Quality of Life*

April 17, 2000

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Sacramento
California
(916) 671-9353 ext. 001
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(916) 441-6400

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Assembly Member Herb Wesson
Chair, Assembly Committee on Governmental Organization
State Capitol Building, Room 2179
Sacramento, CA 95814

RE: **Oppose: AB 2799 (Shelley)**

Dear Assembly Member Wesson:

The California Association of Health Facilities (CAHF), a non-profit professional organization representing a majority of the state's licensed long-term health care facilities, has taken an oppose position on AB 2799 (Shelley).

AB 2799 would allow a state agency or a superior court in California to order disclosure of a record, already made exempt from disclosure under the express and detailed provisions of the California Public Records Act (Government Code Section 6254), if the agency or the court determines that "the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record."

The court's current role under the Public Records Act is to determine whether the information being kept from public view falls into one of the categories detailed in Section 6254. There is no reason to require judges to undertake a broad balancing review to determine whether to override express privacy protections enacted by the Legislature.

CAHF is concerned that enactment of this legislation would effectively eliminate the safeguards which exist for protecting both confidential and proprietary information by allowing any individual, regardless of motivation, to use the civil justice system to invade personal privacy and reveal confidential information, and possibly harass organizations with litigation. The amendments to the Public Records Act provided in AB 2799 would create undue confusion and muddy the balance the Legislature has achieved in protecting competing public interests.



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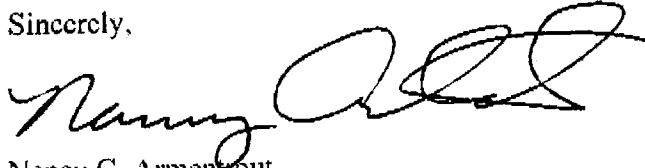
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LH: 115 AP - 73

We urge your "No" vote on AB 2799 (Shelley) when it is heard in the Assembly Committee on Government Organization on April 24, 2000.

Sincerely,



Nancy C. Armentrout
Director of Legislative Affairs

cc: Members of the Assembly Committee on Government Organization
Assembly Member Kevin Shelley

LEGISLATIVE INTENT SERVICE (800) 666-1917

LEGISLATIVE INTENT SERVICE



Heim, Noack, Kelly & Spahn

GOVERNMENTAL RELATIONS

1121 L Street, Suite 100

Sacramento, CA 95814

Tel. (916) 442-4584

Fax (916) 441-4925

April 20, 2000

**TO: Assemblyman Herb Wesson, Chairman
Members, Assembly Governmental Organization Committee**

**FROM: Ralph Heim, Russell Noack, Les Spahn, Anne Kelly
and John Caldwell**

**RE: ██████████ (Shelley) - ██████████
Set for hearing April 24, 2000**

On behalf of the American Insurance Association, representing more than 300 insurers, we are writing to urge your opposition to AB 2799 (Shelley).

AB 2799 effectively eliminates the confidentiality protections of the California Public Records Act.

The California Public Records Act requires that any public agency must disclose any public record in its possession unless an exemption applies. Under AB 2799, any state bureaucrat or state judge could ignore those exemptions as long as they found that "the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record."

As a practical matter, this means that the exemptions in law can be ignored as long as somebody can make an argument (however weak) that release of the information is in the public interest. This could result in the release of very private and confidential information. For example, state government bodies resolve disputes in the worker's compensation system. Under this bill, then, it is possible that private medical records in the worker's compensation system could be made public.

The fundamental problem with this bill, however, is that it dismisses the Legislature as the appropriate body to decide what is or is not in the public interest. The fact is, the exemptions in the Public Records Act were passed by many legislatures and signed by many governors. That the number of these exemptions has grown over the years should not be a surprise since the scope of information that state government now has access to has also grown. But in every one of those exemptions, the Legislature weighed the issue of public interest versus the rights of confidentiality (for both businesses and individuals).

This bill would scrap the collective judgment of democratically elected officials in favor of the opinion of either a bureaucrat or a judge. If the sponsors feel that some of the exemptions are unreasonable, they should come to the Legislature and explain why it is in the public interest that certain information should not be confidential.

Again, we urge a NO vote on AB 2799.

LEGISLATIVE INTENT SERVICE (800) 666-1917



LH: 117 AP - 75



90 Years
of Water Leadership

April 20, 2000

The Honorable Kevin Shelley
Assembly Member, 12th District
State Capitol, Room 3160
Sacramento, CA 95814

RE: AB 2799 – public records: Request for Amendment

Dear Assembly Member Shelley:

The Association of California Water Agencies (ACWA) has reviewed AB 2799 and respectfully requests that an amendment be made to the bill. Our current position is "Watch-Amend" pending the outcome of this request.

Currently, the Public Records Act (Gov't Code S6250 *et. seq.*) allows an agency to withhold public records from disclosure in two situations:

1. If the records fall within one of the specific exemptions listed in the Act (6254 – 6254.14); or
2. If the agency determines that, although not specifically exempt, the public interest in withholding the record outweighs the public interest in disclosure (S6259).

A plaintiff who proves that an agency's refusal to disclose a record was not justified under any of the sections noted above is entitled to an award of attorney's fees and costs (S6255).

As a result, an agency that properly relies upon a specific exemption (i.e. the first situation above) is not vulnerable to court-ordered disclosure. AB 2799, however, would significantly alter current practice. It would allow a disgruntled party to file an action asking the court to order disclosure notwithstanding the agency's reliance on a specific statutory exemption. If successful, the plaintiff would be entitled to attorney's fees and costs under section 6259.

Until now, the existence of specific exemptions has provided certainty to local agencies responding to requests under the Public Records Act. AB 2799, on the other hand, would create considerable uncertainty in such cases. In each case,

Association of California
Water Agencies
910 K Street, Suite 100
Sacramento, California
95814-3512

916/441-4545
FAX 916/325-4849
www.acwanet.com

Hall of the States
400 N. Capitol St., N.W.
Suite 357 South
Washington, D.C.
20001-1512

202/434-4760
FAX 202/434-4763

LEGISLATIVE INTENT SERVICE (800) 666-1917

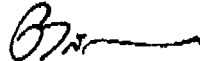


local agencies would have to gamble whether a decision to rely upon a specific exemption would be overruled by a court -- at the agency's expense.

The Public Records Act is already subject to some abuse by parties who file broad-brush requests that require large amounts of staff time and resources for which an agency must absorb the costs (only the direct costs of duplication may be charged the requesting party). Section 3 of the bill would compound this problem. Therefore, we respectfully request that it be removed.

Thank you for your consideration of these remarks. I look forward to working with you and your sponsor on this issue. In the meantime, should you or your staff have questions concerning ACWA's position on this measure, please contact me at 441-4545 ext. 125.

Sincerely,



Brett McFadden
Legislative Advocate

cc: The Honorable Herb Wesson
Consultant, Assembly Governmental Organization Committee
Consultant, Republican Caucus
Office of the Governor





**National Association
of Independent Insurers**

980 Ninth Street, Suite 1600, Sacramento, CA 95814-2736

Samuel Sorch
VICE PRESIDENT
WESTERN REGIONAL MANAGER

MEMORANDUM

TO: The Honorable Herb Wesson, Chair
Members of the Assembly Governmental Organization Committee

FROM: National Association of Independent Insurers

DATE: April 20, 2000

RE: AB 2799 (Shelley), as introduced on February 28, 2000

NAII POSITION: Opposed

The California Public Records Act (Government Code Section 6250 et. seq.) establishes a general rule that records maintained by public agencies should be open to public inspection. However, the Act balances the general rule of disclosure with the particular needs of state agencies to operate effectively and the interests of confidentiality and privacy. Government Code Section 6254 establishes this balance in twenty-six detailed subsections that set forth specific exceptions to the general rule of record disclosure.

AB 2799 would overturn this carefully crafted statutory balancing of interests. In effect, the bill would make the current set of reasoned exceptions in Section 6254 irrelevant because the bill would authorize any state agency or superior court judge to disregard any statutory exception if the agency or judge determines that "the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record."

AB 2799 is poor public policy. Each of the exceptions in Section 6254 was made a part of the Public Records Act because the Legislature believed the exception was justified. If it is thought that an existing exception is no longer justified, the responsible action is to ask the Legislature to repeal the statutory provision. AB 2799 takes the irresponsible approach of essentially throwing out all of the exceptions and turning the whole question of public access to records over to a case by case determination by state agencies and judges.

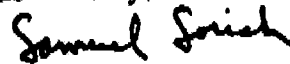


April 20, 2000
Page 2

As insurance companies, NAII members are concerned that AB 2799 would impair the Department of Insurance's efforts to effectively regulate insurers. The Department is able to carry out its regulatory responsibilities by having access to a broad range of information obtained from insurance companies. Much of this information is proprietary and confidential and is now protected from disclosure by exceptions in Section 6254. If this information is subject to public disclosure by simply passing the Department's or a judge's balancing test, the free flow of information to the Department will be cut off. This will lead to a great amount of litigation over what information should be submitted to the Department and lawsuits over the disclosure of information that is in the Department's records. The practical result would be that the regulatory authority of the Department of Insurance would be weakened.

NAII believes that the existing balance in the Public Records Act should be preserved and AB 2799 should be rejected.

Submitted by,



Samuel Sorich
Vice President

cc: The Honorable Kevin Shelley
Richard Rios, Senior Consultant

LEGISLATIVE INTENT SERVICE (800) 666-1917



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
SACRAMENTO LEGISLATIVE OFFICE

GIL GARCETTI • District Attorney
ROBERT P. HEFLIN • Chief Deputy District Attorney

JAMES R. PROVENZA • Special Assistant

April 20, 2000

The Honorable Herb Wesson
Chair, Assembly Governmental Organization Committee
State Capitol, Room 2179
Sacramento, California 95814

ASSEMBLY BILL 2799 (SHELLEY)
OPPOSE
Assembly Governmental Organization Committee
Hearing Date: April 24, 2000

Dear Assembly Member Wesson:

We regret to inform you that the Los Angeles District Attorney's Office is opposed to Assembly Bill 2799. AB 2799 would add subdivision (b) to Section 6255 of the Government Code which would provide:

Notwithstanding any provision of this chapter, an agency, or the superior court in any action brought pursuant to Section 6259, may disclose or order to be disclosed any record made exempt by express provisions of this chapter if, on the facts of the particular case, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.

The above provision would potentially permit the release of confidential victim and witness information in a criminal case, such as the location and identity of these individuals. It could also require the disclosure of information in a pending investigation. We feel that this could make witnesses and victims more reluctant to come forward and could jeopardize the prosecution of criminal cases.

The above provision could also result in an actionable violation of the right to privacy under Article 1, Sec 1 of the California Constitution.

1100 K Street, Suite 404
Sacramento, CA 95814

LH: 22 AP - 80
Fax: (916) 445-2222

(800) 666-1917

LEGISLATIVE INTENT SERVICE



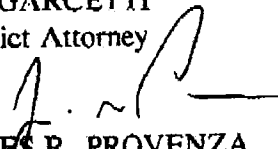
April 20, 2000
Page Two

We also object to removing language from existing law which states that "computer data shall be provided in a form determined by the agency." Unfortunately, no standard is set to replace this language. Thus, even where disclosure of computer data is provided, the party seeking disclosure could complain that the format provided is not satisfactory and that the information should be provided in a different format, even if it would be impractical for the agency to provide the information in the requested format.

Thank you for your consideration of our position on Assembly Bill 2799.

Very truly yours,

GIL GARCETTI
District Attorney

By 
JAMES R. PROVENZA
Special Assistant District Attorney
JRP:jk

cc: Consultant/Members, Assembly Government Organization Committee

LEGISLATIVE INTENT SERVICE (800) 666-1917



BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: 916.445.9555
Telephone: 916.445.3519
Facsimile: 916.322.2630
E-Mail: JAyala@hdcdojnet.state.ca.us

April 17, 2000



Honorable Herb Wesson, Chair
Assembly Committee on Governmental Organization
Legislative Office Building
1020 N Street, Room 159
Sacramento, CA 95814

RE: Opposition to Assembly Bill 2799 (Shelley)

Dear Assembly Member Wesson:

On behalf of the Office of the State Attorney General, I wish to express our opposition to AB 2799 relating to public records. The bill would undermine many of the express exceptions from public disclosure contained in the California Public Records Act for records relating to personnel and medical records of employees, pending litigation, ongoing investigations of law enforcement agencies, and other records recognized as privileged from disclosure, among other things. In our view, the exemption from public disclosure contained in existing law for these types of records serve important and compelling public policies.

Sincerely,

JOE J. AYALA
Legislative Advocate

For **BILL LOCKYER**
Attorney General

LEGISLATIVE INTENT SERVICE (800) 666-1917



cc: Honorable Brett Granlund, Vice-Chair
Assembly Committee on Governmental Organization
Honorable Kevin Shelley



CALIFORNIA
MANUFACTURERS
& TECHNOLOGY
ASSOCIATION

April 17, 2000

Assemblyman Herb Wesson, Chair
Assembly Governmental Organization Committee
Room 2179, State Capitol
Sacramento, CA 95814

Subject: Assembly Bill 2799 (Shelley)
Position: OPPOSED
Hearing: April 24, 2000 Assembly Governmental Organization Committee

Dear Assemblyman Shelley,

California Manufacturers and Technology Association OPPOSES AB 2799.

Current law provides that public records may be kept confidential if there is a specific exemption in the law, or if the agency determines that the public interest served by not making the record public clearly outweighs the public interest served by disclosing the record.

This bill would create a 'reverse' balancing test, allowing exempt information to be made public if the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.

CMTA opposes the application of this reverse balancing test to public records exempt under the law. Agencies, companies and individuals interested in protecting proprietary data would be subject to litigation to protect confidentiality rights now specifically protected by law.

In addition, CMTA opposes the application of the reverse balancing test to public records not exempt under the law. Existing law provides that agencies must weigh the public interest in not disclosing against the public interest in disclosing, the greater burden being placed on the agency to show that confidentiality interests "clearly outweigh" the disclosure interests. This is the appropriate standard to apply for public records.

Respectfully,

Dorothy Rothrock
Policy Director, Corporate Counsel

cc: Members of the Assembly Governmental Organization Committee
Assemblyman Kevin Shelley
Consultants, Assembly Governmental Organization Committee
Michael Petersen, Assembly Republican Minority

LH: 125 AP - 83

LEGISLATIVE INTENT SERVICE (800) 666-1917





WINE INSTITUTE

April 17, 2000

1127 Eleventh Street
Suite 900
Sacramento
California 95814
(916) 441-6974
Fax (916) 441-7090

The Honorable Herb Wesson
Chair, Assembly Governmental Organization Committee
Room 2179, State Capitol

Herb
~~Dear Mr. Chair:~~

Representing the largest, oldest trade association for all California wineries, the Wine Institute must register its strong opposition to AB 2799 (Shelley) regarding public disclosure of private documents.

This measure would mandate a governmental agency or superior court to disclose any documents if on a case-by-case basis "the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record." Essentially, AB 2799 reverses the interests considered in the balancing test by emphasizing the public interest in disclosure over assuring First Amendment protections.

The bill's Section 6255 is particularly problematic because:

- (1) It flips the balancing test, thus jeopardizing such highly sensitive information like trade secrets, marketing data, and attorney-client confidential communications;
- (2) It sets the stage to harass individuals and organizations with threatened litigation;
- (3) It disregards that a judicial remedy already exists if an agency is improperly stonewalling; e.g., Government Code Sections 6258 and 6659;
- (4) It grants agencies more discretion to determine competing interests possibly in a bureaucratic or headline-grabbing manner; and
- (5) It undermines the public interest by discouraging parties from voluntarily providing proprietary information.

The bill's sponsor, California Newspaper Publishers Association, has yet to make a case that there are documented horror stories to reverse current law's well crafted balancing test. AB 2799 treads on individuals' and businesses' right to privacy. The Wine Institute joins the Civil Justice Association of California by urging you to vote "no" on AB 2799.

Respectfully,

Mike Falasco
Legislative Representative

cc: Assemblymember Kevin Shelley
Assembly G.O. Committee members

LEGISLATIVE INTENT SERVICE (800) 666-1917

LEGISLATIVE INTENT SERVICE



April 20, 2000

Sacramento, CA 95814

**TO: Assemblyman Herb Wesson, Chairman
Members, Assembly Governmental Organization Committee**

Tel. (916) 442-4584

Fax (916) 441-4925

**FROM: Ralph Heim, Russell Noack, Les Spahn, Anne Kelly
and John Caldwell**

**RE: AB 2799 (Shelley) - Oppose
Set for hearing April 24, 2000**

On behalf of the American Insurance Association, representing more than 300 insurers, we are writing to urge your opposition to AB 2799 (Shelley).

AB 2799 effectively eliminates the confidentiality protections of the California Public Records Act.

The California Public Records Act requires that any public agency must disclose any public record in its possession unless an exemption applies. Under AB 2799, any state bureaucrat or state judge could ignore those exemptions as long as they found that "the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record."

As a practical matter, this means that the exemptions in law can be ignored as long as somebody can make an argument (however weak) that release of the information is in the public interest. This could result in the release of very private and confidential information. For example, state government bodies resolve disputes in the worker's compensation system. Under this bill, then, it is possible that private medical records in the worker's compensation system could be made public.

The fundamental problem with this bill, however, is that it dismisses the Legislature as the appropriate body to decide what is or is not in the public interest. The fact is, the exemptions in the Public Records Act were passed by many legislatures and signed by many governors. That the number of these exemptions has grown over the years should not be a surprise since the scope of information that state government now has access too has also grown. But in every one of those exemptions, the Legislature weighed the issue of public interest versus the rights of confidentiality (for both businesses and individuals).

This bill would scrap the collective judgment of democratically elected officials in favor of the opinion of either a bureaucrat or a judge. If the sponsors feel that some of the exemptions are unreasonable, they should come to the Legislature and explain why it is in the public interest that certain information should not be confidential.

Again, we urge a NO vote on AB 2799.



**LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
SACRAMENTO LEGISLATIVE OFFICE**

GIL GARCETTI • District Attorney
ROBERT P. HEFLIN • Chief Deputy District Attorney

JAMES R. PROVENZA • Special Assistant

April 20, 2000

The Honorable Herb Wesson
Chair, Assembly Governmental Organization Committee
State Capitol, Room 2179
Sacramento, California 95814

**ASSEMBLY BILL 2799 (SHELLEY)
OPPOSE
Assembly Governmental Organization Committee
Hearing Date: April 24, 2000**

Dear Assembly Member Wesson:

We regret to inform you that the Los Angeles District Attorney's Office is opposed to Assembly Bill 2799. AB 2799 would add subdivision (b) to Section 6255 of the Government Code which would provide:

Notwithstanding any provision of this chapter, an agency, or the superior court in any action brought pursuant to Section 6259, may disclose or order to be disclosed any record made exempt by express provisions of this chapter if, on the facts of the particular case, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.

The above provision would potentially permit the release of confidential victim and witness information in a criminal case, such as the location and identity of these individuals. It could also require the disclosure of information in a pending investigation. We feel that this could make witnesses and victims more reluctant to come forward and could jeopardize the prosecution of criminal cases.

The above provision could also result in an actionable violation of the right to privacy under Article 1, Sec 1 of the California Constitution.

1100 K Street, Suite 404
Sacramento, CA 95814
(916) 442-0668

Fax: (916) 442-0668
LH: 128 AP - 86

LEGISLATIVE INTENT SERVICE (800) 666-1917



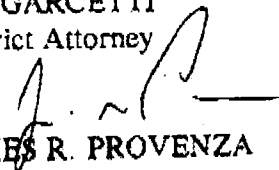
April 20, 2000
Page Two

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Thank you for your consideration of our position on Assembly Bill 2799.

Very truly yours,

GIL GARCETTI
District Attorney

By 
JAMES R. PROVENZA
Special Assistant District Attorney
JRP:jk

cc: Consultant/Members, Assembly Government Organization Committee

LEGISLATIVE INTENT SERVICE (800) 666-1917





April 17, 2000

Assemblyman Herb Wesson, Chair
 Assembly Governmental Organization Committee
 Room 2179, State Capitol
 Sacramento, CA 95814

Subject: Assembly Bill 2799 (Shelley)
Position: OPPOSED
Hearing: April 24, 2000 Assembly Governmental Organization Committee

Dear Assemblyman Shelley,

California Manufacturers and Technology Association OPPOSES AB 2799.

Current law provides that public records may be kept confidential if there is a specific exemption in the law, or if the agency determines that the public interest served by not making the record public clearly outweighs the public interest served by disclosing the record.

This bill would create a 'reverse' balancing test, allowing exempt information to be made public if the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.

CMTA opposes the application of this reverse balancing test to public records exempt under the law. Agencies, companies and individuals interested in protecting proprietary data would be subject to litigation to protect confidentiality rights now specifically protected by law.

In addition, CMTA opposes the application of the reverse balancing test to public records not exempt under the law. Existing law provides that agencies must weigh the public interest in not disclosing against the public interest in disclosing, the greater burden being placed on the agency to show that confidentiality interests "clearly outweigh" the disclosure interests. This is the appropriate standard to apply for public records.

Respectfully,

A handwritten signature in cursive script, appearing to read "Dorothy Rothrock".

Dorothy Rothrock
 Policy Director, Corporate Counsel

cc: Members of the Assembly Governmental Organization Committee
 Assemblyman Kevin Shelley
 Consultants, Assembly Governmental Organization Committee
 Michael Petersen, Assembly Republican Minority

LEGISLATIVE INTENT SERVICE (800) 666-1917



April 7, 2000



The Honorable Kevin Shelley
Member of the Assembly
Room 3160, State Capitol Building
Sacramento, CA 95814

1100 K Street
Suite 101
Sacramento
California
95814

RE: AB 2799 (Shelley) – Oppose unless amended
Set for hearing April 11, Assembly Governmental Organization Committee

Telephone
916.327.7500
Facsimile
916.441.5507

Dear Assembly Member Shelley:

The California State Association of Counties (CSAC) writes to indicate its position of oppose unless amended on AB 2799, your measure relating to public records.

As we indicated in our previous letter, CSAC has grave concerns about what we view as a serious erosion of protections afforded to non-disclosable information by the potentially broad application of Government Code section 6255(b). Although we understand that you are contemplating an amendment to this section to exclude records that are specifically prohibited from release, we must indicate our opposition in principle to the proposed "reverse balancing" provision. Even with the proposed amendment, there exists real apprehension that the "reverse balancing" provision may, at best, lead to confusion as to what materials is subject to disclosure under the Public Records Act and, at worst, result in release of information that was never intended to be subject to public disclosure.

Counties have consistently indicated their desire and willingness to fulfill their statutory obligations in regards to disclosing public records. We believe, however, that sections 6255 (a) and (b) introduce unnecessary confusion and place public agencies in an untenable position as they attempt to assess whether a record should be disclosed. In addition, we continue to solicit specific input from counties as to the practical application of all other changes contained in your measure.

We thank you for your willingness thus far to meet with and address local government concerns. However, to protect what we view as a critical protection in public records law, CSAC must take an oppose unless amended position. Our hope is that we can continue our discussions with you and your staff to resolve our concerns on this bill. Feel free to contact me at 916/327-7500, ext. 513, or Elizabeth Howard at 916-327-7500, ext. 537 to discuss this matter further. Thank you.

Sincerely,

Rubín R. López
Legislative Representative

cc: The Honorable Herb Wesson, Chair, Assembly Governmental Organization Committee
Members and Consultants, Assembly Governmental Organization Committee

(800) 666-1917

LEGISLATIVE INTENT SERVICE





CALIFORNIA CHAMBER of COMMERCE

April 20, 2000

The Honorable Kevin Shelley
California State Assembly
State Capitol, Room 3160
Sacramento, CA 95814

RE: - AB 2799 - Disclosure of Records

Dear Assemblyman Shelley:

On behalf of the members of the California Chamber of Commerce, I write to inform you of our opposition to your Assembly Bill 2799, which would allow a state agency or Superior Court to order disclosure of a record, currently exempt from disclosure under the provisions of the California Public Records Act.

Your bill would authorize the agency or Court to disclose these exempt records if the agency or Court determines that "the public interest served by disclosing the record clearly outweighs the public interest served by not-disclosing the record." Moreover, your bill essentially reverses the test presently used by an agency or Court when determining whether or not to disclose non-exempted records.

We are concerned that this proposed change to the California Public Records Act would result in undermining many of California's regulatory programs, which often rely on submission of proprietary commercial information and data by members of the regulated community. Many of the businesses in California that submit information and data, that would otherwise be proprietary, rely on the State agencies and their sub-divisions to use the information solely for regulatory purposes. Willingness by the regulated community to participate in regulatory programs is often predicated upon the understanding that proprietary information will be used exclusively by the regulating entity. Allowing agencies or courts to disclose this information will serve as disincentive to cooperation between the regulated community and regulators.

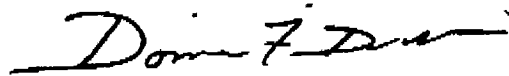
We believe that reversing the balancing test presently used by agencies and the Court, could disrupt the exchange of information that exists between regulator and regulated, resulting in more litigious and less effective regulatory administration.



Page 2

For these and other reasons we oppose your Assembly Bill 2799. I am happy to meet with your staff to more fully discuss the issue.

Sincerely,



Dominic F. DiMare, Legislative Advocate
Telecommunications, Utilities and Worker's Compensation

cc: The Honorable Herb Wesson, Chairman, Assembly Governmental
Organization Committee
Mike Gotch, Office of the Governor
Michael Peterson, Assembly Republican Caucus

LEGISLATIVE INTENT SERVICE (800) 666-1917





WINE INSTITUTE

April 17, 2000

1225 Broadway Street

Suite 900

San Francisco

California 95814

(415) 441-6924

Fax (415) 441-7800

The Honorable Herb Wesson
Chair, Assembly Governmental Organization Committee
Room 2179, State Capitol

Dear Mr. ~~Chair~~ ^{Herb}:

Representing the largest, oldest trade association for all California wineries, the Wine Institute must register its strong opposition to AB 2799 (Shelley) regarding public disclosure of private documents.

This measure would mandate a governmental agency or superior court to disclose any documents if on a case-by-case basis "the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record." Essentially, AB 2799 reverses the interests considered in the balancing test by emphasizing the public interest in disclosure over assuring First Amendment protections.

The bill's Section 6255 is particularly problematic because:

- (1) It flips the balancing test, thus jeopardizing such highly sensitive information like trade secrets, marketing data, and attorney-client confidential communications;
- (2) It sets the stage to harass individuals and organizations with threatened litigation;
- (3) It disregards that a judicial remedy already exists if an agency is improperly stonewalling; e.g., Government Code Sections 6258 and 6659;
- (4) It grants agencies more discretion to determine competing interests possibly in a bureaucratic or headline-grabbing manner; and
- (5) It undermines the public interest by discouraging parties from voluntarily providing proprietary information.

The bill's sponsor, California Newspaper Publishers Association, has yet to make a case that there are documented horror stories to reverse current law's well crafted balancing test. AB 2799 treads on individuals' and businesses' right to privacy. The Wine Institute joins the Civil Justice Association of California by urging you to vote "no" on AB 2799.

Respectfully,

Mike Falasco
Legislative Representative

cc. Assemblymember Kevin Shelley
Assembly G.O. Committee members

(800) 666-1917

LEGISLATIVE INTENT SERVICE



April 3, 2000



The Honorable Kevin Shelley
Member of the Assembly
Room 3160, State Capitol Building
Sacramento, CA 95814

1100 K Street
Suite 101
Sacramento
California
95814

RE: AB 2799 (Shelley) – Concerns
Set for hearing April 11, Assembly Governmental Organization Committee

Telephone
916.327.7500

Facsimile
916.441.5507

Dear Assembly Member Shelley:

The California State Association of Counties (CSAC) writes to express its concerns regarding AB 2799, your measure relating to public records.

As you recall, we were very appreciative that you worked with us last year in discussions on AB 1099 to accommodate the concerns of local governments regarding expanded accessibility to public records in an electronic format. Our review of AB 2799, which contains provisions similar to those in AB 1099 relating to the release of documents in an electronic format, revealed potential new concerns with two specific provisions that may represent a marked shift in existing public record law.

Of greatest concern is the "reverse balancing" provision under Government Code section 6255(b). As we understand this provision, it would permit a court—despite any other exemption in the Public Records Act—to order disclosure of records "if, on the facts of the particular case, the public interested served by disclosing the record outweighs the public interest served by not disclosing the record." It would appear, for example, that preliminary drafts or notes, geological and utility systems data, complaint or investigation records of local law enforcement agencies, and any other records currently exempted could be ordered to be released.

A second area of concern relates to the proposed reinsertion of the word "delay" under section 6253(d) so that the provision reads: "Nothing in this chapter shall be construed to *delay or* obstruct the inspection of copying of public records." We currently are soliciting county input on this proposed revision to determine the significance of the amendment.

We would welcome the opportunity to work with you on addressing concerns of local government on AB 2099. As soon as we receive specific input on the provisions highlighted above, we will contact you. In the meantime, please do not hesitate to contact me at 916/327-7500, ext. 513, or Elizabeth Howard at 916-327-7500, ext. 537 to discuss this matter further. Thank you.

Sincerely,

Rubin R. Lopez
Legislative Representative

cc: The Honorable Herb Wesson, Chair, Assembly Governmental Organization Committee
Members and Consultants, Assembly Governmental Organization Committee

(800) 666-1917

LEGISLATIVE INTENT SERVICE





Association of California
Insurance Companies
1121 L Street, Suite 510
Sacramento, CA 95814-3926
Tel. (916) 442-4581
Fax. (916) 444-3872
e-mail: acic@acic-1.org

April 4, 2000

The Honorable Herb Wesson, Chair
Assembly Governmental Organization Committee
California State Capitol, Room 2179
Sacramento, CA 95814

Re: AB 2799 (Shelley, as introduced) Public records: disclosure
ACIC Position: Oppose

Dear Assemblyman Wesson:

The Association of California Insurance Companies (ACIC) **opposes** AB 2799 which is set to be heard in the Assembly Governmental Organization on **Monday, April 10, 2000**.

AB 2799 would essentially vitiate the protection of confidential records provided by the exemptions of particular records specified in Government Code §6254 of the Public Records Act by subjecting such records to a vague balancing test involving the "public interest." Of particular concern to insurers is the exemption stated in Government Code §6254(d)(1)-(4) which protects the confidentiality of information submitted by insurance companies to the Department of Insurance for regulatory purposes. This exemption is essential to insurers if the department is to assure protection of proprietary information submitted by individual companies. Enactment of AB 2799 could lead to the wholesale diminution of confidentiality protections afforded under current law by possibly disrupting the free flow of information to the department.

The State of California, through enactment of §6254, has established as a matter of public policy that certain types of information should be exempt from the disclosure requirements of the Public Records Act. There is no need to change that determination.

The ACIC respectfully requests your "NO" vote on AB 2799.

Very truly yours,

Jeffrey J Fuller
Vice President & General Counsel

cc: Assemblyman Kevin Shelley, Author
Richard Rios, Consultant, Assembly G.O. Committee



Personal Insurance Federation of California

Wesson
2179

California's Personal Lines Trade Association
REPRESENTING THE LEADING AUTOMOBILE AND HOMEOWNERS INSURERS

MEMORANDUM

Date: April 6, 2000

To: Honorable Herb Wesson
Members of the Governmental Organization Committee

From: Dan C. Dunmoyer, President
Phyllis A. Marshall, Vice President of Legislative and Regulatory Affairs
G. Diane Colborn, Senior Legislative Advocate and Counsel

Re: AB 2799 (Shelley): Public Records: disclosure
Assembly Governmental Organization Committee: April 10, 2000
PIFC Position: Oppose

The Personal Insurance Federation of California (PIFC), representing insurers selling 40% of the personal lines insurance sold in California, including State Farm, Farmers, 21st Century, SAFECO, and Progressive Insurance Companies opposes AB 2799 by Assemblyman Shelley.

AB 2799 would require a state agency or the superior court of California to disclose a record, made exempt under the express provisions of the California Public Records Act, if the state agency or the superior court determines that, "the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record". This provision effectively eliminates the safeguards which exist for protecting both confidential and proprietary information.

This change in the law will have a substantial and profound adverse effect on the manner in which entities interact with state agencies. Entities would be reluctant to share confidential and/or proprietary information with state agencies which they would otherwise disclose. This will have a crippling effect on the ability of state agencies to carry out their administrative functions. This change would, in effect, substantially diminish the role that state agencies play in regulating entities and would buttress the role of the judiciary. Such a change would spur litigation and would place a strain on the judiciary which would be accessed on a regular basis to issue protective orders as a means of safeguarding against the release of confidential and proprietary information. The effect of this change is to shift oversight authority from state agencies to the judiciary.

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LEGISLATIVE INTENT SERVICE



Under California's Public Records Act ("PRA"), Government Code Sections 6250 et. seq., a state agency must disclose any "public record" in its possession to any person unless an exemption applies. Government Code Section 6252 (d) defines "public records" 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 characteristics". While the scope of records covered by the PRA is fairly broad, the statutory scheme includes several specific exemptions. Government Code Section 6254 provides that "nothing in this chapter shall be construed to require disclosure of records that are any of the following " and delineates twenty-six exemptions. These exemptions were designed to protect the privacy of persons who have disclosed confidential information to the government, to preserve state secrets, agency deliberative processes and confidential sources of information.

The safeguards provided in Sections 6254 (a) through (d) of particular importance to PIFC and its member companies are:

"(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business. . . .

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6. . . .

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referenced in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referenced in paragraph (1)."

AB 2799 would eliminate these safeguards and would require the disclosure of confidential information. It should be noted that one of the top legislative public policy debates this year centers around the issue of privacy. This legislature is considering proposals to enhance privacy protections in both the private and public sector. This bill contravenes those discussions by requiring the disclosure of confidential information by a state agency or the superior court. As noted above, these are but a few of the list of extensive exemptions provided for in Section 6254. The other exemptions range from law enforcement records including victim information, hospital and medical information, local taxpayer information, etc. In addition, subsection (k) prohibits disclosure of information which is exempted or prohibited pursuant to federal or state



law, including, but not limited to, provisions of the Evidence Code relating to privilege. AB 2799 would require the release of this information, which could have the effect of subjecting entities to liability, based on privacy rights.

The business of insurance is regulated by the Department of Insurance Commissioner. Effective regulation is dependent on the free flow of information from insurers to the Commissioner whether that information be confidential, proprietary or damaging. State agencies, particularly those that are charged with regulating a particular industry, must have the necessary tools to acquire information. The exemptions in Section 6254 were designed to do just that -- allow for the free flow of information that is necessary for that state agency to carry out its public purpose. AB 2799 would eliminate this free flow of information and instead would require insurers to access the courts in order to seek protective orders every time information is requested from the Commissioner, be that information to assess a complaint, information pertaining to a market conduct examination or any other information which might otherwise be released into the public domain, thus subjecting insurers to additional liabilities.

AB 2799 would have the effect of creating a "pre-litigation" adversarial atmosphere on interactions between the Commissioner and insurers. This would substantially hinder the administrative process and would have a damaging effect on the resolution of administrative processes. AB 2799 has the effect of shifting administrative and/or regulatory enforcement to class action exposure.

In conclusion, entities that are regulated are required to provide regulators and state agencies with information that is proprietary and adverse to the company's interest. This allows state agencies to carry out their administrative and executive functions. A regulated industry's willingness to continue to provide this kind of information depends on the promise of confidentiality provided by Section 6254. AB 2799 removes that assurance of confidence and thus diminishes the ability of state agencies to carry out their purpose.

For these reasons we urge your "NO" vote on AB 2799, by Assemblyman Shelley. If you have any questions regarding our opposition, please feel free to contact Phyllis Marshall at (916) 442-6646.

cc:
Honorable Kevin Shelley
Ann Richardson, Deputy Legislative Secretary, Governor's Office
Richard Rios, Assembly Governmental Organization
Michael Peterson, Assembly Republican Caucus

4.AB 2799 a gov

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LEGISLATIVE INTENT SERVICE





California State Sheriffs' Association

CORRECTED COPY
Organization Founded by the Sheriffs in 1894

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Sheriff
Alameda County

1st Vice President
Les Weidman
Sheriff
Stanislaus County

2nd Vice President
Larry Smith
Sheriff
Riverside County

Secretary
Jim Thomas
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Santa Barbara County

Treasurer
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Sheriff
Contra Costa County

Sergeant-at-Arms
Bruce Mix
Sheriff
Modoc County

Immediate Past President
Charles Hyrd
Sheriff
Siskiyou County

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Sheriff
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Carl Sparks
Sheriff
Kern County

Mark Tracy
Sheriff
Santa Cruz County

Joan L. Phillippe
Executive Director

April 7, 2000

The Honorable Kevin Shelley
Member of the Assembly
Room 3160, State Capitol Building
Sacramento, CA 95814

RE: AB 2799 (Shelley) - ~~Oppose~~ unless amended

Dear Assembly Member Shelley:

On behalf of the California State Sheriffs' Association (CSSA), I regret to inform you that we must oppose your AB 2799, relative to public records unless is amended.

As you know, your AB 2799 contains provisions similar to those in last year's AB 1099 relating to the release of documents in an electronic format. Although we did not oppose AB 1099, we respectfully suggest that AB 2799 makes changes to existing law that are unnecessary and are likely to cause more problems than they solve.

Firstly, the "reverse balancing" provision under Government Code section 6255(b) appears to permit a court—despite any other exemption in the Public Records Act—to order disclosure of records "if, on the facts of the particular case, the public interested served by disclosing the record outweighs the public interest served by not disclosing the record." It would appear, for example, investigation records of local law enforcement agencies, and any other records currently exempted, could be ordered to be released. We are concerned that this provision could jeopardize ongoing investigations. We would suggest that this section be amended to exempt records of an ongoing investigation by law enforcement.

Secondly, we are concerned with the wording in section 6253(d), which says that, "Nothing in this chapter shall be construed to *delay or obstruct* the inspection of copying of public records." Frankly, while reasonable parties may be able to work around this provision, it is ripe for abuse and will likely result in far more contests in this area. We suggest that this amendment be removed or clarified.

We stand ready to work with you and your staff on identifying the exact problem you seek to address by these amendments and to help you amend the bill so that we may remove our opposition. Thank you.

Sincerely,

Nick Warner
Legislative Representative

cc: The Honorable Herb Wesson, Chair, Assembly Governmental Organization Committee

1450 Halyard Drive, Suite 6 * West Sacramento, California 95691-5001
P O Box 980790 * West Sacramento, California 95798-0790
Telephone 916/375-8000 * Fax 916/375-8017

LH: 140 AP - 98

(800) 666-1917

LEGISLATIVE INTENT SERVICE



April 7, 2000



The Honorable Kevin Shelley
Member of the Assembly
Room 3160, State Capitol Building
Sacramento, CA 95814

1100 K Street
Suite 101
Sacramento
California
95814

RE: AB 2799 (Shelley) – Oppose unless amended
Set for hearing April 11, Assembly Governmental Organization Committee

Telephone
916.327.7500
Facsimile
916.441.5507

Dear Assembly Member Shelley:

The California State Association of Counties (CSAC) writes to indicate its position of oppose unless amended on AB 2799, your measure relating to public records.

As we indicated in our previous letter, CSAC has grave concerns about what we view as a serious erosion of protections afforded to non-disclosable information by the potentially broad application of Government Code section 6255(b). Although we understand that you are contemplating an amendment to this section to exclude records that are specifically prohibited from release, we must indicate our opposition in principle to the proposed "reverse balancing" provision. Even with the proposed amendment, there exists real apprehension that the "reverse balancing" provision may, at best, lead to confusion as to what materials is subject to disclosure under the Public Records Act and, at worst, result in release of information that was never intended to be subject to public disclosure.

Counties have consistently indicated their desire and willingness to fulfill their statutory obligations in regards to disclosing public records. We believe, however, that sections 6255 (a) and (b) introduce unnecessary confusion and place public agencies in an untenable position as they attempt to assess whether a record should be disclosed. In addition, we continue to solicit specific input from counties as to the practical application of all other changes contained in your measure.

We thank you for your willingness thus far to meet with and address local government concerns. However, to protect what we view as a critical protection in public records law, CSAC must take an oppose unless amended position. Our hope is that we can continue our discussions with you and your staff to resolve our concerns on this bill. Feel free to contact me at 916/327-7500, ext. 513, or Elizabeth Howard at 916-327-7500, ext. 537 to discuss this matter further. Thank you.

Sincerely,

Rubin R. Lopez
Legislative Representative

cc: The Honorable Herb Wesson, Chair, Assembly Governmental Organization Committee
Members and Consultants, Assembly Governmental Organization Committee

(800) 666-1917

LEGISLATIVE INTENT SERVICE





GARY PENROD, SHERIFF



April 3, 2000

The Honorable Kevin Shelley
Assembly Member
Capitol Building #3160
Sacramento, CA 95814

Position: **OPPOSE** Assembly Bill 2799 Public Records: Disclosure

Dear Assembly Member Shelley:

The San Bernardino County Sheriff's Department must oppose Assembly Bill 2799 as it would permit a court, despite any other exemption within the Public Records Act, to force the disclosure of an otherwise non-disclosable record if the facts of a particular case show the public interest served by disclosing the information outweighs the public interest served by not disclosing the record. We expect to see public agencies defending victims who have a right under the current law not to have information disclosed about themselves from request by the media, particularly the print media who seek to obtain large volumes of information at times, some of which contains non-disclosable information which requires extensive redacting. If the media could make an appropriate argument, the agency would be prevented from redacting much of this information.

We believe the current section 6253 of the Government Code is functioning well with both sides working from an even playing field and for this reason, we must oppose this measure. I have assigned my Legislative Liaison, Lieutenant Paul Curry, to work with you and your staff to try to resolve this issue. Please feel free to contact Lieutenant Curry at 909.387.0632.

Sincerely,

Gary S. Penrod, Sheriff

cc: Herb Wesson, Chair ✓
Governmental Organization

(800) 666-1917

LEGISLATIVE INTENT SERVICE





California State Sheriffs' Association

April 7, 2000

Organization Founded by the Sheriffs in 1894

Officers

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Charles C. Plummer
Sheriff
Alameda County

1st Vice President
Les Weidman
Sheriff
Stanislaus County

2nd Vice President
Larry Smith
Sheriff
Riverside County

Secretary
Jim Thomas
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Sergeant-at-Arms
Bruce Mix
Sheriff
Madoc County

Immediate Past President
Charles Byrd
Sheriff
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Robert Doyle
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Marin County

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Past President
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Sheriff
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Sheriff
San Bernardino County

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Tom Sawyer
Sheriff
Merced County

Jerry Shadinger
Sheriff
Colusa County

Gary Simpson
Sheriff
Napa County

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Kern County

Mark Tracy
Sheriff
Santa Cruz County

Joan L. Phillipe
Executive Director

The Honorable Kevin Shelley
Member of the Assembly
Room 3160, State Capitol Building
Sacramento, CA 95814

RE: AB 2799 (Shelley) - Oppose unless amended

Dear Assembly Member Shelley:

The California State on behalf of the California State Sheriffs' Association (CSSA), I regret to inform you that we must oppose your AB 2799, relative to public records.

As you know, your AB 2799 contains provisions similar to those in last year's AB 1099 relating to the release of documents in an electronic format. Although we did not oppose AB 1099, we respectfully suggest that AB 2799 makes changes to existing law that are unnecessary and are likely to cause more problems than they solve.

Firstly, the "reverse balancing" provision under Government Code section 6255(b) appears to permit a court—despite any other exemption in the Public Records Act—to order disclosure of records "if, on the facts of the particular case, the public interested served by disclosing the record outweighs the public interest served by not disclosing the record." It would appear, for example, investigation records of local law enforcement agencies, and any other records currently exempted, could be ordered to be released. We are concerned that this provision could jeopardize ongoing investigations. We would suggest that this section be amended to exempt records of an ongoing investigation by law enforcement.

Secondly, we are concerned with the working in section 6253(d), which says that, "Nothing in this chapter shall be construed to delay or obstruct the inspection of copying of public records." Frankly, while reasonable parties may be able to work around this provision, it is ripe for abuse and will likely result in far more contests in this area. We suggest that this amendment be removed or clarified.

We stand ready to work with you and your staff on identifying the exact problem you seek to address by these amendments and to help you amend the bill so that we may remove our opposition. Thank you.

Sincerely,

Nick Warner
Legislative Representative

cc: The Honorable Herb Wesson, Chair, Assembly Governmental Organization Committee

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April 3, 2000



The Honorable Kevin Shelley
Member of the Assembly
Room 3160, State Capitol Building
Sacramento, CA 95814

1100 K Street
Suite 101
Sacramento
California
95814

RE: **AB 2799 (Shelley) – Concerns**
Set for hearing April 11, Assembly Governmental Organization Committee

Telephone
916.327.7500
Facsimile
916.441.5507

Dear Assembly Member Shelley:

The California State Association of Counties (CSAC) writes to express its concerns regarding AB 2799, your measure relating to public records.

As you recall, we were very appreciative that you worked with us last year in discussions on AB 1099 to accommodate the concerns of local governments regarding expanded accessibility to public records in an electronic format. Our review of AB 2799, which contains provisions similar to those in AB 1099 relating to the release of documents in an electronic format, revealed potential new concerns with two specific provisions that may represent a marked shift in existing public record law.

Of greatest concern is the "reverse balancing" provision under Government Code section 6255(b). As we understand this provision, it would permit a court—despite any other exemption in the Public Records Act—to order disclosure of records "if, on the facts of the particular case, the public interest served by disclosing the record outweighs the public interest served by not disclosing the record." It would appear, for example, that preliminary drafts or notes, geological and utility systems data, complaint or investigation records of local law enforcement agencies, and any other records currently exempted could be ordered to be released.

A second area of concern relates to the proposed reinsertion of the word "delay" under section 6253(d) so that the provision reads: "Nothing in this chapter shall be construed to *delay or* obstruct the inspection of copying of public records." We currently are soliciting county input on this proposed revision to determine the significance of the amendment.

We would welcome the opportunity to work with you on addressing concerns of local government on AB 2099. As soon as we receive specific input on the provisions highlighted above, we will contact you. In the meantime, please do not hesitate to contact me at 916/327-7500, ext. 513, or Elizabeth Howard at 916-327-7500, ext. 537 to discuss this matter further. Thank you.

Sincerely,

Rubin R. Lopez
Legislative Representative

cc: The Honorable Herb Wesson, Chair, Assembly Governmental Organization Committee
Members and Consultants, Assembly Governmental Organization Committee

(800) 666-1917

LEGISLATIVE INTENT SERVICE





CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION

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JERRY JORDAN, Executive Director

April 4, 2000

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So. California Public Power Authority

Honorable Kevin Shelley
The Assembly
State Capitol
Sacramento, CA 95814

RE: OPPOSITION TO AB 2799 CONCERNING PUBLIC RECORDS

Dear Assembly Member Shelley:

The California Municipal Utilities Association opposes your AB 2799 which is scheduled to be heard in Assembly Governmental Organization Committee, April 10.

Our principle concern is with Section 2 of the bill, proposed Government Code Section 6253.2, which appears to require a public agency to provide information in any electronic format in which it holds that information. This could result in being required to disclose proprietary information or in providing far more information than is actually requested, as when the requested information is contained within a relational data base such as a geographic information system.

We would appreciate an opportunity to discuss our concerns with you with the goal of resolving our particular concern and removing our opposition. Thanks for considering our views.

Sincerely,

Stuart E. Wilson
Assistant Executive Director

cc: Members, Assembly Committee on Governmental Organization

(800) 666-1917

LEGISLATIVE INTENT SERVICE





CALIFORNIA ASSOCIATION of SANITATION AGENCIES

925 L Street, Suite 1400 Sacramento, CA 95814

TEL: (916) 446-0388 - FAX: (916) 448-4808

April 5, 2000

MICHAEL F. DILLON
Executive Director &
Lobbyist

ROBERTA LARSON
Director of Legal and
Regulatory Affairs

President
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Coleta Sanitary District
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Secretary-Treasurer
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District

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Monterey Regional Water
Pollution Control Agency

ROBERT REID
West Valley Sanitation
District of Santa Clara
County

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Federal Legislative Advocate
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esap@ensresources.com

The Honorable Herb Wesson, Chair
Assembly Governmental Organization Committee
State Capitol, Room 2179
Sacramento, CA 95814

SUBJECT: AB 2799 (SHELLEY) RELATING TO THE PUBLIC RECORDS ACT—OPPOSE

Dear Assembly Member Wesson:

The California Association of Sanitation Agencies (CASA) opposes AB 2799 by Assembly Member Kevin Shelley, which would allow a court to order disclosure of documents without regard to whether the documents are protected from disclosure by a privilege.

CASA understands the need to ensure that the public has timely access to public documents. However, not every document produced by a public agency is suitable for disclosure. Current law recognizes that there are valid reasons to withhold documents, such as employee privacy, attorney-client privilege or deliberative process privilege. AB 2799 would allow a court to override these considerations and order disclosure. This would effectively nullify the public entity's right to claim these privileges. Moreover, because the payment of attorney's fees is mandatory under the Public Records Act, a public entity would be obligated to pay a plaintiff's attorney's fees even where a record was properly withheld under the statute if the judge decides to override that decision pursuant to the bill.

For these reasons, respectfully request a "No" vote when AB 2799 is heard in your committee. Thank you for your consideration of our concerns.

Sincerely,

Roberta L. Larson

LEGISLATIVE INTENT SERVICE (800) 666-1917





Association of California
Insurance Companies
1121 L Street, Suite 510
Sacramento, CA 95814-3926
Tel. (916) 442-4581
Fax. (916) 444-3872
e-mail: acic@acic-1.org

April 4, 2000

The Honorable Herb Wesson, Chair
Assembly Governmental Organization Committee
California State Capitol, Room 2179
Sacramento, CA 95814

Re: **AB 2799 (Shelley, as introduced) Public records: disclosure**
ACIC Position: Oppose

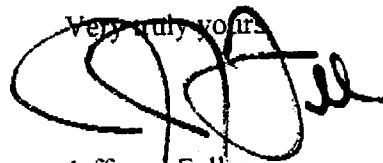
Dear Assemblyman Wesson:

The Association of California Insurance Companies (ACIC) **opposes** AB 2799 which is set to be heard in the Assembly Governmental Organization on **Monday, April 10, 2000**.

AB 2799 would essentially vitiate the protection of confidential records provided by the exemptions of particular records specified in Government Code §6254 of the Public Records Act by subjecting such records to a vague balancing test involving the "public interest." Of particular concern to insurers is the exemption stated in Government Code §6254(d)(1)-(4) which protects the confidentiality of information submitted by insurance companies to the Department of Insurance for regulatory purposes. This exemption is essential to insurers if the department is to assure protection of proprietary information submitted by individual companies. Enactment of AB 2799 could lead to the wholesale diminution of confidentiality protections afforded under current law by possibly disrupting the free flow of information to the department.

The State of California, through enactment of §6254, has established as a matter of public policy that certain types of information should be exempt from the disclosure requirements of the Public Records Act. There is no need to change that determination.

The ACIC respectfully requests your **"NO"** vote on AB 2799.

Very truly yours,


Jeffrey J Fuller
Vice President & General Counsel

cc: Assemblyman Kevin Shelley, Author
Richard Rios, Consultant, Assembly G.O. Committee

The leading voice of California insurers

LH: 147AP - 105

LEGISLATIVE INTENT SERVICE (800) 666-1917





Personal Insurance Federation of California

Committee
1020 NSt
#159

California's Personal Lines Trade Association
REPRESENTING THE LEADING AUTOMOBILE AND HOMEOWNERS INSURERS

MEMORANDUM

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 - Greg Jones, Treasurer
State Farm
 - Jerry Carmanin, Secretary
Farmers
 - Jim Ruddy
SAFECO
- STAFF**
- Dan Dunmoyer
President
 - Phyllis Marshall
Vice President of Legislative & Regulatory Affairs
 - Diane Colborn
Senior Legislative Advocate & Counsel
 - Jerry Davies
Director of Communications

Date: April 6, 2000

To: Honorable Herb Wesson
Members of the Governmental Organization Committee

From: Dan C. Dunmoyer, President
Phyllis A. Marshall, Vice President of Legislative and Regulatory Affairs
G. Diane Colborn, Senior Legislative Advocate and Counsel

Re: AB 2799 (Shelley): Public Records: disclosure
Assembly Governmental Organization Committee: April 10, 2000
PIFC Position: Oppose

The Personal Insurance Federation of California (PIFC), representing insurers selling 40% of the personal lines insurance sold in California, including State Farm, Farmers, 21st Century, SAFECO, and Progressive Insurance Companies opposes AB 2799 by Assemblyman Shelley.

AB 2799 would require a state agency or the superior court of California to disclose a record, made exempt under the express provisions of the California Public Records Act, if the state agency or the superior court determines that, "the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record". This provision effectively eliminates the safeguards which exist for protecting both confidential and proprietary information.

This change in the law will have a substantial and profound adverse effect on the manner in which entities interact with state agencies. Entities would be reluctant to share confidential and/or proprietary information with state agencies which they would otherwise disclose. This will have a crippling effect on the ability of state agencies to carry out their administrative functions. This change would, in effect, substantially diminish the role that state agencies play in regulating entities and would buttress the role of the judiciary. Such a change would spur litigation and would place a strain on the judiciary which would be accessed on a regular basis to issue protective orders as a means of safeguarding against the release of confidential and proprietary information. The effect of this change is to shift oversight authority from state agencies to the judiciary.

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Under California's Public Records Act ("PRA"), Government Code Sections 6250 et. seq., a state agency must disclose any "public record" in its possession to any person unless an exemption applies. Government Code Section 6252 (d) defines "public records" 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 characteristics". While the scope of records covered by the PRA is fairly broad, the statutory scheme includes several specific exemptions. Government Code Section 6254 provides that "nothing in this chapter shall be construed to require disclosure of records that are any of the following " and delineates twenty-six exemptions. These exemptions were designed to protect the privacy of persons who have disclosed confidential information to the government, to preserve state secrets, agency deliberative processes and confidential sources of information.

The safeguards provided in Sections 6254 (a) through (d) of particular importance to PIFC and its member companies are:

"(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, . . .

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6. . .

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referenced in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referenced in paragraph (1)."

AB 2799 would eliminate these safeguards and would require the disclosure of confidential information. It should be noted that one of the top legislative public policy debates this year centers around the issue of privacy. This legislature is considering proposals to enhance privacy protections in both the private and public sector. This bill contravenes those discussions by requiring the disclosure of confidential information by a state agency or the superior court. As noted above, these are but a few of the list of extensive exemptions provided for in Section 6254. The other exemptions range from law enforcement records including victim information, hospital and medical information, local taxpayer information, etc. In addition, subsection (k) prohibits disclosure of information which is exempted or prohibited pursuant to federal or state



law, including, but not limited to, provisions of the Evidence Code relating to privilege. AB 2799 would require the release of this information, which could have the effect of subjecting entities to liability, based on privacy rights.

The business of insurance is regulated by the Department of Insurance Commissioner. Effective regulation is dependent on the free flow of information from insurers to the Commissioner whether that information be confidential, proprietary or damaging. State agencies, particularly those that are charged with regulating a particular industry, must have the necessary tools to acquire information. The exemptions in Section 6254 were designed to do just that – allow for the free flow of information that is necessary for that state agency to carry out its public purpose. AB 2799 would eliminate this free flow of information and instead would require insurers to access the courts in order to seek protective orders every time information is requested from the Commissioner, be that information to assess a complaint, information pertaining to a market conduct examination or any other information which might otherwise be released into the public domain, thus subjecting insurers to additional liabilities.

AB 2799 would have the effect of creating a "pre-litigation" adversarial atmosphere on interactions between the Commissioner and insurers. This would substantially hinder the administrative process and would have a damaging effect on the resolution of administrative processes. AB 2799 has the effect of shifting administrative and/or regulatory enforcement to class action exposure.

In conclusion, entities that are regulated are required to provide regulators and state agencies with information that is proprietary and adverse to the company's interest. This allows state agencies to carry out their administrative and executive functions. A regulated industry's willingness to continue to provide this kind of information depends on the promise of confidentiality provided by Section 6254. AB 2799 removes that assurance of confidence and thus diminishes the ability of state agencies to carry out their purpose.

For these reasons we urge your "NO" vote on AB 2799, by Assemblyman Shelley. If you have any questions regarding our opposition, please feel free to contact Phyllis Marshall at (916) 442-6646.

cc:
Honorable Kevin Shelley
Ann Richardson, Deputy Legislative Secretary, Governor's Office
Richard Rios, Assembly Governmental Organization
Michael Peterson, Assembly Republican Caucus

4.AB 2799 a gov

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CIVIL JUSTICE
ASSOCIATION OF CALIFORNIA
MEMORANDUM



April 18, 2000

TO: Hon. Herb Wesson, Chair
Hon. Brett Granlund, Vice Chair
Members, Assembly Governmental Organization Committee

FROM: Barbara M. Wheeler, Vice President-Legislation
Jeff Sievers, Legislative Advocate
John H. Sullivan, President

RE: **AB 2799 (Shelley)**
Status: Assembly GO Committee
Hearing Date: April 24, 2000

CJAC POSITION: OPPOSE

The Civil Justice Association of California (CJAC) regrets to advise that it has adopted an oppose position on AB 2799 (Shelley).

AB 2799 would allow a state agency or a superior court to order disclosure of a record, already made exempt from disclosure under the express and detailed provisions of the California Public Records Act (Government Code Section 6254), if the agency or the court determines that "the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record."

We are concerned that if this bill becomes law, the public's trust in the civil justice system and government in general will erode as citizens lose the relative certainty that information they provide to a state or local agency on the assurance of confidentiality will remain confidential. Additionally, enactment of the bill would effectively eliminate the safeguards which exist for protecting both confidential and proprietary information by allowing any individual, regardless of motivation, to use the civil justice system to invade personal privacy and reveal confidential information or at least harass people and organizations with litigation.

After meeting with the sponsors of the bill (the California Newspaper Publishers' Association) and reading the committee analysis of AB 2799, we do not see any backup evidence of this bill's need. The sponsor states this bill is necessary to balance the ability of private citizens to obtain information in government records with the ability of public agencies to maintain confidentiality. However, a thorough reading of the lengthy Public Records Act exemption section (Government

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Code Section 6254) reveals the Legislature's deliberate crafting of the very balancing the sponsors say is needed. For example:

1. Gov. Code Sec. 6254 (c): personnel, medical, or similar files, the disclosure of which would constitute an *unwarranted* invasion of personal privacy.
2. Gov. Code Sec. 6254 (f): *...unless* the disclosure would endanger the safety of a witness or other person.

The court's current role under the Public Records Act is to determine whether the information being kept from public view falls into one of the categories detailed in Section 6254. There is no reason to require judges to undertake a broad balancing review to determine whether to override express privacy protections enacted by the Legislature. Why should a company be forced into court to establish the value of its "geological and geophysical data, plant production data...or market or crop reports" (Gov. Code Sec. 6254 (e))? Why should Native Americans be forced to go into court to fight challenges to the secrecy of the records of their graves, cemeteries, and sacred places (Gov. Code Sec. 6254 (r))?

Although primarily a criminal law consideration, we must point out that AB 2799's threat to the security of information obtained in confidence would seriously deter investigations which benefit the public. Why would crime victims come forward to testify or further assist law enforcement agencies if they cannot be guaranteed that information they give to the law enforcement agency will not be disclosed to the public?

We believe California's civil justice system -- and the public's already eroding trust in it -- would be substantially harmed by the enactment of AB 2799. The amendments to the Public Records Act provided in AB 2799 would create undue confusion and muddy the balance the Legislature has achieved in protecting competing public interests. The amendments appear even to allow any state agency to independently override the Public Records Act's privacy protections without going near a courtroom! (Sec. 6255).

We urge your no vote on this measure.

cc: Assemblyman Kevin Shelley
Senator Debra Bowen
Richard Rios, Assembly Governmental Organization
Michael Peterson, Assembly Republican Caucus
Ann Richardson, Deputy Legislative Secretary, Governor's Office

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GARY PENROD, SHERIFF

May 3, 2000

The Honorable Kevin Shelley
Assembly Member
Capitol Building #3160
Sacramento, CA 95814

Position: **OPPOSE AS AMENDED** April 27, 2000 AB2799 Public Records: Disclosure

Dear Assembly Member Shelley:

Local law enforcement agencies receive public records requests on a daily basis from news gathering companies, special interests groups and business entities seeking large amounts of data from our files which will further their interests. Ordinary citizens rarely request information and when they do it is usually related to an event in which they were involved in or in their neighborhood. Special interest requests cause local law enforcement employees to spend countless hours researching electronic data bases to identify exempt files, and segregating those files which would invade the personal privacy of citizens.

The inflexible mandate to provide data in an electronic format fails to address the redaction problems created by providing the data in an electronic format. There currently does not exist a program, which would have the capability of extracting exempt records from releasable ones. Law enforcement records can and do at times contain sensitive business and personal data acquired during a criminal investigation. This data, if released, could have an adverse effect on the person or business who reported a crime. Businesses and citizens who do not wish to have their personal information made public (victims of sex crimes, child abuse, domestic violence etc.) by virtue of electronic data would be left with only one choice; to not report a crime.

This bill also fails to address the actual cost to the public of redacting an electronic database. In order to redact the database, each record must be reviewed individually. All of the costs for personnel to review the database are not currently reimbursable, only the cost of the copy of the file.

For these reasons we must continue to oppose this measure.

Sincerely,

Paul R. Curry
Paul R. Curry, Lieutenant
Legislative Liaison
909.387.0632

cc: Assembly Governmental Organization Committee

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Personal Insurance Federation of California

California's Personal Lines Trade Association
REPRESENTING THE LEADING AUTOMOBILE AND HOMEOWNERS INSURERS

MEMORANDUM

BOARD
 Bill Mellick, Chairman
20th Century Industries
 Mark Niehaus, Vice Chairman
Progressive Insurance Companies
 Greg Jones, Treasurer
State Farm
 Jerry Camahan, Secretary
Farmers
 Jim Ruddy
SAFECO

STAFF
 Dan Dunmoyer
President
 Phyllis Marshall
*Vice President of Legislative
& Regulatory Affairs*
 Diane Colborn
*Senior Legislative Advocate
& Counsel*
 Jerry Davies
Director of Communications

Date: May 2, 2000
To: Honorable Herb Wesson, Chairman
 Members of the Governmental Organization Committee
From: Dan C. Dunmoyer, President
 Phyllis A. Marshall, Vice President of Legislative and Regulatory Affairs
 G. Diane Colborn, Senior Legislative Advocate and Counsel
Re: AB 2799 (Shelley): Public Records: disclosure
 Assembly Governmental Organization Committee: May 8, 2000
 PIFC Position: Neutral

The Personal Insurance Federation of California (PIFC), representing insurers selling 40% of the personal lines insurance sold in California, including State Farm, Farmers, 21st Century, SAFECO, and Progressive Insurance Companies is neutral on AB 2799 by Assemblyman Shelley as a result of the April 27, 2000 amendments.

If you have any questions regarding our position, please feel free to contact Phyllis Marshall at (916) 442-6646.

CC:
 Honorable Kevin Shelley
 Ann Richardson, Deputy Legislative Secretary, Governor's Office
 Richard Rios, Assembly Governmental Organization
 Michael Peterson, Assembly Republican Caucus

4.AB 2799 n gov2

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California State Association of Counties



May 3, 2000

1100 K Street
Suite 101
Sacramento
California
95814

Telephone
916.327.7500
Facsimile
916.441.5507

The Honorable Kevin Shelley
Member of the Assembly
Room 3160, State Capitol Building
Sacramento, CA 95814

RE: **AB 2799 (Shelley) – REMOVAL OF OPPOSITION (As amended April 27, 2000)**
Set for hearing May 8, Assembly Governmental Organization Committee

Dear Assembly Member Shelley:

The California State Association of Counties (CSAC) has removed its opposition to AB 2799, your measure relating to public records, following amendments on April 27, 2000.

The removal of the "reverse balancing" provision under Government Code section 6255(b) addresses the majority of county concerns on this measure. We look forward to working with you and your staff to continue discussions on other provisions in AB 2799.

Thank you for your continued willingness to work with us. Please feel free to contact me at 916/327-7500, ext. 513, or Elizabeth Howard at 916-327-7500, ext. 537 at any time.

Sincerely,

Rubin R. Lopez
Legislative Representative

cc: The Honorable Herb Wesson, Chair, Assembly Governmental Organization Committee
Members and Consultants, Assembly Governmental Organization Committee

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Date of Hearing: May 17, 2000

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Carole Migden, Chairwoman

AB 2799 (Shelley) – As Amended: April 27, 2000

Policy Committee: Governmental Organization

Vote: 12-2

Urgency: No State Mandated Local Program: Yes

Reimbursable: No

SUMMARY

This bill, as proposed to be amended:

- 1) Requires that a public agency's justification for denying the release of a public record be made in writing if the request for that record was submitted in writing.
- 2) Requires public agencies to make public records available, when requested, in the electronic format in which they hold the information.
- 3) Specifies that the direct costs of duplication, for which agencies may charge requesters pursuant to current law, include the costs associated with duplicating electronic records.

FISCAL EFFECT

- 1) Assuming that agencies generally respond in writing when denying a public records request, there should be negligible fiscal impact.
- 2) Potential revenue loss to various agencies that currently make and sell copies of public records documents, probably offset by workload savings from providing electronic rather than paper copies of public records.

COMMENTS

- 1) Purpose. According to the sponsor, the California Newspaper Publishers Association, this bill is intended to ensure quicker access to public records. The sponsor also notes that the bill seeks to provide reasonable guidelines for public access to electronically held records.
- 2) Prior Legislation. The provisions of this bill regarding electronic records are identical to those contained in SB 1065 (Bowen) from last year. That bill was vetoed by the governor, who indicated at the time that the state's information technology resources should be directed towards making sure that its computer systems were year 2000 compliant.
- 3) Amendment. Staff recommends the following amendments, which generally would conform with current practice and are reflected in this analysis.



On page 5, line 9, after "6255", insert "(a)".

On page 5, line 10, delete "in writing."

On page 5, after line 15, insert: "(b) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing."

Analysis Prepared by: Chuck Nicol / APPR. / (916)319-2081



Date of Hearing: May 17, 2000

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Carole Migden, Chairwoman

AB 2799 (Shelley) – As Amended: April 27, 2000

Policy Committee: Governmental Organization

Vote: 12-2

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Reimbursable: No

SUMMARY

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Analysis Prepared by: Chuck Nicol / APPR. / (916)319-2081



Date of Hearing: May 8, 2000

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION

Herb Wesson, Chair

AB 2799 (Shelley) – As amended: April 27, 2000

SUBJECT: Public records

SUMMARY: Provides for the release of public records in an electronic format and requires a public agency that withholds a public record to justify its withholding in writing.

- 1) Deletes the requirement that public records kept on computer be disclosed in a form determined by the public agency. Requires a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following guidelines:
 - a) The agency must make the information available in any electronic format in which it holds the information.
 - b) Each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.
 - c) An agency may not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- 2) Requires an agency that withholds a public record to justify its withholding in writing.
- 3) Specifies that the requirements of the bill shall not be construed to permit an agency to make information available only in an electronic format nor shall they be construed to permit access to records held by the Department of Motor Vehicles that are otherwise restricted under the PRA.
- 4) Specifies that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

EXISTING LAW

- 1) Defines "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 characteristics.
- 2) Requires public records to be open to inspection at all times during the office hours of a state or local agency and affords every person the right to inspect any public record, except as specifically provided.



- 3) Requires state and local agencies to make an exact copy of a public record available to any person upon payment of fees covering direct costs of duplication, or a statutory fee, if applicable.
- 4) Requires that computer data be provided in a form determined by the agency.

FISCAL EFFECT: Unknown.

COMMENTS:

1. Need for the bill. The PRA permits a state or local agency to provide computer records in any format determined by the agency. This bill would require an agency to provide computer records in any format that it currently uses. According to the sponsor, the California Newspaper Publishers Association, this bill is intended to ensure quicker, more useful access to public records. The sponsor also notes that the bill seeks to provide reasonable guidelines for public access to electronically held records.
2. Substantive amendments. This bill was heard by this committee on April 24, 2000 and failed passage. Since the April 24 hearing, the author has substantially amended the bill to remove a controversial provision which would have authorized courts and state agencies to release records exempted from the PRA if the court or agency determined that the "public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record." This provision is referred to as the "reverse balancing test" and was the primary issue of discussion during the bill's hearing.
3. Remaining opposition. Although some opponents have removed their opposition in response to the most recent amendments, some remain concerned with the bill's requirement that public records be released in any electronic format that the agency uses to hold public records. Opponents point out that state and local agencies retain massive databases which may include nondisclosable public records. They claim that redacting the nondisclosable information from the electronic records could be a costly and time-consuming process that is more vulnerable to error, which may result in the unintentional release of nondisclosable information. Opponents note that the bill does not contain a provision authorizing agencies to charge fees covering the cost of preparing the electronic record for public release. It is unclear how local agencies currently account for public records that are required to be redacted but that are disclosed in a paper format.
4. Similar legislation. AB 1099 (Shelley) of this legislative session would have required state and local agencies to provide copies of public records in any form requested, including in a computer format, as long as the form was already used by the agency in the conduct of its business. AB 1099 passed this committee by a 15-0 vote but was later amended to contain a subject matter different from that which this committee considered.



REGISTERED SUPPORT / OPPOSITION:

Support

California Newspaper Publishers Association
First Amendment Coalition

Opposition

California Association of Sanitation Agencies
California Municipal Utilities Association
California State Sheriffs Association
Office of the State Attorney General
San Bernardino County Sheriff's Department

Analysis Prepared by: Richard Rios / G. O. / (916) 319-2531



ASSEMBLY THIRD READING

AB 2799 (Shelley)

As Amended May 23, 2000

Majority vote

GOVERNMENTAL ORGANIZATION 12-2 APPROPRIATIONS 17-2

Ayes: Wesson, Granlund, Battin, Briggs,
Cardenas, Lempert, Longville,
Machado, Maldonado, Strickland,
Wiggins, Wright

Ayes: Migden, Campbell Alquist, Aroner,
Ashburn, Cedillo, Corbett, Davis,
Kuehl, Maldonado, Papan, Romero,
Shelley, Thomson, Wesson, Wiggins,
Zettel

Nays: Brewer, Floyd

Nays: Ackerman, Brewer

SUMMARY: Provides for the release of public records in an electronic format and requires a public agency that withholds a public record to justify its withholding in writing. Specifically, this bill:

- 1) Deletes the requirement that public records kept on computer be disclosed in a form determined by the public agency. Requires a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following guidelines:
 - a) The agency must make the information available in any⁻⁻⁻ electronic format in which it holds the information;
 - b) Each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies; and,
 - c) An agency may not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- 2) Requires an agency that denies a request for inspection or copies of public records to justify its withholding in writing when the request for public records was in writing.
- 3) Specifies that this requirements of this bill shall not be construed: a) to permit an agency to make information available only in an electronic format; nor, b) to permit access to records held by the Department of Motor Vehicles that are otherwise restricted under the Public Records Act (PRA)
- 4) Specifies that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

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EXISTING LAW:

- 1) Defines "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 characteristics.
- 2) Requires public records to be open to inspection at all times during the office hours of a state or local agency and affords every person the right to inspect any public record, except as specifically provided.
- 3) Requires state and local agencies to make an exact copy of a public record available to any person upon payment of fees covering direct costs of duplication.
- 4) Requires that computer data be provided in a form determined by the agency.

FISCAL EFFECT: According to the Assembly Appropriations Committee analysis:

- 1) Assuming that agencies generally respond in writing when denying a public records request, there should be negligible fiscal impact.
- 2) Potential costs to various agencies that currently make and sell copies of public records documents for workload in redacting nondisclosable electronic records from disclosable electronic records.

COMMENTS: PRA permits a state or local agency to provide computer records in any format determined by the agency. This bill would require public agencies to provide computer records in any format that it currently uses. This bill would also prohibit an agency from delaying access to the inspection or copying of public records. This bill is an attempt to provide reasonable guidelines for public access to electronically held records and the author believes that this bill will substantially increase the availability of public records and reduce the cost and inconvenience associated with large volumes of paper records.

Some remain concerned with this bill's requirement that public records be released in any electronic format that the agency uses to hold public records. They point out that state and local agencies retain massive databases which may include disclosable as well as nondisclosable public records. Those concerned claim that separating disclosable electronic records from nondisclosable electronic records could be a costly and time-consuming process that is more vulnerable to error and may result in the unintentional release of nondisclosable records. Additionally, some note that this bill does not contain a provision authorizing agencies to charge fees covering the cost of preparing the electronic record for public release when such preparation is necessary. It is unclear how agencies currently account for public records that are required to be redacted but that are disclosed in a paper format.

The provisions of this bill regarding electronic records are identical to those contained in SB 1065 (Bowen) of 1999 that was vetoed by the Governor. The Governor indicated at the time that the state's information technology resources should be directed towards making sure that its computer systems were year 2000 compliant.





**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

Date Amended:	05/23/00	Bill No:	AB 2799
Tax:	Public Records Act	Author:	Shelley
Board Position:		Related Bills:	SB 2027 (Sher)

BILL SUMMARY:

This bill provides for the release of public records in an electronic format and requires a public agency that withholds a public record to justify its withholding in writing.

ANALYSIS:

Current Law:

Under current law the Public Records Act, or PRA (commencing with Section 6250 of the Government Code), provides for public access to any record maintained by a state and local agency, unless there is a statutory exemption that allows or requires the agency to withhold the record.

A public record is defined as "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." The PRA provides that public records be open to inspection at all times during the office hours of the state or local agency and that every person has a right to inspect any public record, except as specifically provided.

Under current law, upon request, an exact copy of the record shall be provided unless impracticable to do so, and computer data shall be provided in a form determined by the agency.

Proposed Law:

This bill would amend Sections 6253 and 6255 of, and add Section 6253.2 to, the Government Code. Specifically, AB 2799 would:

- Delete the requirement that public records kept on computer be disclosed in a form determined by the public agency, and instead require a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

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guidelines: 1) the agency must make the information available in any electronic format in which it holds the information, 2) each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies, and 3) an agency shall not be required to reconstruct a report in an electronic format if the report is no longer in an electronic format.

- Require an agency that withholds a public record in response to a written request to justify its withholding in writing.
- Specify that the requirements of the bill shall not be construed to permit an agency to make information available only in an electronic format nor to permit public access to records held by the Department of Motor Vehicles that are otherwise restricted under the PRA.
- Specify that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

This bill would become operative on January 1, 2001.

Background:

In July 1998, the California Joint Legislative Task Force on Government Oversight issued a report entitled "The Failure of the California Public Records Act," and stated that much of the information forming the basis for state and local government decisions is not easily accessible to the public.

COMMENTS:

1. **Sponsor and purpose of the bill.** This bill is sponsored by the California Newspaper Publishers Association in an effort to ensure more useful access to public records.
2. **Amendments to this bill since our analysis of the April 27, 2000 version are minor.** These amendments do not affect our analysis.
3. **Portions of this bill codify existing Board practices.** The Board already provides denials of public records requests in writing.
4. **Related legislation:** This bill is similar to SB 2027 (Sher), which would establish a new appeals procedure for an agency's denial of a written request or an agency's failure to respond to a written request for a public record.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.



COST ESTIMATE:

It is not anticipated that the provisions of this bill would result in additional administrative costs. Provisions of the Public Records Act allow the Board to recover the direct costs of providing the records in an electronic format.

REVENUE ESTIMATE:

This bill would not impact state revenues.

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Analysis prepared by:	Laurie D. Watson	324-1890	06/05/00
Contact:	Margaret S. Shedd	322-2376	

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.



CHARLES V. (CHUCK) SMITH

CHAIRMAN OF THE BOARD OF SUPERVISORS
1000 JEFFERSON STREET
SANTA ANA, CALIFORNIA 92701

July 19, 2000

The Honorable Kevin Shelley
California State Assembly
P.O. Box 942849
Sacramento, California 94249-0001

Dear Assembly Member Shelley:

On behalf of the Board of Supervisors, I am writing in opposition to your bill ~~AB 2799~~ **AB 2799**, which would require a public agency that keeps public records in an electronic format to make requested public records information available in an electronic format.

Although we have attempted to work with your office on this bill to make it more acceptable, we continue to take issue with most of its provisions. The key reasons our County opposes your bill are as follows:

- Compliance with the provision to provide any public record in electronic format could require development of a new computer program to provide non-confidential information in a report without also providing electronically the confidential information. Without that software, county employees would need to go through each record to ensure that confidential information is not included in non-confidential information. Either method would be prohibitively expensive.
- The provisions provide no definition of "delay". Even if delay is defined, each public record request is unique; a single time period for all requests cannot be legislated.
- When a citizen seeks access to public records in person, the provision to "justify in writing" the reasons for withholding is illogical and creates extra and unnecessary staff duties, particularly for citizens who apply in person.
- The provisions for the fee assessment only cover the direct costs.
- The bill creates an incredibly bureaucratic regimen for the denial of a record.

COUNCIL OF SUPERVISORS OF ADMINISTRATION
CIVIC CENTER, 224 N. GATE, SANTA ANA, CALIFORNIA 92701
TEL: 714/246-4000 FAX: 714/246-4000
WWW.COS.AZ.ORG
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(800) 666-1917

LEGISLATIVE INTENT SERVICE



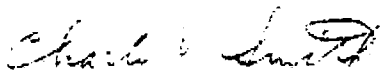
The Honorable Kevin Shelley
July 19, 2000
Page 2

- The bill would expose the County to increased litigation costs.

Further, we believe that AB 2799 contains the same provisions as those contained in AB 179 (Bowen) and AB 1065 (Bowen), bills that were vetoed by two different governors for reasons of expense, administrative burdens, and the potential breach of citizen confidentiality.

Thank you for your consideration of our concerns.

Sincerely,



Charles V. Smith, Chairman
Board of Supervisors

cc: The Honorable Gray Davis, Governor, State of California
Members, Orange County State Legislative Delegation
Members, Orange County Board of Supervisors
Dennis Carpenter, Carpenter Snodgrass and Associates
Steve Szalay, California State Association of Counties

LEGISLATIVE INTENT SERVICE (800) 666-1917



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SENATE JUDICIARY COMMITTEE

Adam B. Schiff, Chairman

1999-2000 Regular Session

AB 2799	A
Assembly Member Shelley	B
As Amended June 22, 2000	
Hearing Date: June 27, 2000	2
Government Code	7
GMO:cjt	9
	9

SUBJECT

Public Records: Disclosure

DESCRIPTION

This bill would revise various provisions in the Public Records Act (PRA) in order to make available public records, not otherwise exempt from disclosure, in an electronic format, if the information or record is kept in electronic format by a public agency. It would specify what costs the requester would bear for obtaining copies of records in an electronic format.

The bill would add, to the unusual circumstances that would permit an extension of time to respond to a request for public records, the need of the agency to compile data, write programming language, or construct a computer report to extract data. The bill would require that a response to a request for public records that includes a denial, in whole or in part, shall be in writing, and provide that the Public Records Act shall not be construed to permit an agency to delay or obstruct inspection or copying of public records.

BACKGROUND

This bill is a blend of two bills that were passed by this Committee last year, AB 1099 (Shelley), and SB 1065 (Bowen).

AB 1099 passed the Senate (and was chaptered) but contained provisions unrelated to electronic records. SB 1065 was vetoed by the Governor, who stated in his veto message that he believes the bill to be well-intentioned, but "the State's information technology resources should be directed towards making sure that its computer systems are year 2000 compliant. The author was unwilling to add language which would ensure the completion of this task

(more)

LH:170



before the implementation of the provisions of this bill." Most of SB 1065 was incorporated into AB 2799.

AB 2799 contains those provisions of both bills that were received without much opposition. It is sponsored by the California Newspaper Publishers Association, and is one of several bills moving through both houses that relate to public records or to the use of electronic records by public agencies.

CHANGES TO EXISTING LAW

The Public Records Act allows an agency to provide computer data in any form determined by the agency. The Act directs a public agency, upon request for inspection or for a copy of the records, to respond to a request within 10 days after receipt of the request. In unusual circumstances, which are specified in the Act, this timeline for responding may be extended in writing for 14 days. [Government Code Section 6253.]

This bill would:

- a) Require a public agency to make disclosable information available in any electronic format in which it holds the information, unless release of the information would compromise the integrity of the record or any proprietary software in which it is maintained;
- b) Add, in the definition of "unusual circumstances" for which the time limit for responding to a request for a copy of records may be extended up to 14 days after the initial 10 days, the need for the agency to compile data, to write programming language or a computer program, or to construct a computer report to extract data;
- c) Require a public agency to respond in writing to a written request for public records, including a denial of the request in whole or in part, and requiring that the names and titles of the persons responsible for the denial be stated therein;
- d) Provide that nothing in the Act shall be construed to permit the agency to delay or obstruct the inspection or copying of public records;
- e) Provide that a requester bear the costs of programming and computer services necessary to produce a record not otherwise readily produced, as specified;
- f) Delete the provision in current law that computer data that is a public record shall be provided in a form determined by the agency.

COMMENT

1. Stated need for legislation

With the advent of the electronic age, more and more people want to be able to access information in an electronic format. Apparently, there is not current



authority under which a person seeking electronically available records could obtain such records in that format. This means that if an agency makes a CD or disk copies of the records, a member of the public could not obtain records in that format—the public would have to buy copies made out of the printouts from the records. The expense of copying these records in paper format, especially when the records are voluminous, makes those public records practically inaccessible to the public, according to the author and the proponents.

The author also states that the current provision in the PRA that gives a public agency the discretion to determine in which form the information requested should be provided works so that the agency can effectively frustrate the request by providing a copy of the requested record in a form different from the request, which could sometimes render the information useless.

The sponsor of this bill, the California Newspaper Publishers Association (CNPA) also contends that the 10-day period that a public agency has to respond to a request for inspection or copying of public records is not intended to delay access to records. It is intended instead, when there is a legitimate dispute over whether the records requested are covered by an exemption, to provide time for the agency to provide the information or provide the written grounds for a denial. What many state agencies do, the sponsor says, is to use the 10 days as a "grace period" for providing the information, during which time many a requester (members of the public) often gives up and never acquires the record.

These two deficiencies in the Public Records Act are what this bill is intended to cure.

2. Information in electronic form to be provided in same form

This bill would require a public agency that has information constituting a public record in an electronic format to make that information available in an electronic format upon request. Additionally,

- a) the agency is required to provide information in any electronic format in which it holds the information; and
- b) the agency is required to provide a copy of an electronic record in the format requested if it is the format that had been used by the agency to create copies for its own use or for other agencies.

3. Conditions on providing records in electronic format

The bill would make conditional the requirement that a public agency comply with a request for public records held in an electronic format. These conditions are:



- a. An agency would not be required to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

This provision was amended into SB 1065 (Bowen) when it was heard in this Committee last year, in response to concerns raised by the some state agencies.

- b. An agency would not be permitted to make information available only in an electronic format.

Even though this bill is intended to make records available to the public in electronic format if kept by an agency in that form, an agency may not, under this bill, frustrate the public's access to information by then converting the non-electronically formatted records into electronic format. As prevalent as electronic data processing is now, there are still those who may not have access to computer equipment to read computer disks or CDs. Thus, if public information is requested in a form other than in an electronic format, a public agency must provide such record in the non-electronic format.

However, this bill would require the agency to provide information in electronic format only if requested by a member of the public. If the record is available in electronic format as well as in printed form, it is not clear whether the public agency has an obligation to tell the requester that the information is available in electronic format.

SHOULD A PUBLIC AGENCY INFORM A REQUESTER THAT THE INFORMATION REQUESTED IS AVAILABLE IN ELECTRONIC FORM?

- c. An agency would not be required to release an electronic record in electronic form if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

This limitation was added to the bill in order to alleviate concerns that electronic records, though created with taxpayer money (see Comment 5), may have been produced using software designed specifically for the agency. This bill would give the agency the flexibility to refuse to release a requested record in electronic format, if such a release would mean that the software would also have to be released. Even without the software problem, though, an electronic record containing the data may be deciphered and the software program reconstructed (see below).

The agency also may refuse to provide the information in electronic format if the electronic record, when transmitted or provided to a requester, could



be altered and then retransmitted, thus rendering the original record vulnerable.

These two concerns were registered by opponents of SB 1065 last year. Thus, AB 2799 includes a provision that gives the public agency the option not to provide the information if disclosing it would jeopardize the integrity or security of the system.

- a) The Department of Motor Vehicles would not be required to provide public access to its records where access is otherwise restricted by statute.

These records would be, among others, personal information on holders of driver's licenses, and other information protected by federal and state privacy statutes.

The Governor's veto message of SB 1065 stated that many of the state's computer systems do not yet have the capacity to implement the provisions of the bill, and that he is concerned that SB 1065 would not be able to protect "the confidentiality of citizens whose personal information is maintained by the state departments including the Employment Development Department, the Department of Motor Vehicles, the Department of Health Services, and the California Highway Patrol."

Only the records of the DMV, where access to the records is restricted by statute, are exempt from this bill.

SHOULD THE OTHER AGENCIES ALSO BE EXEMPTED?

4. Costs of reproduction of records: what requester pays for

This bill would specify the copying costs that a requester would pay:

- a) If the record duplicated is an electronic record in a format used by the agency to make its own copies or copies for other agencies, the cost of duplication would be the cost of producing a copy in an electronic format.
- b) If the public agency would be required to produce a copy of an electronic record and the record is one that is produced by the public agency at otherwise regularly scheduled intervals, or if the request would require data compilation, extraction, or programming to produce the record, the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce the record.



5. Target records to be duplicated

This bill would target voluminous documents as those public records to which the public should have access in the electronic format, and those public records such as the city budget, environmental impact reports, or minutes from a Board of Supervisors' meeting as documents that should be available on disk or the Internet. Especially because these documents were created a taxpayer expense in the first place, it is argued, a person seeking copies should not be gouged by the public agency for the cost of a person standing in front of a copy machine to duplicate the record when the record could quickly be copied onto a disk or accessed on the Internet. Thus, the bill provides that the cost of duplicating a record in electronic format would be the direct cost of producing that record in electronic format, i.e., the cost of copying the CD or copying records stored in a computer into disks.

Where the records do not lend themselves to electronic format, this bill would not impose a duty on the public agency to convert the records into electronic format (just as the agency would not be permitted to make records available only in electronic format). For example, environmental impact reports, which are voluminous, normally contain maps and other fold-out attachments. Until these documents are actually produced by the public agency or their contractors in electronic format, there would be no obligation for the agency to provide the reports in disk or CD form.

However, if at some point in time these voluminous records do become available in electronic form, it is possible that public agencies will just have to create websites for posting all disclosable records accessible to the public.

6. Public agency may not delay or obstruct access to public records

This bill would provide that "Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records..." [Government Code Section 6253(d).]

Thus, any delay experienced by an agency in responding to a request could be interpreted as a violation of the Public Records Act. Under existing law, the court is required to award reasonable attorney's fees and court costs to a person who prevails in litigation filed under the PRA. But this award would be available only if the requester can prove that the agency "obstructed" the availability of the requested records for inspection or copying. Because of the change this bill would make to the referenced provision, it may invite litigation at every delay in production of records requested.

Proponents of this change, however, point to the fact that when this section was last amended, the word "delay" was replaced with the word "obstruct." The return of the word "delay" to this section, they say, would remove any



doubt that the prior substitution of "obstruct" for "delay" in subdivision (d) of Section 6253 was not intended to weaken the PRA's mandate that agencies act in good faith to promptly disclose public records requested under the Act.

An example used by proponent, counsel to The Orange County Register, is the requested records from the University of California, Irvine, for the Register's investigation and report on the abuses at the University's fertility clinic (for which the Register earned a Pulitzer Prize). The Register apparently utilized the PRA to obtain public records that were critical to the reporting. Repeated requests met with repeated months of delay, "even where the University readily conceded that the records are not exempt from disclosure." Proponent indicated, however, that the Register "is not so naïve as to believe that this amendment will solve the serious problem of administrative delay in responding to CPRA requests..."

7. "Unusual circumstance" would extend time to respond

Existing law provides for an extension of the public agency's deadline for responding to a request from 10 days to no more than 14 days more, if certain "unusual circumstances exist, such as the need to search for and collect data from field facilities separate from the office processing the request or the need for consultation with another agency that has a substantial interest in the determination of the request.

This bill would add to these "unusual circumstances," the need to compile data, write programming language or a computer program, or to construct a computer report to extract data. This provision recognizes that sometimes the information or data requested is not in a central location nor easily accessible to the agency itself, and thus would take time to produce or copy.

8. Denial of request must be in writing

Existing law requires an agency to justify the withholding of its record by demonstrating that the record requested is exempt under the PRA, or that on the facts of the particular case, the public interest served by not disclosing the information outweighs the public interest served by disclosure of the record. The PRA provision does not require this justification or denial of the request to be in writing.

This bill would expressly state that a response to a written request for inspection or copying of public records that includes a determination that the request is denied, in whole or in part, must be in writing.



9. Withdrawn opposition

The following entities initially registered opposition to the bill for various reasons, most of them related to the proprietary software and security exemption from providing information in electronic format and to the earlier version which did not specify that electronic records or electronically formatted information must be disclosable in the first place (or not exempt from the PRA) to be available in electronic format:

The County of Los Angeles; the County of Los Angeles Sheriff's Department; California State Sheriff's Association; California State Association of Counties; California Association of Clerks and Election Officials.

The amendments last made to this bill shifted these entities' position to neutral.

The one remaining opponent of the bill, the County of Orange, contends that the county, like many others, already provide information to the public on public records and how to access them, 24 hours a day through the Internet. "Without reasonable regulations," the county argues, "County staff could be required to spend considerable time copying and editing records, determining if they are appropriate for public disclosure and responding with written justifications if the requests are denied."

Support: Orange County Register

Opposition: County of Orange

HISTORY

Source: California Newspaper Publishers' Association (CNPA)

Related Pending Legislation: SB 2027 (Sher) would also amend the Public Records Act as it relates to a person's right to litigate in the event of a denial of the person's request. The bill is now in the Assembly Judiciary Committee.

Prior Legislation: AB 1099 (Shelley) and SB 1065 (Bowen), see background)

Prior Vote: Asm. G.O. (Ayes 12, Noes 2)
Asm. Appr. (Ayes 17, Noes 2)
Asm. Flr. (Ayes 70, Noes 4)



1999-2000

COMPLETE BILL HISTORY

BILL NUMBER : A.B. No. 2799
 AUTHOR : Shelley
 TOPIC : Public records: disclosure.
 TYPE OF BILL :

INACTIVE BILL
 NON-APPROPRIATION
 STATE-MANDATED LOCAL PROGRAM
 NON-TAX-LEVY

NON-URGENCY
 MAJORITY VOTE
 FISCAL

BILL HISTORY

2000

Sept. 30 Chaptered by Secretary of State - Chapter 982, Statutes of 2000.
 Sept. 29 Approved by the Governor.
 Sept. 7 Enrolled and to the Governor at 9:30 a.m.
 Aug. 25 Senate amendments concurred in. To enrollment. (Ayes 72. Noes 2. Page 8364.)
 Aug. 25 In Assembly. Concurrence in Senate amendments pending. Assembly Rule 77 suspended.
 Aug. 25 Read third time, passed, and to Assembly. (Ayes 34. Noes 0. Page 5992.)
 Aug. 18 From committee: Be placed on second reading file pursuant to Senate Rule 28.8. Read second time. To third reading.
 July 6 Read second time, amended, and re-referred to Com. on APPR.
 July 5 From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 5. Noes 0.).
 June 22 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.
 June 22 Read second time, amended, and re-referred to Com. on APPR.
 June 8 Referred to Com. on JUD.
 May 25 In Senate. Read first time. To Com. on RLS. for assignment.
 May 25 Read third time, passed, and to Senate. (Ayes 70. Noes 4. Page 6573.)
 May 24 Read second time. To third reading.
 May 23 Read second time and amended. Ordered returned to second reading.
 May 22 From committee: Amend, and do pass as amended. (Ayes 17. Noes 2.) (May 17).
 May 8 From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 12. Noes 2.) (May 8).
 May 2 Re-referred to Com. on G.O.
 Apr. 27 Joint Rule 61 (b)(5) suspended.
 Apr. 27 From committee chair, with author's amendments: Amend, and re-refer to Com. on G.O. Read second time and amended.
 Apr. 24 In committee: Set second hearing. Failed passage. Reconsideration granted.
 Apr. 10 In committee: Set, first hearing. Hearing canceled at the request



10/19/2000

Page 2

of author.

Mar. 16 Referred to Com. on G.O.
Feb. 29 From printer. May be heard in committee March 30.
Feb. 28 Joint Rule 54 suspended. Assembly Rule 49(a) suspended. Read
first time. To print.

LEGISLATIVE INTENT SERVICE (800) 666-1917

SENATE JUDICIARY COMMITTEE
Adam B. Schiff, Chairman
1999-2000 Regular Session

AB 2799	A
Assembly Member Shelley	B
As Amended June 22, 2000	
Hearing Date: June 27, 2000	2
Government Code	7
GMO:cjt	9
	9

SUBJECT

Public Records: Disclosure

DESCRIPTION

This bill would revise various provisions in the Public Records Act (PRA) in order to make available public records, not otherwise exempt from disclosure, in an electronic format, if the information or record is kept in electronic format by a public agency. It would specify what costs the requester would bear for obtaining copies of records in an electronic format.

The bill would add, to the unusual circumstances that would permit an extension of time to respond to a request for public records, the need of the agency to compile data, write programming language, or construct a computer report to extract data. The bill would require that a response to a request for public records that includes a denial, in whole or in part, shall be in writing, and provide that the Public Records Act shall not be construed to permit an agency to delay or obstruct inspection or copying of public records.

BACKGROUND

This bill is a blend of two bills that were passed by this Committee last year, AB 1099 (Shelley), and SB 1065 (Bowen).

AB 1099 passed the Senate (and was chaptered) but contained provisions unrelated to electronic records. SB 1065 was vetoed by the Governor, who stated in his veto message that he believes the bill to be well-intentioned, but "the State's information technology resources should be directed towards making sure that its computer systems are year 2000 compliant. The author was unwilling to add language which would ensure the completion of this task

(more)



before the implementation of the provisions of this bill." Most of SB 1065 was incorporated into AB 2799.

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This bill would:

- a) Require a public agency to make disclosable information available in any electronic format in which it holds the information, unless release of the information would compromise the integrity of the record or any proprietary software in which it is maintained;
- b) Add, in the definition of "unusual circumstances" for which the time limit for responding to a request for a copy of records may be extended up to 14 days after the initial 10 days, the need for the agency to compile data, to write programming language or a computer program, or to construct a computer report to extract data;
- c) Require a public agency to respond in writing to a written request for public records, including a denial of the request in whole or in part, and requiring that the names and titles of the persons responsible for the denial be stated therein;
- d) Provide that nothing in the Act shall be construed to permit the agency to delay or obstruct the inspection or copying of public records;
- e) Provide that a requester bear the costs of programming and computer services necessary to produce a record not otherwise readily produced, as specified;
- f) Delete the provision in current law that computer data that is a public record shall be provided in a form determined by the agency.

COMMENT

1. Stated need for legislation

With the advent of the electronic age, more and more people want to be able to access information in an electronic format. Apparently, there is not current



authority under which a person seeking electronically available records could obtain such records in that format. This means that if an agency makes a CD or disk copies of the records, a member of the public could not obtain records in that format—the public would have to buy copies made out of the printouts from the records. The expense of copying these records in paper format, especially when the records are voluminous, makes those public records practically inaccessible to the public, according to the author and the proponents.

The author also states that the current provision in the PRA that gives a public agency the discretion to determine in which form the information requested should be provided works so that the agency can effectively frustrate the request by providing a copy of the requested record in a form different from the request, which could sometimes render the information useless.

The sponsor of this bill, the California Newspaper Publishers Association (CNPA) also contends that the 10-day period that a public agency has to respond to a request for inspection or copying of public records is not intended to delay access to records. It is intended instead, when there is a legitimate dispute over whether the records requested are covered by an exemption, to provide time for the agency to provide the information or provide the written grounds for a denial. What many state agencies do, the sponsor says, is to use the 10 days as a "grace period" for providing the information, during which time many a requester (members of the public) often gives up and never acquires the record.

These two deficiencies in the Public Records Act are what this bill is intended to cure.

2. Information in electronic form to be provided in same form

This bill would require a public agency that has information constituting a public record in an electronic format to make that information available in an electronic format upon request. Additionally,

- a) the agency is required to provide information in any electronic format in which it holds the information; and
- b) the agency is required to provide a copy of an electronic record in the format requested if it is the format that had been used by the agency to create copies for its own use or for other agencies.

3. Conditions on providing records in electronic format

The bill would make conditional the requirement that a public agency comply with a request for public records held in an electronic format. These conditions are:



- a. An agency would not be required to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

This provision was amended into SB 1065 (Bowen) when it was heard in this Committee last year, in response to concerns raised by the some state agencies.

- b. An agency would not be permitted to make information available only in an electronic format.

Even though this bill is intended to make records available to the public in electronic format if kept by an agency in that form, an agency may not, under this bill, frustrate the public's access to information by then converting the non-electronically formatted records into electronic format. As prevalent as electronic data processing is now, there are still those who may not have access to computer equipment to read computer disks or CDs. Thus, if public information is requested in a form other than in an electronic format, a public agency must provide such record in the non-electronic format.

However, this bill would require the agency to provide information in electronic format only if requested by a member of the public. If the record is available in electronic format as well as in printed form, it is not clear whether the public agency has an obligation to tell the requester that the information is available in electronic format.

SHOULD A PUBLIC AGENCY INFORM A REQUESTER THAT THE INFORMATION REQUESTED IS AVAILABLE IN ELECTRONIC FORM?

- c. An agency would not be required to release an electronic record in electronic form if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

This limitation was added to the bill in order to alleviate concerns that electronic records, though created with taxpayer money (see Comment 5), may have been produced using software designed specifically for the agency. This bill would give the agency the flexibility to refuse to release a requested record in electronic format, if such a release would mean that the software would also have to be released. Even without the software problem, though, an electronic record containing the data may be deciphered and the software program reconstructed (see below).

The agency also may refuse to provide the information in electronic format if the electronic record, when transmitted or provided to a requester, could



be altered and then retransmitted, thus rendering the original record vulnerable.

These two concerns were registered by opponents of SB 1065 last year. Thus, AB 2799 includes a provision that gives the public agency the option not to provide the information if disclosing it would jeopardize the integrity or security of the system.

- a) The Department of Motor Vehicles would not be required to provide public access to its records where access is otherwise restricted by statute.

These records would be, among others, personal information on holders of driver's licenses, and other information protected by federal and state privacy statutes.

The Governor's veto message of SB 1065 stated that many of the state's computer systems do not yet have the capacity to implement the provisions of the bill, and that he is concerned that SB 1065 would not be able to protect "the confidentiality of citizens whose personal information is maintained by the state departments including the Employment Development Department, the Department of Motor Vehicles, the Department of Health Services, and the California Highway Patrol."

Only the records of the DMV, where access to the records is restricted by statute, are exempt from this bill.

SHOULD THE OTHER AGENCIES ALSO BE EXEMPTED?

4. Costs of reproduction of records: what requester pays for

This bill would specify the copying costs that a requester would pay:

- a) If the record duplicated is an electronic record in a format used by the agency to make its own copies or copies for other agencies, the cost of duplication would be the cost of producing a copy in an electronic format.
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5. Target records to be duplicated

This bill would target voluminous documents as those public records to which the public should have access in the electronic format, and those public records such as the city budget, environmental impact reports, or minutes from a Board of Supervisors' meeting as documents that should be available on disk or the Internet. Especially because these documents were created a taxpayer expense in the first place, it is argued, a person seeking copies should not be gouged by the public agency for the cost of a person standing in front of a copy machine to duplicate the record when the record could quickly be copied onto a disk or accessed on the Internet. Thus, the bill provides that the cost of duplicating a record in electronic format would be the direct cost of producing that record in electronic format, i.e., the cost of copying the CD or copying records stored in a computer into disks.

Where the records do not lend themselves to electronic format, this bill would not impose a duty on the public agency to convert the records into electronic format (just as the agency would not be permitted to make records available only in electronic format). For example, environmental impact reports, which are voluminous, normally contain maps and other fold-out attachments. Until these documents are actually produced by the public agency or their contractors in electronic format, there would be no obligation for the agency to provide the reports in disk or CD form.

However, if at some point in time these voluminous records do become available in electronic form, it is possible that public agencies will just have to create websites for posting all disclosable records accessible to the public.

6. Public agency may not delay or obstruct access to public records

This bill would provide that "Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records..." [Government Code Section 6253(d).]

Thus, any delay experienced by an agency in responding to a request could be interpreted as a violation of the Public Records Act. Under existing law, the court is required to award reasonable attorney's fees and court costs to a person who prevails in litigation filed under the PRA. But this award would be available only if the requester can prove that the agency "obstructed" the availability of the requested records for inspection or copying. Because of the change this bill would make to the referenced provision, it may invite litigation at every delay in production of records requested.

Proponents of this change, however, point to the fact that when this section was last amended, the word "delay" was replaced with the word "obstruct." The return of the word "delay" to this section, they say, would remove any



doubt that the prior substitution of "obstruction" for "delay" in subdivision (d) of Section 6253 was not intended to weaken the PRA's mandate that agencies act in good faith to promptly disclose public records requested under the Act.

An example used by proponent, counsel to The Orange County Register, is the requested records from the University of California, Irvine, for the Register's investigation and report on the abuses at the University's fertility clinic (for which the Register earned a Pulitzer Prize). The Register apparently utilized the PRA to obtain public records that were critical to the reporting. Repeated requests met with repeated months of delay, "even where the University readily conceded that the records are not exempt from disclosure." Proponent indicated, however, that the Register "is not so naive as to believe that this amendment will solve the serious problem of administrative delay in responding to CPRA requests..."

7. "Unusual circumstance" would extend time to respond

Existing law provides for an extension of the public agency's deadline for responding to a request from 10 days to no more than 14 days more, if certain "unusual circumstances exist, such as the need to search for and collect data from field facilities separate from the office processing the request or the need for consultation with another agency that has a substantial interest in the determination of the request.

This bill would add to these "unusual circumstances," the need to compile data, write programming language or a computer program, or to construct a computer report to extract data. This provision recognizes that sometimes the information or data requested is not in a central location nor easily accessible to the agency itself, and thus would take time to produce or copy.

8. Denial of request must be in writing

Existing law requires an agency to justify the withholding of its record by demonstrating that the record requested is exempt under the PRA, or that on the facts of the particular case, the public interest served by not disclosing the information outweighs the public interest served by disclosure of the record. The PRA provision does not require this justification or denial of the request to be in writing.

This bill would expressly state that a response to a written request for inspection or copying of public records that includes a determination that the request is denied, in whole or in part, must be in writing.



9. Withdrawn opposition

The following entities initially registered opposition to the bill for various reasons, most of them related to the proprietary software and security exemption from providing information in electronic format and to the earlier version which did not specify that electronic records or electronically formatted information must be disclosable in the first place (or not exempt from the PRA) to be available in electronic format:

The County of Los Angeles; the County of Los Angeles Sheriff's Department; California State Sheriff's Association; California State Association of Counties; California Association of Clerks and Election Officials.

The amendments last made to this bill shifted these entities' position to neutral.

The one remaining opponent of the bill, the County of Orange, contends that the county, like many others, already provide information to the public on public records and how to access them, 24 hours a day through the Internet. "Without reasonable regulations," the county argues, "County staff could be required to spend considerable time copying and editing records, determining if they are appropriate for public disclosure and responding with written justifications if the requests are denied."

Support: Orange County Register

Opposition: County of Orange

HISTORY

Source: California Newspaper Publishers' Association (CNPA)

Related Pending Legislation: SB 2027 (Sher) would also amend the Public Records Act as it relates to a person's right to litigate in the event of a denial of the person's request. The bill is now in the Assembly Judiciary Committee.

Prior Legislation: AB 1099 (Shelley) and SB 1065 (Bowen), see background)

Prior Vote: Asm. G.O. (Ayes 12, Noes 2)
Asm. Appr. (Ayes 17, Noes 2)
Asm. Flr. (Ayes 70, Noes 4)





**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

Date Amended:	05/23/00	Bill No:	AB 2799
Tax:	Public Records Act	Author:	Shelley
Board Position:		Related Bills:	SB 2027 (Sher)

BILL SUMMARY:

This bill provides for the release of public records in an electronic format and requires a public agency that withholds a public record to justify its withholding in writing.

ANALYSIS:

Current Law:

Under current law the Public Records Act, or PRA (commencing with Section 6250 of the Government Code), provides for public access to any record maintained by a state and local agency, unless there is a statutory exemption that allows or requires the agency to withhold the record.

A public record is defined as "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." The PRA provides that public records be open to inspection at all times during the office hours of the state or local agency and that every person has a right to inspect any public record, except as specifically provided.

Under current law, upon request, an exact copy of the record shall be provided unless impracticable to do so, and computer data shall be provided in a form determined by the agency.

Proposed Law:

This bill would amend Sections 6253 and 6255 of, and add Section 6253.2 to, the Government Code. Specifically, AB 2799 would:

- Delete the requirement that public records kept on computer be disclosed in a form determined by the public agency, and instead require a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

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guidelines: 1) the agency must make the information available in any electronic format in which it holds the information, 2) each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies, and 3) an agency shall not be required to reconstruct a report in an electronic format if the report is no longer in an electronic format.

- Require an agency that withholds a public record to justify its withholding in writing.
- Specify that the requirements of the bill shall not be construed to permit an agency to make information available only in an electronic format nor to permit public access to records held by the Department of Motor Vehicles that are otherwise restricted under the PRA.
- Specify that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

This bill would become operative on January 1, 2001.

what is delay? 1 wk, 10 days, 1 mo

Background:

In July 1998, the California Joint Legislative Task Force on Government Oversight issued a report entitled "The Failure of the California Public Records Act," and stated that much of the information forming the basis for state and local government decisions is not easily accessible to the public.

COMMENTS:

1. **Sponsor and purpose of the bill.** This bill is sponsored by the California Newspaper Publishers Association in an effort to ensure more useful access to public records.
2. **Portions of this bill codify existing Board practices.** The Board already provides denials of public records requests in writing.
3. **Related legislation:** This bill is similar to SB 2027 (Sher), which would establish a new appeals procedure for an agency's denial of a written request or an agency's failure to respond to a written request for a public record.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

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COST ESTIMATE:

It is not anticipated that the provisions of this bill would result in additional administrative costs. Provisions of the Public Records Act allow the Board to recover the direct costs of providing the records in an electronic format.

REVENUE ESTIMATE:

This bill would not impact state revenues.

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YAB

Analysis prepared by: Laurie D. Watson

LL 6-8-00
Perkins 6/8/00
324-1890

TWB 6-7

05/18/00

Contact:

Margaret S. Shields 322-2376

st

6/1/00
6/1/00

g:Legislat/enbill/2799-1lw

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

AB 2799

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ASSEMBLY THIRD READING
AB 2799 (Shelley)
As Amended May 23, 2000
Majority vote

GOVERNMENTAL ORGANIZATION 12-2 APPROPRIATIONS 17-E

Ayes: Wesson, Granlund, Battin, Briggs, Cardenas, Lempert, Longville, Machado, Maldonado, Strickland, Wiggins, Wright	Ayes: Migden, Campbell Alquist, Aroner, Ashburn, Cedillo, Corbett, Davis, Kuehl, Maldonado, Papan, Romero, Shelley, Thomson, Wesson, Wiggins, Zettel
Nays: Brewer, Floyd	Nays: Ackerman, Brewer

SUMMARY: Provides for the release of public records in an electronic format and requires a public agency that withholds a public record to justify its withholding in writing. Specifically,

this bill:

- 1) Deletes the requirement that public records kept on computer be disclosed in a form determined by the public agency. Requires a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following guidelines:
 - a) The agency must make the information available in any electronic format in which it holds the information;
 - b) Each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies; and,

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- c) An agency may not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- 2) Requires an agency that denies a request for inspection or copies of public records to justify its withholding in writing when the

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Page 2

request for public records was in writing.

- 3) Specifies that this requirements of this bill shall not be construed: a) to permit an agency to make information available only in an electronic format; nor, b) to permit access to records held by the Department of Motor Vehicles that are otherwise restricted under the Public Records Act (PRA) -
- 4) Specifies that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

EXISTING LAW :

- 1) Defines "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 characteristics.
- 2) Requires public records to be open to inspection at all times during the office hours of a state or local agency and affords every person the right to inspect any public record, except as specifically provided.

3) Requires state and local agencies to make an exact copy of a public record available to any person upon payment of fees covering direct costs of duplication.

4) Requires that computer data be provided in a form determined by the agency.

FISCAL EFFECT: According to the Assembly Appropriations Committee analysis:

1) Assuming that agencies generally respond in writing when denying a public records request, there should be negligible fiscal impact.

2) Potential costs to various agencies that currently make and sell copies of public records documents for workload in redacting nondisclosable electronic records from disclosable electronic records.

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COMMENTS: PRA permits a state or local agency to provide computer records in any format determined by the agency. This bill would require public agencies to provide computer records in any format that it currently uses. This bill would also prohibit an agency from delaying access to the inspection or copying of public records.

This bill is an attempt to provide reasonable guidelines for public access to electronically held records and the author believes that this bill will substantially increase the availability of public records and reduce the cost and inconvenience associated with large volumes of paper records.

Some remain concerned with this bill's requirement that public records be released in any electronic format that the agency uses to

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hold public records. They point out that state and local agencies retain massive databases which may include disclosable as well as nondisclosable public records. Those concerned claim that separating disclosable electronic records from nondisclosable electronic records could be a costly and time-consuming process that

is more vulnerable to error and may result in the unintentional release of nondisclosable records. Additionally, some note that this bill does not contain a provision authorizing agencies to charge fees covering the cost of preparing the electronic record for

public release when such preparation is necessary. It is unclear how agencies currently account for public records that are required

to be redacted but that are disclosed in a paper format.

The provisions of this bill regarding electronic records are identical to those contained in SB 1065 (Bowen) of 1999 that was vetoed by the Governor. The Governor indicated at the time that the state's information technology resources should be directed towards making sure that its computer systems were year 2000 compliant.

Analysis Prepared by: Richard Rios / G. O. / (916) 319-2531 FN:
0004727



Assembly Republican Bill Analysis
Governmental Organization Committee

AB 2799 (Shelley)
Support

AB 2799 (SHELLEY)
PUBLIC RECORDS: DISCLOSURE.

Version: 5/25/00 Last Amended
Vote: Majority
Support

Vice-Chair: Brett Granlund
Tax or Fee Increase: No
Encourages public access to computerized records of state and local agencies.

Policy Question

Should state and local agencies be required to facilitate public access to records?

Summary

1. Mandates that public agencies make records in any electronic format in which they store the records.
2. Requires public agencies to justify withholding a requested record in writing by demonstrating that the public interest protected by non-disclosure clearly outweighs the interest in disclosure.
3. Prohibits agency delay in disclosing records.
4. Requires agencies denying a written request for records, in whole or in part, to respond to the request in writing.

Support

California Newspaper Publishers Association (Sponsor), California First Amendment Coalition.

Opposition

California Municipal Utilities Association, California State Sheriffs' Association, California Association of Clerks and Election Officials, Los Angeles County Board of Supervisors, San Bernardino County Sheriff.

Assembly Republican Governmental Organization	
Votes (12-2) 5/8/00	
Ayes: Granlund, Bartin, Briggs, Maldonado, Strickland	
Noes: Brewer	
Abs / NV: Margett	
Assembly Republican Appropriations Votes (17-2)	
5/17/00	
Ayes: Campbell, Ashburn, Maldonado, Zettel	
Noes: Ackerman, Brewer	
Abs / NV: Runner	
Assembly Republican	Votes (0-0) 1/1/00
Ayes: None	
Noes: None	
Abs / NV: None	
Assembly Republican	Votes (0-0) 1/1/00
Ayes: None	
Noes: None	
Abs / NV: None	

Arguments In Support of the Bill

Permitting the broadest access to public records is consistent with the principles of our form of government and current state law. We should do what we can to assure such access. It is how the citizens know what the government is doing.

Arguments In Opposition to the Bill

This bill would increase the costs of state and local agencies by making more records available. This is just another state mandate on local governments.

Fiscal Effect

As approved by the Assembly Appropriations Committee (5/17/00):

MINOR LOCAL AND STATE COSTS -
Unknown, probably minor costs to state and local public agencies for release of records, potentially state-reimbursable.

Fiscal Comment

The costs are associated with public entities that are required to release public records in any electronic form in which it currently exists. Public entities may keep large amounts of information in a database, some of which may not be for public consumption. Public entities may then have to purge the database and eliminate nondiscloseable records, which could be a costly endeavor.

Comments

1. Under current law, the California Public Records Act requires that public records be made available for inspection and copying by the public, unless some specific and explicit exception would deny access. Copies are to be made available at a nominal charge. Computer records may be accessed through the system that the agency permits.
2. This bill would require agencies, both state and local, to make records available in any format that the agency uses itself or uses to make records available to any other agency. It would also require state and local agencies to determine that any new electronic data system

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Assembly Republican Bill Analysis

AB 2799 (Shelley)

or software would not impede or impair public access before acquiring or developing it.

- 3. Making records more accessible and requiring agencies to take into account the affect on accessibility will promote public knowledge about governmental action. That is a supportable goal. Because citizens have to know what government is doing and government now does so much, steps need to be taken to make information accessible in easily used ways.

- 4. The San Bernardino County Sheriff is concerned that requiring law enforcement agencies to provide records electronically prevents them from redacting (removing) the sensitive parts of records that other laws may obligate them not to release. He cites victims of sex crimes, child abuse and domestic violence as examples.
- 5. The other opponents claim that the costs of redacting exceed the amounts that legally they may charge for copies.

Policy Consultant: Mike Petersen 5/24/00
Fiscal Consultant: Paul J. Deiro 5/22/00

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Assembly California Legislature

KEVIN SHELLEY

Majority Leader



SENATE COMMITTEE ON JUDICIARY
Adam Schiff, Chairman

BACKGROUND INFORMATION

Measure: AB 2799

Author: Assembly Member Shelley

1. Origin of the Bill:

a) Who is the source of the bill?

California Newspaper Publisher Association

b) Has a similar bill been introduced?

AB 1099 (Shelley) – 1999 – amended for another purpose
SB 1065 (Bowen) – 1999 – vetoed

c) Interim Committee Report?

No

2. Problem or deficiency this bill seeks to remedy:

In California, all government agencies are subject to the California Public Records Act (CPRA). The CPRA is the instrument that provides the public in California with the right to access records held by the state and all of its subdivisions. It governs the public's right to access information from state and local agencies, including cities and counties, school districts, municipal

corporations, and any other boards or commissions that are part of a covered political entity (Gov. Code Section 6252).

Records subject to public access under the CPRA "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 the physical form or characteristic." Records held electronically have become the focus of great debate. Under current law, when a person makes a request for data contained in computer format, the agency has the discretion to determine in which form the information should be provided. An agency can effectively frustrate a public record's request by providing the requested records in a form different from the public's request.

It is very important that an agency disclose public information in a timely fashion. If there is a legitimate dispute over whether or not a record is covered by an exemption, the agency is entitled to take up to 10 working days to either provide the information or provide the written grounds for its denial. The 10-day period is not intended to delay access to records; however, many state agencies believe the 10-day grace period can be used for any record. By delaying the process, the public often gives up and never acquires the record.

3. See attached
4. See attached
5. The author has been working with the opposition closely to address their concerns. Amendments may be introduced to address the issue of the cost and feasibility of redacting public information. If necessary, the amendments will be submitted to committee no later June 19, 2000
6. Tom Newton, California Newspaper Publishers Association
Terry Francke, 1st Amendment Coalition

Staff Contact: Ryan Spencer, 319-2340

Unofficial Ballot

Bill: AB 2799 1999-2000
Author: Shelley
Topic: Public records: disclosure.

05/25/00 ASM. FLOOR
AB 2799 SHELLEY THIRD READING

AYES 70 NOES 4 (PASS)

05/17/00 ASM. APPR.
Do pass as amended.

AYES 17 NOES 2 (PASS)

05/08/00 ASM. G.O.
Do pass and be re-referred to the Committee on Appropriations.

AYES 12 NOES 2 (PASS)

04/24/00 ASM. G.O.
Set second hearing. Failed passage. Reconsideration granted.

AYES 13 NOES 0 (PASS)

04/24/00 ASM. G.O.
Do pass as amended and be re-referred to the Committee on Appropriations.

AYES 6 NOES 3 (FAIL)

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AB 2799
Page 1

Date of Hearing: April 24, 2000

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION
Herb Wesson, Chair
AB 2799 (Shelley) - As introduced: February 28, 2000

SUBJECT: Public records

SUMMARY: Provides for the release of public records in an electronic format and authorizes the release of records that are exempt from the Public Records Act (the PRA) in specified circumstances. Specifically, this bill:

- 1) Deletes the requirement that public records kept on computer be disclosed in a form determined by the public agency. Requires a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following guidelines:
 - a) The agency must make the information available in any electronic format in which it holds the information.
 - b) Each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.
 - c) An agency may not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.

- 1) Authorizes an agency, or the superior court in an action brought under the PRA, to disclose or order to be disclosed any record exempted from the PRA if, on the facts of the particular case, the public interest served in disclosing the record clearly outweighs the public interest served by not disclosing the record.

- 1) Requires an agency that withholds a public record to justify its withholding in writing.

- 1) Specifies that the requirements of the bill shall not be

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construed to permit an agency to make information available only in an electronic format nor shall they be construed to permit access to records held by the Department of Motor Vehicles that are otherwise restricted under the PRA.

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- 1) Specifies that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

EXISTING LAW

- 1) Defines "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 characteristics.
- 2) Requires public records to be open to inspection at all times during the office hours of a state or local agency and affords every person the right to inspect any public record, except as specifically provided.
- 3) Requires a public agency to justify withholding a public record by demonstrating that the record in question is exempt under express provisions of the PRA or that on the facts of a particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosing the record.
- 4) Requires a court, when it finds that a public official's decision not to disclose a public record is unjustified, to order the public official to make the record public.

FISCAL EFFECT : Unknown.

COMMENTS :

- 1. Need for the bill. The PRA permits a state or local

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agency to provide computer records in any format determined by the agency. This bill would require an agency to provide computer records in any format that it currently uses. According to the sponsor, the California Newspaper Publishers Association, this bill is intended to ensure quicker, more useful access to public records. The sponsor also notes that the bill seeks to provide reasonable guidelines for public access to electronically held records. The sponsor claims that this bill will balance the ability of private citizens to access public records with the discretion of public agencies to deny such records requests.

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2. Reverse balancing test. The PRA generally establishes broad guidelines about the types of documents that may not be subject to public disclosure and affords state agencies discretion to apply a balancing test when determining whether or not to release a record. In applying the test, the agency must determine that the "public interest served by not making the record public clearly outweighs the public interest served by disclosing the record." This bill attempts to apply a reverse balancing test by giving courts and state agencies the authority to disclose any public record if the agency or superior court determines that, depending on the facts of a particular case, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record. The reverse balancing test disclosure would apply even when a court finds that the record is exempted from disclosure under the PRA.

3. Opposition. Opponents argue that the bill subjects confidential records to a "vague" balancing test. Opponents claim that the test undermines key provisions of the PRA which protect proprietary information such as applications for the issuance of securities or of financial institutions, including banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies. Opponents also contend that the bill would permit a court or other agency, despite an exemption in the PRA, to order



disclosure of a record it found to pass the reverse balancing test. Opponents are concerned that this provision would permit the release of specifically exempted information such as preliminary drafts or notes, geological and utility systems data, or complaint or investigation of records of local law enforcement agencies.

4. Policy consideration. The committee may wish to consider whether the courts should have the discretion, even when they find that a record is generally exempt from disclosure under the PRA, to require disclosure of that record if it meets the reverse balancing test. The committee may also wish to consider whether the reverse balancing test gives courts and agencies too much discretionary authority to release records that are specifically prohibited from release under the PRA or any other provision of law.

REGISTERED SUPPORT / OPPOSITION :

AB 2799
Page 4

Support

California Newspaper Publishers Association
First Amendment Coalition

Opposition

Association of California Insurance Companies
California Association of Sanitation Agencies
California Chamber of Commerce
California Manufacturers & Technology Association
California Municipal Utilities Association
California State Association of Counties
California State Sheriffs Association
Civil Justice Association of California
Office of the State Attorney General
Personal Insurance Federation of California
San Bernardino County Sheriff's Department
Wine Institute

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Analysis Prepared by: Richard Rios / G. C. / (916) 319-2531

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AB 2799

Page 1

Date of Hearing: May 8, 2000

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION
Herb Wesson, Chair
AB 2799 (Shelley) - As amended: April 27, 2000

SUBJECT: Public records

SUMMARY: Provides for the release of public records in an electronic format and requires a public agency that withholds a public record to justify its withholding in writing.

- 1) Deletes the requirement that public records kept on computer be disclosed in a form determined by the public agency. Requires a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following guidelines:
 - a) The agency must make the information available in any electronic format in which it holds the information.
 - b) Each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.
 - c) An agency may not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- 1) Requires an agency that withholds a public record to justify its withholding in writing.
- 2) Specifies that the requirements of the bill shall not be construed to permit an agency to make information available only in an electronic format nor shall they be construed to permit access to records held by the Department of Motor Vehicles that are otherwise restricted under the PRA.
- 3) Specifies that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the



inspection or copying of public records.

EXISTING LAW

AB 2799

Page 2

- 1) Defines "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 characteristics.
- 2) Requires public records to be open to inspection at all times during the office hours of a state or local agency and affords every person the right to inspect any public record, except as specifically provided.
- 3) Requires state and local agencies to make an exact copy of a public record available to any person upon payment of fees covering direct costs of duplication, or a statutory fee, if applicable.
- 4) Requires that computer data be provided in a form determined by the agency.

FISCAL EFFECT: Unknown.

COMMENTS:

1. Need for the bill. The PRA permits a state or local agency to provide computer records in any format determined by the agency. This bill would require an agency to provide computer records in any format that it currently uses. According to the sponsor, the California Newspaper Publishers Association, this bill is intended to ensure quicker, more useful access to public records. The sponsor also notes that the bill seeks to provide reasonable guidelines for public access to electronically held records.

2. Substantive amendments. This bill was heard by this committee on April 24, 2000 and failed passage. Since the

April 24 hearing, the author has substantially amended the bill to remove a controversial provision which would have authorized courts and state agencies to release records exempted from the PRA if the court or agency determined that the "public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record." This provision is referred to as the "reverse balancing test" and was the primary issue of discussion during the bill's hearing.

3. Remaining opposition. Although some opponents have

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removed their opposition in response to the most recent amendments, some remain concerned with the bill's requirement that public records be released in any electronic format that the agency uses to hold public records. Opponents point out that state and local agencies retain massive databases which may include nondisclosable public records. -They claim that redacting the nondisclosable information from the electronic records could be a costly and time-consuming process that is more vulnerable to error, which may result in the unintentional release of nondisclosable information. Opponents note that the bill does not contain a provision authorizing agencies to charge fees covering the cost of preparing the electronic record for public release. It is unclear how local agencies currently account for public records that are required to be redacted but that are disclosed in a paper format.

4. Similar legislation. AB 1099 (Shelley) of this legislative session would have required state and local agencies to provide copies of public records in any form requested, including in a computer format, as long as the form was already used by the agency in the conduct of its business. AB 1099 passed this committee by a 15-0 vote but was later amended to contain a subject matter different from that which this committee considered.



REGISTERED SUPPORT / OPPOSITION :

Support

California Newspaper Publishers Association
First Amendment Coalition

Opposition

California Association of Sanitation Agencies
California Municipal Utilities Association
California State Sheriffs Association
Office of the State Attorney General
San Bernardino County Sheriff's Department

AB 2799
Page 4

Analysis Prepared by : Richard Rios / G. O. / (916) 319-2531

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AB 2799
Page 1

Date of Hearing: May 17, 2000

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Carole Migden, Chairwoman

AB 2799 (Shelley) - As Amended: April 27, 2000

Policy Committee: Governmental
Organization Vote: 12-2

Urgency: No State Mandated Local Program:
Yes Reimbursable: No

SUMMARY

This bill, as proposed to be amended:

- 1) Requires that a public agency's justification for denying the release of a public record be made in writing if the request for that record was submitted in writing.
- 2) Requires public agencies to make public records available, when requested, in the electronic format in which they hold the information.
- 3) Specifies that the direct costs of duplication, for which agencies may charge requesters pursuant to current law, include the costs associated with duplicating electronic records.

FISCAL EFFECT

- 1) Assuming that agencies generally respond in writing when denying a public records request, there should be negligible fiscal impact.
- 2) Potential revenue loss to various agencies that currently make and sell copies of public records documents, probably offset by workload savings from providing electronic rather than paper copies of public records.

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COMMENTS

1) Purpose. According to the sponsor, the California Newspaper Publishers Association, this bill is intended to ensure

AB 2799

Page 2

quicker access to public records. The sponsor also notes that the bill seeks to provide reasonable guidelines for public access to electronically held records.

2) Prior Legislation. The provisions of this bill regarding electronic records are identical to those contained in SB 1065 (Bowen) from last year. That bill was vetoed by the governor, who indicated at the time that the state's information technology resources should be directed towards making sure that its computer systems were year 2000 compliant.

3) Amendment. Staff recommends the following amendments, which generally would conform with current practice and are reflected in this analysis.

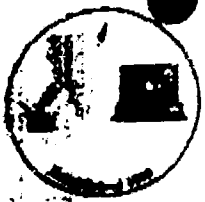
On page 5, line 9, after "6255", insert "(a)".

On page 5, line 10, delete "in writing."

On page 5, after line 15, insert: "(b) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing."

Analysis Prepared by: Chuck Nicol / APPR. / (916) 319-2081





CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS

Officers 1999-2000
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President
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Union, CA 95482
(707) 463-4378
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Yuba County

June 21, 2000

The Honorable Kevin Shelley
California State Assembly
State Capitol, Room 3160
Sacramento, CA 95814

Dear Assembly Member Shelley:

ASSEMBLY BILL 2799 (SHELLEY) PUBLIC RECORDS: DISCLOSURE AS PROPOSED AMENDED NEUTRAL

Based on the amendments agreed to this week, the California Association of Clerks and Election Officials removes its opposition to ~~AB 2799~~ AB 2799. Our members wish to thank you for agreeing to amend the bill to address their concerns.

The bill, as proposed amended, now addresses the costs incurred by public agencies in providing copies of electronic records under circumstances now described in the bill. We appreciate your ~~commitment~~ and that of the bill's sponsor, to work with us to resolve the issues raised during the discussion of AB 2799.

Very truly yours,

Violet Varona-Lukens, Co-Chair
Clerks of the Board of Supervisors
Legislative Committee

MVL:JM:pj

LEGISLATIVE INTENT SERVICE (800) 666-1917

California State Association of Counties



May 3, 2000

100 A Street
Suite 101
Sacramento
California
95814
Telephone
916/327-7500
Facsimile
916/441-5507

The Honorable Kevin Shelley
Member of the Assembly
Room 3160, State Capitol Building
Sacramento, CA 95814

RE: AB 2799 (Shelley) - REMOVAL OF OPPOSITION (As amended April 27, 2000)
Set for hearing May 8, Assembly Governmental Organization Committee

Dear Assembly Member Shelley:

The California State Association of Counties (CSAC) has removed its opposition to AB 2799, your measure relating to public records, following amendments on April 27, 2000.

The removal of the "reverse balancing" provision under Government Code section 6255(b) addresses the majority of county concerns on this measure. We look forward to working with you and your staff to continue discussions on other provisions in AB 2799.

Thank you for your continued willingness to work with us. Please feel free to contact me at 916/327-7500, ext. 513, or Elizabeth Howard at 916-327-7500, ext. 537 at any time.

Sincerely,

Rubin R. Lopez
Legislative Representative

cc: The Honorable Herb Wesson, Chair, Assembly Governmental Organization Committee
Members and Consultants, Assembly Governmental Organization Committee

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California State Sheriffs' Association

Organization Founded by the Sheriffs in 1850

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San Joaquin County

John E. Phillips
Executive Director

June 22, 2000

The Honorable Adam Schiff, Chair
Senate Judiciary Committee
2205 Capitol Building
Sacramento, CA 95814

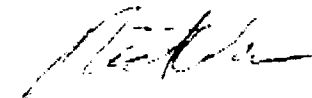
Subject: AB 2799 (Shelley) – Remove opposition

Dear Chair Schiff:

On behalf of the California State Sheriffs Association (CSSA), I am pleased to inform you that we have removed our opposition to the measure. We are now neutral on the bill.

Thank you for your consideration of our position.

Cordially,


Nick Warner
Legislative Advocate

cc: The Honorable Kevin Shelley, Member of the Assembly

1450 Halyard Drive, Suite 6 * West Sacramento, California 95691-5001
P O Box 980790 * West Sacramento, California 95798-0790
Telephone 916/375-8000 * Fax 916/375-8017

(800) 666-1917

LEGISLATIVE INTENT SERVICE



BILL NUMBER: SB 1065
VETOED DATE: 10/17/1998

To the Members of the Senate:

I am returning Senate Bill 1065 without my signature.

This is well-intentioned legislation. However, many of the state's computer systems do not yet have the capacity to implement the provisions of this bill.

As such, this bill does not keep faith with previous legislation I have signed to protect the confidentiality of citizens whose personal information is maintained by state departments including the Employment Development Department, the Department of Motor Vehicles, the Department of Health Services, and the California Highway Patrol.

I believe the State's information technology resources should be directed towards making sure that its computer systems are year 2000 compliant. The author was unwilling to add language which would ensure the completion of this task before the implementation of the provisions of this bill.

Cordially,

GRAY DAVIS

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**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date Amended:	07/06/00	Bill No:	AB 2799
Tax:	Public Records Act	Author:	Shelley
Board Position:		Related Bills:	SB 2027 (Shar)

BILL SUMMARY:

This bill provides for the release of public records in an electronic format and requires a public agency that withholds a public record to justify its withholding in writing.

ANALYSIS:

Current Law:

Under current law the Public Records Act, or PRA (commencing with Section 6250 of the Government Code), provides for public access to any record maintained by a state and local agency, unless there is a statutory exemption that allows or requires the agency to withhold the record.

A public record is defined as "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." The PRA provides that public records be open to inspection at all times during the office hours of the state or local agency and that every person has a right to inspect any public record, except as specifically provided.

Under current law, upon request, an exact copy of the record shall be provided unless impracticable to do so, and computer data shall be provided in a form determined by the agency.

Proposed Law:

This bill would amend Sections 6253 and 6255 of, and add Section 6253.9 to, the Government Code. Specifically, AB 2799 would:

- Delete the requirement that public records kept on computer be disclosed in a form determined by the public agency, and instead require a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

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Assembly Bill 2799 (Shelley)

Page 2

DRAFT

guidelines: 1) the agency must make the information available in any electronic format in which it holds the information, 2) each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies, 3) an agency shall not be required to reconstruct a report in an electronic format if the report is no longer in an electronic format, 4) if the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format, and 5) the duplication costs shall be limited to the direct cost of producing a copy of the record in an electronic format, as specified.

- Require an agency that withholds a public record in response to a written request to justify its withholding in writing.
- Allow additional time for an agency to provide records under unusual circumstances, including the need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.
- Specify that the requirements of the bill shall not be construed to permit an agency to make information available only in an electronic format nor to permit public access to records held by any agency that are otherwise restricted under the PRA.
- Specify that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

This bill would become operative on January 1, 2001.

Background:

In July 1998, the California Joint Legislative Task Force on Government Oversight issued a report entitled "The Failure of the California Public Records Act," and stated that much of the information forming the basis for state and local government decisions is not easily accessible to the public.

COMMENTS:

1. **Sponsor and purpose of the bill.** This bill is sponsored by the California Newspaper Publishers Association in an effort to ensure more useful access to public records.
2. **Amendments to this bill since our analysis of the May 23, 2000 version are minor.**
3. **Portions of this bill codify existing Board practices.** The Board already provides denials of public records requests in writing.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

LH: 216 SP - 39

Assembly Bill 2799 (Shelley)

Page 3

DRAFT

4. **Related legislation:** This bill is similar to SB 2027 (Sher), which would establish a new appeals procedure for an agency's denial of a written request or an agency's failure to respond to a written request for a public record.

COST ESTIMATE:

It is not anticipated that the provisions of this bill would result in additional administrative costs. Provisions of the Public Records Act allow the Board to recover the direct costs of providing the records in an electronic format.

REVENUE ESTIMATE:

This bill would not impact state revenues.

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Analysis prepared by:	Laurie D. Watson	324-1890	07/10/00
Contact:	Margaret S. Shedd	322-2378	

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This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.



California Newspaper Publishers Association CNPA Services, Inc.

930 G Street, Sacramento, CA 95814-1811
Tel: (916) 238-6000 • Fax: (916) 238-6002

APR 26 1999

April 26, 2000

Honorable Herb Wesson
California State Assembly
State Capitol Room 2179
Sacramento, California 95814

RE: SPONSOR AB 2799, AS AMENDED

Dear Assembly member ^{Herb}Wesson:

The California Newspaper Publishers Association urges your support of Assembly **Bill 2799** by Assemblyman Kevin Shelley, which was amended in the Assembly Governmental Organization Committee April 23, to remove a provision known as the "Reverse Balancing Test" that was opposed by a large number of diverse interests. **AB 2799** is scheduled to be reheard by the Assembly Committee on Governmental Organization on Monday, April 21.

As amended, **AB 2799** would:

- **Electronic access** - The bill would require state and local agencies to provide copies of accessible computerized public records in an electronic format. Current law provides virtually no direction on this issue either for the public or agencies governed by the Act. The law merely provides that "Computer data shall be provided in a form determined by the agency" (Govt. Code Sec. 6253 (b)). **AB 2799** would provide reasonable rules for public access to electronically held records, including a provision that these records shall be made available in any form in which the agency holds the information.
- **"Delay"** - **AB 2799** would reinsert the word "delay" into Sec. 6253 (d), removed unwisely in 1996 legislation, to provide that, notwithstanding the timelines described in the Act, an agency shall not delay access to the inspection or copying of public records.

The recent amendment to **AB 2799** removes most, if not all of the opposition. Last year, legislation with language identical to the electronic access provisions of **AB 2799** was unanimously approved by the committee, although the bill was vetoed by the Governor

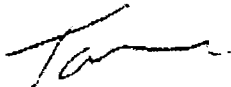
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Honorable Herb Wesson
California State Assembly
RE: SPONSOR AB 2799, AS AMENDED
April 26, 2000
Page 2

because of the uncertainty surrounding the Y2K problem. On behalf of the nearly 500 newspaper members of CNPA, please vote AYE on AB 2799 when it comes before you.

Sincerely,



Thomas W. Newton
CNPA General Counsel

cc: Honorable Kevin Shelley
Honorable Debra Bowen
George Riggs, CNPA President, Publisher and CEO, Contra Costa Times
Bill Niese, General Counsel, Times Mirror
Jack Bates, CNPA Executive Director
James Ewert, CNPA Legal Counsel
Richard Rios, Senior Consultant to the Assembly Governmental Organization Committee

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ATTORNEYS AT LAW

April 7, 2000

Honorable Kevin Shelley
California State Assembly
State Capitol, Room 3160
Sacramento, CA 95814

Re: AB 2799

Dear Assembly Member Shelley:

This firm serves as First Amendment counsel to The Orange County Register. I write to express The Register's enthusiastic support for AB 2799. Although AB 2799 contains a number of worthy provisions, this letter specifically addresses one portion of the legislation that may not receive the attention that it deserves.

Specifically, AB 2799 would insert into Gov't Code subsection 6253(d) the words "delay or." The effect of this amendment would be to restore a term to subsection (d) that was previously deleted when the term "obstruct" was inserted in place of the word "delay." Although the proposed amendment may appear only technical and inconsequential, it is not.

The Register, like other metropolitan and community newspapers in California, routinely relies on the California Public Records Act (CPRA) to obtain access to public records that are essential to enable it to inform its readers regarding the operations of government agencies and the conduct of government officials. Too often, public agencies to which CPRA requests are addressed search for technicalities in the statute to delay the release of records that may raise questions regarding the propriety or efficacy of agency decisions and may embarrass agency officials. These agencies know full well that, as one court has stated, "news delayed is often news denied," and that by delaying the release of potentially controversial records, they may deny a news organization information that is vital to time-sensitive reporting.

For example, when The Register investigated and reported on the abuses at the fertility clinic at the University of California-Irvine - reporting that earned it journalism's most distinguished award, the Pulitzer Prize, and prompted reform legislation in California and

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Honorable Kevin Shelley
April 10, 2000
Page 2

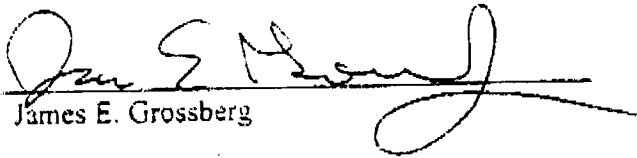
elsewhere – The Register utilized the CPRA to obtain public records that were critical to The Register's reporting. Yet, time and time again, the University of California ignored the CPRA's mandate that public records be open to inspection "at all times" and that, even if the agency has a basis on which to question whether records are exempt from disclosure under applicable law, the agency determine within 10 days whether the records are in fact exempt. Rather, The Register's CPRA requests were typically met with months of delay, even where the University readily conceded that the records were not exempt from disclosure.

The provision of AB 2799 described above would return to the CPRA language that specifically instructs that nothing in the Act shall be utilized as an excuse to delay the inspection of public records as required by law. Although The Register is not so naïve as to believe that this amendment will solve the serious problem of administrative delay in responding to CPRA requests, it will at least remove any doubt that the prior substitution of "obstruct" for "delay" in subsection 6253(d) was not intended to weaken the CPRA's mandate that agencies act in good faith to promptly disclose public records requested under the Act.

Thank you for your consideration of this letter and for your introduction of AB 2799.

Yours sincerely,

LEVINE SULLIVAN & KOCH, L.L.P.

By 
James E. Grossberg

LEGISLATIVE INTENT SERVICE (800) 666-1917



California Newspaper Publishers Association CNPA Services, Inc.

930 G Street, Sacramento, CA 95814-1811
Tel: (916) 288-6000 • Fax: (916) 288-6002

June 27, 2000

Honorable Cathie Wright
California State Senate
State Capitol Room 5052
Sacramento, California 95814

RECEIVED
JUN 28 2000

RE: SPONSOR AB 2799, AS AMENDED

Dear Senator *Cathie Wright*

The California Newspaper Publishers Association urges your support of **Assembly Bill 2799** by Assemblyman Kevin Shelley, which, as amended June 22, 2000, would make several important changes to the California Public Records Act. **AB 2799** is scheduled to be heard by the Senate Judiciary Committee on Thursday, June 29.

The most recent amendments would allow state and local agencies to recover certain costs associated with making available a computer-format copy of a record. Specifically, the amendments would allow agencies, in response to a request for a computer-format copy of a public record, to recover costs associated with compiling data, extracting data, or performing programming in order to make a copy of a record. With one exception, the latest amendments have removed all known opposition to the bill. It is our understanding that the single remaining opponent to **AB 2799** (Orange County), has decided to oppose any version of legislation that would allow citizens to access their records in an electronic format.

AB 2799 would do all of the following:

- **Electronic access** -- The bill would require state and local agencies to provide copies of accessible computerized public records in an electronic format. Current law provides virtually no direction on this issue either for the public or agencies governed by the Act. The law merely provides that "Computer data shall be provided in a form determined by the agency "(Govt. Code Sec. 6253 (b))." **AB 2799** would provide reasonable rules for public access to electronically held records, including a provision that these records shall be made available in any form in which the agency holds the information.

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LEGISLATIVE INTENT SERVICE



Honorable Cathie Wright
California State Senate
RE: SPONSOR AB 2799, AS AMENDED
June 27, 2000
Page 2

- **"Delay"** -- **AB 2799** would reinsert the word "delay" into Sec. 6253 (d), removed unwisely in 1996 legislation, to provide that, notwithstanding the timelines described in the Act, an agency shall not delay access to the inspection or copying of public records.
- **Response in writing** -- **AB 2799** would require agencies to justify "in writing" their decision to withhold access to records if the request was submitted to the agency in writing.

At this late date, it seems slightly surreal that the state that has accomplished more than any other to deliver the information age to the world, has not enacted simple rules to allow its citizens *modern* public access to its public records. On behalf of the nearly 500 members of the CNPA, please vote AYE on **AB 2799** when it comes before you.

Sincerely,



Thomas W. Newton
CNPA General Counsel

cc: Honorable Kevin Shelley
Honorable Debra Bowen
George Riggs, CNPA President, Publisher and CEO, Contra Costa Times
Hal Fuson, V.P. and Chief Legal Officer, Copley Press, Inc.
Jack Bates, CNPA Executive Director
James Ewert, CNPA Legal Counsel
Gloria Mejias Ochoa, Consultant to the Senate Judiciary Committee

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(800) 666-1917

LEGISLATIVE INTENT SERVICE



June 27, 2000

To: Senator Adam Schiff,
Chair, Senate Judiciary Committee
State Capitol,
Sacramento, CA 95814

From: Barbara Alexander
7031 Zoeland Drive
Citrus Heights, CA 95621

Re: Opposition to AB 2754 (House)

Sent by facsimile letter to 445-8390

I learned this week of Assemblyman House's bill to allow animal shelters to kill animals brought to them more quickly. You cannot imagine how upsetting this is to a family like mine. We continually try to find ways to rescue and save the lives of abandoned, injured or mistreated dogs and cats. Very recently, we spent days trying to find a way to rescue a cat trapped in an abandoned building.

Some states do not allow animals to be killed at all, especially if there is one small shred of hope the animal can be treated or socialized. California should require all shelters to be "no kill" shelters. No kill shelters will provide the incentives needed for both individuals and government to finally address, in a humane and adequate way, the issue of dog and cat overpopulation.

Please do not allow this bill to pass your committee.

Thank you for your consideration.

Sent by facsimile letter to
Assemblyman George House
319-2125

LEGISLATIVE INTENT SERVICE (800) 666-1917



**CARPENTER SNODGRASS
& ASSOCIATES**

SHELLEY
316C

June 20, 2000

JUN 20 2000

TO: The Honorable Adam Schiff, Chairperson
Members, Senate Judiciary Committee

FROM: Carpenter Snodgrass & Associates **OPPOSE**

RE: **AB 2799 (Shelley)** Hearing Date: June 29, 2000

On behalf of the Orange County Board of Supervisors, we urge your opposition to AB 2799 (Shelley) which would require any agency to provide electronic public records upon request.

The County of Orange, like many counties is using the Internet to broadcast information about public records and how they can be accessed by the community. This gives citizens 24 hour-a-day access to Assessor, Treasurer-Tax Collector, Purchasing and Board of Supervisors records, to name a few.

Without reasonable regulations, County staff could be required to spend considerable time copying and editing records, determining if they are appropriate for public disclosure and responding with written justifications if requests are denied.

For these reasons we urge your NO vote on AB 2799.

cc: Assemblyman Shelley

LEGISLATIVE INTENT SERVICE (800) 666-1917





California State Sheriffs' Association

Organization Founded by the Sheriffs in 1894

April 7, 2000

The Honorable Kevin Shelley
Member of the Assembly
Room 3160, State Capitol Building
Sacramento, CA 95814

RE: AB 2798 (Shelley) - Oppose unless amended

Dear Assembly Member Shelley:

The California State Sheriffs' Association (CSSA), I regret to inform you that we must oppose your AB 2799, relative to public records.

As you know, your AB 2799 contains provisions similar to those in last year's AB 1099 relating to the release of documents in an electronic format. Although we did not oppose AB 1099, we respectfully suggest that AB 2799 makes changes to existing law that are unnecessary and are likely to cause more problems than they solve.

Firstly, the "reverse balancing" provision under Government Code section 6255(b) appears to permit a court—despite any other exemption in the Public Records Act—to order disclosure of records "if, on the facts of the particular case, the public interest served by disclosing the record outweighs the public interest served by not disclosing the record." It would appear, for example, investigation records of local law enforcement agencies, and any other records currently exempted, could be ordered to be released. We are concerned that this provision could jeopardize ongoing investigations. We would suggest that this section be amended to exempt records of an ongoing investigation by law enforcement.

Secondly, we are concerned with the working in section 6253(d), which says that, "Nothing in this chapter shall be construed to delay or obstruct the inspection of copying of public records." Frankly, while reasonable parties may be able to work around this provision, it is ripe for abuse and will likely result in far more contests in this area. We suggest that this amendment be removed or clarified.

We stand ready to work with you and your staff on identifying the exact problem you seek to address by these amendments and to help you amend the bill so that we may remove our opposition. Thank you

Sincerely,

Nick Warner
Legislative Representative

cc: The Honorable Herb Wesson, Chair, Assembly Governmental Organization Committee

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P O Box 980790 * West Sacramento, California 95798-0790
Telephone 916/373-8000 * Fax 916/373-8017

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GARY PENROD, SHERIFF

May 3, 2000

The Honorable Kevin Shelley
Assembly Member
Capitol Building #3160
Sacramento, CA 95814

Position: OPPOSE AS AMENDED April 27, 2000 AB2799 Public Records Disclosure

Dear Assembly Member Shelley:

Local law enforcement agencies receive public records requests on a daily basis from news gathering companies, special interests groups and business entities seeking large amounts of data from our files which will further their interests. Ordinary citizens rarely request information and when they do it is usually related to an event in which they were involved in or in their neighborhood. Special interest requests cause local law enforcement employees to spend countless hours researching electronic data bases to identify exempt files, and segregating those files which would invade the personal privacy of citizens.

The inflexible mandate to provide data in an electronic format fails to address the redaction problems created by providing the data in an electronic format. There currently does not exist a program, which would have the capability of extracting exempt records from releasable ones. Law enforcement records can and do at times contain sensitive business and personal data acquired during a criminal investigation. This data, if released, could have an adverse effect on the person or business who reported a crime. Businesses and citizens who do not wish to have their personal information made public (victims of sex crimes, child abuse, domestic violence etc.) by virtue of electronic data would be left with only one choice: to not report a crime.

This bill also fails to address the actual cost to the public of redacting an electronic database. In order to redact the database, each record must be reviewed individually. All of the costs for personnel to review the database are not currently reimbursable, only the cost of the copy of the file.

For these reasons we must continue to oppose this measure.

Sincerely,

Paul R. Curry
Paul R. Curry, Lieutenant
Legislative Liaison
909.387.0632

cc: Assembly Governmental Organization Committee

LEGISLATIVE INTENT SERVICE (800) 666-1917



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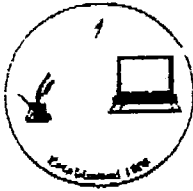
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CALIFORNIA ASSOCIATION OF
CLERKS AND ELECTION OFFICIALS

April 27, 2000

The Honorable Kevin Shelley
State Capitol, Room 3160
Sacramento, CA 95814

Dear Assembly Member Shelley:

**Assembly Bill 2799 (Shelley) Public Records: Disclosure
OPPOSE, UNLESS AMENDED**

Regretfully, the Clerk of the Board of Supervisors Section of the California Association of Clerks and Election Officials opposes AB 2799, unless amended to remove language contained in Section 3 that would fundamentally change the "balancing test" regarding a public agency's decision to disclose or not to disclose a record.

The Public Records Act requires public agencies to make records available for inspection and copying at all times during normal business hours. The Act exempts certain public records from such disclosure. Further, the Act requires a public agency to justify its decision not to disclose a record that is not specifically exempted from disclosure by the Act, by showing that the public interest in not disclosing the record clearly outweighs the public interest in disclosing the record (the "balancing test").

Your bill would permit an agency to ignore even specific exemptions contained in the Act and disclose a record. It would also permit a superior court to order such a record disclosed and would, in effect shift the burden to a public agency in a court proceeding to show that a decision to withhold the record was justified. This would turn the Act's balancing test on its head. Moreover, it would eviscerate all of the privacy protections afforded to citizens currently contained in the Act.

Although we recognize that most records in the possession of clerks of the board of supervisors are public records and that they are clearly subject to disclosure, we are very concerned about the effects this bill would have on sensitive records that are appropriately exempted from disclosure by the Act and by other sections of state law. We believe that placing public agencies in the position of bearing a burden in court to justify nondisclosure of such records is nonsensical and is poor public policy.



The Honorable Kevin Shelley
April 27, 2000
Page 2

The bill would also add the word "delay" to subdivision (d) of Section 6253 (Section 1 of the bill). We question the necessity and advisability of adding this word since the current language of the Public Records Act is quite clear with respect to the time limit by which an agency must produce a record. Addition of this word merely creates confusion where currently none exists.

Again, we must oppose your bill unless amended to address our concerns. If you require any additional information, please call Legislative Committee member John McKibben at (213) 974-1405 or our legislative advocate Bill Siverling at (916) 444-7592.

Very truly yours,



Violet Varona-Lukens, Co-Chair
Clerks of the Board of Supervisors
Legislative Committee

c: Each Member and Consultant,
Assembly Committee on Governmental Organization
William Siverling, Legislative Advocate

J:\Legislation\Legislation 2000\AB 2799 ago.doc

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LEGISLATIVE INTENT SERVICE





COUNTY OF LOS ANGELES
Sacramento Legislative Office

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DANIEL J. WALL
Chief Legislative Representative

May 22, 2000

ASSEMBLY FLOOR LETTER

**ASSEMBLY BILL 2799 (SHELLEY)
AS AMENDED APRIL 27, 2000
POSITION: OPPOSE
ASSEMBLY THIRD READING FILE**

The Los Angeles County Board of Supervisors ~~opposes~~ **Assembly Bill 2799 (Shelley)**, as amended April 27, 2000, relating to public records. That measure soon will be on the Assembly Third Reading File.

Current provisions of the California Public Records Act (PRA) permit computer data held by a public agency to be disclosed in a form determined by the public agency.

Assembly Bill 2799 deletes the authority for a public agency to determine the form in which computer data is to be released. It requires a public agency to provide computer records in any format that the agency utilizes and requires written justification of a public agency's decision to withhold an electronic file.

The broad approach of Assembly Bill 2799 causes problems within several County departments. For example, the Auditor-Controller reports that Countywide time keeping systems contain data that would require special programming to provide information without jeopardizing employee privacy.

The Audit Division utilizes special proprietary software that cannot be redacted in its original electronic format. The electronic format proposal will increase substantially the cost of legal review, redaction and special programming.

Because of the potential costs associated with its implementation, I urge your "NO" vote on Assembly Bill 2799.

Very truly yours,

Steve Zehner
Principal Deputy County Counsel
SZ:lf

cc: Each Assembly Member

LEGISLATIVE INTENT SERVICE (800) 666-1917





County of Los Angeles
Sheriff's Department Headquarters
 1700 Ramona Boulevard
 Monterey Park, California 91754-2169



LEROY D. BACA SHERIFF

April 20, 2000

Assemblymember Kevin Shelley
 California State Assembly
 State Capitol, Room 3160
 Sacramento, California 95814

Dear Assemblymember Shelley:



The Los Angeles County Sheriff's Department opposes Assembly Bill 2799. The bill vests discretion in public agencies or the courts to override express provisions of the Public Records Act which otherwise prohibit disclosure of certain records. Additionally, the bill requires that public records which exist in an electronic format be produced in that format rather than having a "hard-copy" printed.

By vesting discretion in public agencies or the courts, this bill effectively swallows the rule which has identified specific types of sensitive records which should not be disclosed. Under the provisions of this bill, even the names of sex crime victims and information contained in on-going criminal investigations become subject to discretionary disclosure.

Additionally, by requiring records which exist in an electronic format to be produced in the same electronic format, the agency holding the record is prevented from redacting information contained in the record which is confidential and not otherwise subject to disclosure.

Based upon the foregoing reasons, the Los Angeles County Sheriff's Department opposes Assembly Bill 2799.

If I can be of any assistance in this matter, please feel free to contact me or my Legislative Advocates, Sergeant Wayne Bilowit and Sergeant Gerald Cooper at (323) 526-5228.

Sincerely,

Leroy D. Baca
 LEROY D. BACA
 SHERIFF

A Tradition of Service

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28.8's

DATE 8-9-00

(A) - Recommend 28.8 With Author's Amendments. Amendments have no effect on 28.8 recommendation

BILL #	Author	(A)	Minor Absorbable Costs	Chairman Approves		Consultant Comments
				Yes	No	
B 278	Renes				18/	
333	Pagan			Y		
950	Thomson			Y		
1962	Tempert			Y		
2008	Lewenthal			Y		
2054	Borderson			Y		
2234	Wiggins			Y		
2259	Wiggins			Y		
2506	Romero			Y		
2597	Cardenas			Y		
2701	Jackson			Y		
2799	Shelley			Y		
2897	Knott			Y		

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STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	07/06/00	Bill No:	AB 2799
Tax:	Public Records Act	Author:	Shelley
Board Position:		Related Bills:	SB 2027 (Sher)

BILL SUMMARY:

This bill provides for the release of public records in an electronic format and requires a public agency that withholds a public record to justify its withholding in writing.

ANALYSIS:

Current Law:

Under current law the Public Records Act, or PRA (commencing with Section 6250 of the Government Code), provides for public access to any record maintained by a state and local agency, unless there is a statutory exemption that allows or requires the agency to withhold the record.

A public record is defined as "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." The PRA provides that public records be open to inspection at all times during the office hours of the state or local agency and that every person has a right to inspect any public record, except as specifically provided.

Under current law, upon request, an exact copy of the record shall be provided unless impracticable to do so, and computer data shall be provided in a form determined by the agency.

Proposed Law:

This bill would amend Sections 6253 and 6255 of, and add Section 6253.9 to, the Government Code. Specifically, AB 2799 would:

- Delete the requirement that public records kept on computer be disclosed in a form determined by the public agency, and instead require a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position. LH: 233



Assembly Bill 2799 (Shelley)

guidelines: 1) the agency must make the information available in any electronic format in which it holds the information, 2) each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies, 3) an agency shall not be required to reconstruct a report in an electronic format if the report is no longer in an electronic format, 4) if the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format, and 5) the duplication costs shall be limited to the direct cost of producing a copy of the record in an electronic format, absent specified exemptions.

- Require an agency that withholds a public record in response to a written request to justify its withholding in writing.
- Allow additional time for an agency to provide records under unusual circumstances, including the need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.
- Specify that the requirements of the bill shall not be construed to permit an agency to make information available only in an electronic format nor to permit public access to records held by any agency that are otherwise restricted under the PRA.
- Specify that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

This bill would become operative on January 1, 2001.

Background:

In July 1998, the California Joint Legislative Task Force on Government Oversight issued a report entitled "The Failure of the California Public Records Act," and stated that much of the information forming the basis for state and local government decisions is not easily accessible to the public.

COMMENTS:

1. **Sponsor and purpose of the bill.** This bill is sponsored by the California Newspaper Publishers Association in an effort to ensure more useful access to public records.
2. **Amendments to this bill since our analysis of the May 23, 2000 version are minor.**
3. **It would be extremely difficult for the Board to "write programming language or a computer program, or to construct a computer report to extract data" with just an additional 14 days.** Board staff would likely need more time and resources to construct such items in an acceptable and usable form. Other portions of this bill codify existing Board practices, for example the Board already provides denials of public records requests in writing.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position. LH: 234

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Assembly Bill 2799 (Shelley)

4. **Related legislation:** This bill is similar to SB 2027 (Sher), which would establish a new appeals procedure for an agency's denial of a written request or an agency's failure to respond to a written request for a public record.

COST ESTIMATE:

It is not anticipated that the provisions of this bill would result in additional administrative costs. Provisions of the Public Records Act allow the Board to recover the direct costs of providing the records in an electronic format.

REVENUE ESTIMATE:

This bill would not impact state revenues.

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Analysis prepared by:	Laurie D. Watson	324-1890	07/10/00
Contact:	Margaret S. Shedd	322-2376	

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This staff analysis is provided to address various administrative, cost, revenue and policy issues. It is not to be construed to reflect or suggest the Board's formal position. LH: 235

SENATE RULES COMMITTEE

AB 2799

Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 445-6614 Fax: (916) 327-4478

THIRD READING

Bill No: AB 2799
Author: Shelley (D), et al
Amended: 7/6/00 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE: 5-0, 6/29/00
AYES: Escutia, Morrow, O'Connell, Peace, Schiff

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 70-4, 5/25/00 - See last page for vote

SUBJECT: Public records: disclosure

SOURCE: California Newspaper Publishers Association

DIGEST: This bill revises various provisions in the Public Records Act (PRA) in order to make available public records, not otherwise exempt from disclosure, in an electronic format, if the information or record is kept in electronic format by a public agency. It specifies what costs the requester would bear for obtaining copies of records in an electronic format.

The bill adds, to the unusual circumstances that would permit an extension of time to respond to a request for public records, the need of the agency to compile data, write programming language, or construct a computer report to extract data. The bill requires that a response to a request for public records that includes a denial, in whole or in part, shall be in writing, and provides that the Public Records Act shall not be construed to permit an agency to delay or obstruct inspection or copying of public records.



ANALYSIS: The Public Records Act allows an agency to provide computer data in any form determined by the agency. The Act directs a public agency, upon request for inspection or for a copy of the records, to respond to a request within 10 days after receipt of the request. In unusual circumstances, which are specified in the Act, this timeline for responding may be extended in writing for 14 days. [Government Code Section 6253.]

This bill would:

1. Require a public agency to make disclosable information available in any electronic format in which it holds the information, unless release of the information would compromise the integrity of the record or any proprietary software in which it is maintained;
2. Add, in the definition of "unusual circumstances" for which the time limit for responding to a request for a copy of records may be extended up to 14 days after the initial 10 days, the need for the agency to compile data, to write programming language or a computer program, or to construct a computer report to extract data;
3. Require a public agency to respond in writing to a written request for public records, including a denial of the request in whole or in part, and requiring that the names and titles of the persons responsible for the denial be stated therein;
4. Provide that nothing in the Act shall be construed to permit the agency to delay or obstruct the inspection or copying of public records;
5. Provide that a requester bear the costs of programming and computer services necessary to produce a record not otherwise readily produced, as specified;
6. Delete the provision in current law that computer data that is a public record shall be provided in a form determined by the agency.

This bill is a blend of two bills that were passed by the Legislature last year, AB 1099 (Shelley), and SB 1065 (Bowen).

AB 1099 passed the Senate (and was chaptered) but contained provisions unrelated to electronic records. SB 1065 was vetoed by the Governor, who stated in his veto message that he believes the bill to be well-intentioned, but



"the State's information technology resources should be directed towards making sure that its computer systems are year 2000 compliant. The author was unwilling to add language which would ensure the completion of this task before the implementation of the provisions of this bill." Most of SB 1065 was incorporated into AB 2799.

AB 2799 contains those provisions of both bills that were received without much opposition. It is sponsored by the California Newspaper Publishers Association, and is one of several bills moving through both houses that relate to public records or to the use of electronic records by public agencies.

Information in electronic form to be provided in same form

This bill would require a public agency that has information constituting a public record in an electronic format to make that information available in an electronic format upon request. Additionally,

1. the agency is required to provide information in any electronic format in which it holds the information; and
2. the agency is required to provide a copy of an electronic record in the format requested if it is the format that had been used by the agency to create copies for its own use or for other agencies.

Conditions on providing records in electronic format

The bill would make conditional the requirement that a public agency comply with a request for public records held in an electronic format. These conditions are:

1. An agency would not be required to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.
2. An agency would not be permitted to make information available only in an electronic format.

Even though this bill is intended to make records available to the public in electronic format if kept by an agency in that form, an agency may not, under this bill, frustrate the public's access to information by then converting the non-electronically formatted records into electronic



format. As prevalent as electronic data processing is now, there are still those who may not have access to computer equipment to read computer disks or CDs. Thus, if public information is requested in a form other than in an electronic format, a public agency must provide such record in the non-electronic format.

This bill requires a public agency to provide information in electronic format only if requested by a member of the public. If the record is available in electronic format as well as in printed form, the public agency is required to tell the requester that the information is available in electronic format.

3. An agency would not be required to release an electronic record in electronic form if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

This limitation was added to the bill in order to alleviate concerns that electronic records, though created with taxpayer money, may have been produced using software designed specifically for the agency. This bill would give the agency the flexibility to refuse to release a requested record in electronic format, if such a release would mean that the software would also have to be released. Even without the software problem, though, an electronic record containing the data may be deciphered and the software program reconstructed (see below).

The agency also may refuse to provide the information in electronic format if the electronic record, when transmitted or provided to a requester, could be altered and then retransmitted, thus rendering the original record vulnerable.

These two concerns were registered by opponents of SB 1065 last year. Thus, AB 2799 includes a provision that gives the public agency the option not to provide the information if disclosing it would jeopardize the integrity or security of the system.

4. Any agency would not be required to provide public access to its records where access is otherwise restricted by statute.



These records would be, among others, personal information on holders of driver's licenses, and other information protected by federal and state privacy statutes.

The Governor's veto message of SB 1065 stated that many of the state's computer systems do not yet have the capacity to implement the provisions of the bill, and that he is concerned that SB 1065 would not be able to protect "the confidentiality of citizens whose personal information is maintained by the state departments including the Employment Development Department, the Department of Motor Vehicles, the Department of Health Services, and the California Highway Patrol."

Costs of reproduction of records: what requester pays for

This bill would specify the copying costs that a requester would pay:

1. If the record duplicated is an electronic record in a format used by the agency to make its own copies or copies for other agencies, the cost of duplication would be the cost of producing a copy in an electronic format.
2. If the public agency would be required to produce a copy of an electronic record and the record is one that is produced by the public agency at otherwise regularly scheduled intervals, or if the request would require data compilation, extraction, or programming to produce the record, the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce the record.

Target records to be duplicated

This bill would target voluminous documents as those public records to which the public should have access in the electronic format, and those public records such as the city budget, environmental impact reports, or minutes from a Board of Supervisors' meeting as documents that should be available on disk or the Internet. Especially because these documents were created a taxpayer expense in the first place, it is argued, a person seeking copies should not be gouged by the public agency for the cost of a person standing in front of a copy machine to duplicate the record when the record could quickly be copied onto a disk or accessed on the Internet. Thus, the bill provides that the cost of duplicating a record in electronic format would



be the direct cost of producing that record in electronic format, i.e., the cost of copying the CD or copying records stored in a computer into disks.

Where the records do not lend themselves to electronic format, this bill would not impose a duty on the public agency to convert the records into electronic format (just as the agency would not be permitted to make records available only in electronic format). For example, environmental impact reports, which are voluminous, normally contain maps and other fold-out attachments. Until these documents are actually produced by the public agency or their contractors in electronic format, there would be no obligation for the agency to provide the reports in disk or CD form.

However, if at some point in time these voluminous records do become available in electronic form, it is possible that public agencies will just have to create websites for posting all disclosable records accessible to the public.

Public agency may not delay or obstruct access to public records

This bill would provide that "Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records..." [Government Code Section 6253(d).]

Thus, any delay experienced by an agency in responding to a request could be interpreted as a violation of the Public Records Act. Under existing law, the court is required to award reasonable attorney's fees and court costs to a person who prevails in litigation filed under the PRA. But this award would be available only if the requester can prove that the agency "obstructed" the availability of the requested records for inspection or copying. Because of the change this bill would make to the referenced provision, it may invite litigation at every delay in production of records requested.

Proponents of this change, however, point to the fact that when this section was last amended, the word "delay" was replaced with the word "obstruct." The return of the word "delay" to this section, they say, would remove any doubt that the prior substitution of "obstruct" for "delay" in subdivision (d) of Section 6253 was not intended to weaken the PRA's mandate that agencies act in good faith to promptly disclose public records requested under the Act.

An example used by proponent, counsel to The Orange County Register, is the requested records from the University of California, Irvine, for the



Register's investigation and report on the abuses at the University's fertility clinic (for which the Register earned a Pulitzer Prize). The Register apparently utilized the PRA to obtain public records that were critical to the reporting. Repeated requests met with repeated months of delay, "even where the University readily conceded that the records are not exempt from disclosure." Proponent indicated, however, that the Register "is not so naïve as to believe that this amendment will solve the serious problem of administrative delay in responding to CPRA requests..."

"Unusual circumstance" would extend time to respond

Existing law provides for an extension of the public agency's deadline for responding to a request from 10 days to no more than 14 days more, if certain "unusual circumstances exist, such as the need to search for and collect data from field facilities separate from the office processing the request or the need for consultation with another agency that has a substantial interest in the determination of the request.

This bill would add to these "unusual circumstances," the need to compile data, write programming language or a computer program, or to construct a computer report to extract data. This provision recognizes that sometimes the information or data requested is not in a central location nor easily accessible to the agency itself, and thus would take time to produce or copy.

Denial of request must be in writing

Existing law requires an agency to justify the withholding of its record by demonstrating that the record requested is exempt under the PRA, or that on the facts of the particular case, the public interest served by not disclosing the information outweighs the public interest served by disclosure of the record. The PRA provision does not require this justification or denial of the request to be in writing.

This bill would expressly state that a response to a written request for inspection or copying of public records that includes a determination that the request is denied, in whole or in part, must be in writing.



Related Pending Legislation:

SB 2027 (Sher) would also amend the Public Records Act as it relates to a person's right to litigate in the event of a denial of the person's request. The bill is now in the Assembly Judiciary Committee.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 8/14/00)

California Newspaper Publishers Association (source)
Orange County Register
State Franchise Tax Board
1st Amendment Coalition

OPPOSITION: (Verified 8/14/00)

County of Orange

ARGUMENTS IN SUPPORT: According to the author's office, with the advent of the electronic age, more and more people want to be able to access information in an electronic format. Apparently, there is not current authority under which a person seeking electronically available records could obtain such records in that format. This means that if an agency makes a CD or disk copies of the records, a member of the public could not obtain records in that format—the public would have to buy copies made out of the printouts from the records. The expense of copying these records in paper format, especially when the records are voluminous, makes those public records practically inaccessible to the public, according to the author and the proponents.

The author also states that the current provision in the PRA that gives a public agency the discretion to determine in which form the information requested should be provided works so that the agency can effectively frustrate the request by providing a copy of the requested record in a form different from the request, which could sometimes render the information useless.

The sponsor of this bill, the California Newspaper Publishers Association (CNPA) also contends that the 10-day period that a public agency has to



respond to a request for inspection or copying of public records is not intended to delay access to records. It is intended instead, when there is a legitimate dispute over whether the records requested are covered by an exemption, to provide time for the agency to provide the information or provide the written grounds for a denial. What many state agencies do, the sponsor says, is to use the 10 days as a "grace period" for providing the information, during which time many a requester (members of the public) often gives up and never acquires the record.

ARGUMENTS IN OPPOSITION: The County of Orange, contends that the county, like many others, already provide information to the public on public records and how to access them, 24 hours a day through the Internet. "Without reasonable regulations," the county argues, "County staff could be required to spend considerable time copying and editing records, determining if they are appropriate for public disclosure and responding with written justifications if the requests are denied."

ASSEMBLY FLOOR:

AYES: Aanestad, Alquist, Aroner, Baldwin, Bates, Battin, Bock, Briggs, Calderon, Campbell, Cardenas, Cardoza, Cedillo, Corbett, Correa, Cox, Cunneen, Davis, Dickerson, Ducheny, Dutra, Firebaugh, Florez, Floyd, Gallegos, Granlund, Havice, Honda, House, Jackson, Keeley, Knox, Kuehl, Leach, Lempert, Leonard, Longville, Lowenthal, Machado, Maddox, Maldonado, Mazzoni, McClintock, Migden, Nakano, Olberg, Robert Pacheco, Rod Pacheco, Papan, Pescetti, Reyes, Romero, Runner, Scott, Shelley, Steinberg, Strickland, Strom-Martin, Thompson, Thomson, Torlakson, Vincent, Washington, Wayne, Wesson, Wiggins, Wildman, Wright, Zettel, Hertzberg

NOES: Ackerman, Ashburn, Brewer, Kaloogian

RJG:jk 8/16/00 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****



SENATE RULES COMMITTEE

AB 2799

Office of Senate Floor Analyses
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THIRD READING

Bill No: AB 2799
Author: Shelley (D), et al
Amended: 7/6/00 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE: 5-0, 6/29/00
AYES: Escutia, Morrow, O'Connell, Peace, Schiff

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 70-4, 5/25/00 - See last page for vote

SUBJECT: Public records: disclosure

SOURCE: California Newspaper Publishers Association

DIGEST: This bill revises various provisions in the Public Records Act (PRA) in order to make available public records, not otherwise exempt from disclosure, in an electronic format, if the information or record is kept in electronic format by a public agency. It specifies what costs the requester would bear for obtaining copies of records in an electronic format.

The bill adds, to the unusual circumstances that would permit an extension of time to respond to a request for public records, the need of the agency to compile data, write programming language, or construct a computer report to extract data. The bill requires that a response to a request for public records that includes a denial, in whole or in part, shall be in writing, and provides that the Public Records Act shall not be construed to permit an agency to delay or obstruct inspection or copying of public records.



ANALYSIS: The Public Records Act allows an agency to provide computer data in any form determined by the agency. The Act directs a public agency, upon request for inspection or for a copy of the records, to respond to a request within 10 days after receipt of the request. In unusual circumstances, which are specified in the Act, this timeline for responding may be extended in writing for 14 days. [Government Code Section 6253.]

This bill would:

1. Require a public agency to make disclosable information available in any electronic format in which it holds the information, unless release of the information would compromise the integrity of the record or any proprietary software in which it is maintained;
2. Add, in the definition of "unusual circumstances" for which the time limit for responding to a request for a copy of records may be extended up to 14 days after the initial 10 days, the need for the agency to compile data, to write programming language or a computer program, or to construct a computer report to extract data;
3. Require a public agency to respond in writing to a written request for public records, including a denial of the request in whole or in part, and requiring that the names and titles of the persons responsible for the denial be stated therein;
4. Provide that nothing in the Act shall be construed to permit the agency to delay or obstruct the inspection or copying of public records;
5. Provide that a requester bear the costs of programming and computer services necessary to produce a record not otherwise readily produced, as specified;
6. Delete the provision in current law that computer data that is a public record shall be provided in a form determined by the agency.

This bill is a blend of two bills that were passed by the Legislature last year, AB 1099 (Shelley), and SB 1065 (Bowen).

AB 1099 passed the Senate (and was chaptered) but contained provisions unrelated to electronic records. SB 1065 was vetoed by the Governor, who stated in his veto message that he believes the bill to be well-intentioned, but



"the State's information technology resources should be directed towards making sure that its computer systems are year 2000 compliant. The author was unwilling to add language which would ensure the completion of this task before the implementation of the provisions of this bill." Most of SB 1065 was incorporated into AB 2799.

AB 2799 contains those provisions of both bills that were received without much opposition. It is sponsored by the California Newspaper Publishers Association, and is one of several bills moving through both houses that relate to public records or to the use of electronic records by public agencies.

Information in electronic form to be provided in same form

This bill would require a public agency that has information constituting a public record in an electronic format to make that information available in an electronic format upon request. Additionally,

1. the agency is required to provide information in any electronic format in which it holds the information; and
2. the agency is required to provide a copy of an electronic record in the format requested if it is the format that had been used by the agency to create copies for its own use or for other agencies.

Conditions on providing records in electronic format

The bill would make conditional the requirement that a public agency comply with a request for public records held in an electronic format. These conditions are:

1. An agency would not be required to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.
2. An agency would not be permitted to make information available only in an electronic format.

Even though this bill is intended to make records available to the public in electronic format if kept by an agency in that form, an agency may not, under this bill, frustrate the public's access to information by then converting the non-electronically formatted records into electronic



format. As prevalent as electronic data processing is now, there are still those who may not have access to computer equipment to read computer disks or CDs. Thus, if public information is requested in a form other than in an electronic format, a public agency must provide such record in the non-electronic format.

This bill requires a public agency to provide information in electronic format only if requested by a member of the public. If the record is available in electronic format as well as in printed form, the public agency is required to tell the requester that the information is available in electronic format.

3. An agency would not be required to release an electronic record in electronic form if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

This limitation was added to the bill in order to alleviate concerns that electronic records, though created with taxpayer money, may have been produced using software designed specifically for the agency. This bill would give the agency the flexibility to refuse to release a requested record in electronic format, if such a release would mean that the software would also have to be released. Even without the software problem, though, an electronic record containing the data may be deciphered and the software program reconstructed (see below).

The agency also may refuse to provide the information in electronic format if the electronic record, when transmitted or provided to a requester, could be altered and then retransmitted, thus rendering the original record vulnerable.

These two concerns were registered by opponents of SB 1065 last year. Thus, AB 2799 includes a provision that gives the public agency the option not to provide the information if disclosing it would jeopardize the integrity or security of the system.

4. Any agency would not be required to provide public access to its records where access is otherwise restricted by statute.



These records would be, among others, personal information on holders of driver's licenses, and other information protected by federal and state privacy statutes.

The Governor's veto message of SB 1065 stated that many of the state's computer systems do not yet have the capacity to implement the provisions of the bill, and that he is concerned that SB 1065 would not be able to protect "the confidentiality of citizens whose personal information is maintained by the state departments including the Employment Development Department, the Department of Motor Vehicles, the Department of Health Services, and the California Highway Patrol."

Costs of reproduction of records: what requester pays for

This bill would specify the copying costs that a requester would pay:

1. If the record duplicated is an electronic record in a format used by the agency to make its own copies or copies for other agencies, the cost of duplication would be the cost of producing a copy in an electronic format.
2. If the public agency would be required to produce a copy of an electronic record and the record is one that is produced by the public agency at otherwise regularly scheduled intervals, or if the request would require data compilation, extraction, or programming to produce the record, the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce the record.

Target records to be duplicated

This bill would target voluminous documents as those public records to which the public should have access in the electronic format, and those public records such as the city budget, environmental impact reports, or minutes from a Board of Supervisors' meeting as documents that should be available on disk or the Internet. Especially because these documents were created a taxpayer expense in the first place, it is argued, a person seeking copies should not be gouged by the public agency for the cost of a person standing in front of a copy machine to duplicate the record when the record could quickly be copied onto a disk or accessed on the Internet. Thus, the bill provides that the cost of duplicating a record in electronic format would



be the direct cost of producing that record in electronic format, i.e., the cost of copying the CD or copying records stored in a computer into disks.

Where the records do not lend themselves to electronic format, this bill would not impose a duty on the public agency to convert the records into electronic format (just as the agency would not be permitted to make records available only in electronic format). For example, environmental impact reports, which are voluminous, normally contain maps and other fold-out attachments. Until these documents are actually produced by the public agency or their contractors in electronic format, there would be no obligation for the agency to provide the reports in disk or CD form.

However, if at some point in time these voluminous records do become available in electronic form, it is possible that public agencies will just have to create websites for posting all disclosable records accessible to the public.

Public agency may not delay or obstruct access to public records

This bill would provide that "Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records..." [Government Code Section 6253(d).]

Thus, any delay experienced by an agency in responding to a request could be interpreted as a violation of the Public Records Act. Under existing law, the court is required to award reasonable attorney's fees and court costs to a person who prevails in litigation filed under the PRA. But this award would be available only if the requester can prove that the agency "obstructed" the availability of the requested records for inspection or copying. Because of the change this bill would make to the referenced provision, it may invite litigation at every delay in production of records requested.

Proponents of this change, however, point to the fact that when this section was last amended, the word "delay" was replaced with the word "obstruct." The return of the word "delay" to this section, they say, would remove any doubt that the prior substitution of "obstruct" for "delay" in subdivision (d) of Section 6253 was not intended to weaken the PRA's mandate that agencies act in good faith to promptly disclose public records requested under the Act.

An example used by proponent, counsel to The Orange County Register, is the requested records from the University of California, Irvine, for the



Register's investigation and report on the abuses at the University's fertility clinic (for which the Register earned a Pulitzer Prize). The Register apparently utilized the PRA to obtain public records that were critical to the reporting. Repeated requests met with repeated months of delay, "even where the University readily conceded that the records are not exempt from disclosure." Proponent indicated, however, that the Register "is not so naïve as to believe that this amendment will solve the serious problem of administrative delay in responding to CPRA requests..."

"Unusual circumstance" would extend time to respond

Existing law provides for an extension of the public agency's deadline for responding to a request from 10 days to no more than 14 days more, if certain "unusual circumstances exist, such as the need to search for and collect data from field facilities separate from the office processing the request or the need for consultation with another agency that has a substantial interest in the determination of the request.

This bill would add to these "unusual circumstances," the need to compile data, write programming language or a computer program, or to construct a computer report to extract data. This provision recognizes that sometimes the information or data requested is not in a central location nor easily accessible to the agency itself, and thus would take time to produce or copy.

Denial of request must be in writing

Existing law requires an agency to justify the withholding of its record by demonstrating that the record requested is exempt under the PRA, or that on the facts of the particular case, the public interest served by not disclosing the information outweighs the public interest served by disclosure of the record. The PRA provision does not require this justification or denial of the request to be in writing.

This bill would expressly state that a response to a written request for inspection or copying of public records that includes a determination that the request is denied, in whole or in part, must be in writing.



Related Pending Legislation:

SB 2027 (Sher) would also amend the Public Records Act as it relates to a person's right to litigate in the event of a denial of the person's request. The bill is now in the Assembly Judiciary Committee.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 8/14/00)

California Newspaper Publishers Association (source)
Orange County Register
State Franchise Tax Board
1st Amendment Coalition

OPPOSITION: (Verified 8/14/00)

County of Orange

ARGUMENTS IN SUPPORT: According to the author's office, with the advent of the electronic age, more and more people want to be able to access information in an electronic format. Apparently, there is not current authority under which a person seeking electronically available records could obtain such records in that format. This means that if an agency makes a CD or disk copies of the records, a member of the public could not obtain records in that format—the public would have to buy copies made out of the printouts from the records. The expense of copying these records in paper format, especially when the records are voluminous, makes those public records practically inaccessible to the public, according to the author and the proponents.

The author also states that the current provision in the PRA that gives a public agency the discretion to determine in which form the information requested should be provided works so that the agency can effectively frustrate the request by providing a copy of the requested record in a form different from the request, which could sometimes render the information useless.

The sponsor of this bill, the California Newspaper Publishers Association (CNPA) also contends that the 10-day period that a public agency has to



respond to a request for inspection or copying of public records is not intended to delay access to records. It is intended instead, when there is a legitimate dispute over whether the records requested are covered by an exemption, to provide time for the agency to provide the information or provide the written grounds for a denial. What many state agencies do, the sponsor says, is to use the 10 days as a "grace period" for providing the information, during which time many a requester (members of the public) often gives up and never acquires the record.

ARGUMENTS IN OPPOSITION: The County of Orange, contends that the county, like many others, already provide information to the public on public records and how to access them, 24 hours a day through the Internet. "Without reasonable regulations," the county argues, "County staff could be required to spend considerable time copying and editing records, determining if they are appropriate for public disclosure and responding with written justifications if the requests are denied."

ASSEMBLY FLOOR:

AYES: Aanestad, Alquist, Aroner, Baldwin, Bates, Battin, Bock, Briggs, Calderon, Campbell, Cardenas, Cardoza, Cedillo, Corbett, Correa, Cox, Cunneen, Davis, Dickerson, Ducheny, Dutra, Firebaugh, Florez, Floyd, Gallegos, Granlund, Havice, Honda, House, Jackson, Keeley, Knox, Kuehl, Leach, Lempert, Leonard, Longville, Lowenthal, Machado, Maddox, Maldonado, Mazzoni, McClintock, Migden, Nakano, Olberg, Robert Pacheco, Rod Pacheco, Papan, Pescetti, Reyes, Romero, Runner, Scott, Shelley, Steinberg, Strickland, Strom-Martin, Thompson, Thomson, Torlakson, Vincent, Washington, Wayne, Wesson, Wiggins, Wildman, Wright, Zettel, Hertzberg

NOES: Ackerman, Ashburn, Brewer, Kaloogian

RJG:jk 8/16/00 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****



SENATE RULES COMMITTEE

AB 2799

Office of Senate Floor Analyses
1020 N Street, Suite 524
(916).445-6614 Fax: (916) 327-4478

THIRD READING

Bill No: AB 2799
Author: Shelley (D), et al
Amended: 7/6/00 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE: 5-0, 6/29/00
AYES: Escutia, Morrow, O'Connell, Peace, Schiff
[Signature] 283
ASSEMBLY FLOOR: 70-4, 5/25/00 - See last page for vote

SUBJECT: Public records: disclosure

SOURCE: California Newspaper Publishers Association

DIGEST: This bill revises various provisions in the Public Records Act (PRA) in order to make available public records, not otherwise exempt from disclosure, in an electronic format, if the information or record is kept in electronic format by a public agency. It specifies what costs the requester would bear for obtaining copies of records in an electronic format.

The bill adds, to the unusual circumstances that would permit an extension of time to respond to a request for public records, the need of the agency to compile data, write programming language, or construct a computer report to extract data. The bill requires that a response to a request for public records that includes a denial, in whole or in part, shall be in writing, and provides that the Public Records Act shall not be construed to permit an agency to delay or obstruct inspection or copying of public records.

ANALYSIS: The Public Records Act allows an agency to provide computer data in any form determined by the agency. The Act directs a public agency, upon request for inspection or for a copy of the records, to



SENATE JUDICIARY COMMITTEE
Adam B. Schiff, Chairman
1999-2000 Regular Session

AB 2799

Assembly Member Shelley

As Amended June 22, 2000

Hearing Date: June 27, 2000

Government Code

GMO:cjt

A
B

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9
9

SUBJECT

AE Public Records: Disclosure

DESCRIPTION

This bill would revise various provisions in the Public Records Act (PRA) in order to make available public records, not otherwise exempt from disclosure, in an electronic format, if the information or record is kept in electronic format by a public agency. It would specify what costs the requester would bear for obtaining copies of records in an electronic format.

The bill would add, to the unusual circumstances that would permit an extension of time to respond to a request for public records, the need of the agency to compile data, write programming language, or construct a computer report to extract data. The bill would require that a response to a request for public records that includes a denial, in whole or in part, shall be in writing, and provide that the Public Records Act shall not be construed to permit an agency to delay or obstruct inspection or copying of public records.

BACKGROUND

This bill is a blend of two bills that were passed by ^{*the Legislature*} ~~this Committee~~ last year, AB 1099 (Shelley), and SB 1065 (Bowen).

AB 1099 passed the Senate (and was chaptered) but contained provisions unrelated to electronic records. SB 1065 was vetoed by the Governor, who stated in his veto message that he believes the bill to be well-intentioned, but "the State's information technology resources should be directed towards making sure that its computer systems are year 2000 compliant. The author was unwilling to add language which would ensure the completion of this task

(more) LH: 256 SFA - 12

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before the implementation of the provisions of this bill." Most of SB 1065 was incorporated into AB 2799.

AB 2799 contains those provisions of both bills that were received without much opposition. It is sponsored by the California Newspaper Publishers Association, and is one of several bills moving through both houses that relate to public records or to the use of electronic records by public agencies.

end

CHANGES TO EXISTING LAW

The Public Records Act allows an agency to provide computer data in any form determined by the agency. The Act directs a public agency, upon request for inspection or for a copy of the records, to respond to a request within 10 days after receipt of the request. In unusual circumstances, which are specified in the Act, this timeline for responding may be extended in writing for 14 days. [Government Code Section 6253.]

This bill would:

- a) Require a public agency to make disclosable information available in any electronic format in which it holds the information, unless release of the information would compromise the integrity of the record or any proprietary software in which it is maintained;
- b) Add, in the definition of "unusual circumstances" for which the time limit for responding to a request for a copy of records may be extended up to 14 days after the initial 10 days, the need for the agency to compile data, to write programming language or a computer program, or to construct a computer report to extract data;
- c) Require a public agency to respond in writing to a written request for public records, including a denial of the request in whole or in part, and requiring that the names and titles of the persons responsible for the denial be stated therein;
- d) Provide that nothing in the Act shall be construed to permit the agency to delay or obstruct the inspection or copying of public records;
- e) Provide that a requester bear the costs of programming and computer services necessary to produce a record not otherwise readily produced, as specified;
- f) Delete the provision in current law that computer data that is a public record shall be provided in a form determined by the agency.

COMMENT

1. Stated need for legislation

ATT. Authors Office
With the advent of the electronic age, more and more people want to be able to access information in an electronic format. Apparently, there is not current



authority under which a person seeking electronically available records could obtain such records in that format. This means that if an agency makes a CD or disk copies of the records, a member of the public could not obtain records in that format—the public would have to buy copies made out of the printouts from the records. The expense of copying these records in paper format, especially when the records are voluminous, makes those public records practically inaccessible to the public, according to the author and the proponents.

The author also states that the current provision in the PRA that gives a public agency the discretion to determine in which form the information requested should be provided works so that the agency can effectively frustrate the request by providing a copy of the requested record in a form different from the request, which could sometimes render the information useless.

The sponsor of this bill, the California Newspaper Publishers Association (CNPA) also contends that the 10-day period that a public agency has to respond to a request for inspection or copying of public records is not intended to delay access to records. It is intended instead, when there is a legitimate dispute over whether the records requested are covered by an exemption, to provide time for the agency to provide the information or provide the written grounds for a denial. What many state agencies do, the sponsor says, is to use the 10 days as a "grace period" for providing the information, during which time many a requester (members of the public) often gives up and never acquires the record.

These two deficiencies in the Public Records Act are what this bill is intended to cure.

2. Information in electronic form to be provided in same form

This bill would require a public agency that has information constituting a public record in an electronic format to make that information available in an electronic format upon request. Additionally,

- a) the agency is required to provide information in any electronic format in which it holds the information; and
- b) the agency is required to provide a copy of an electronic record in the format requested if it is the format that had been used by the agency to create copies for its own use or for other agencies.

3. Conditions on providing records in electronic format

The bill would make conditional the requirement that a public agency comply with a request for public records held in an electronic format. These conditions are:



- a. An agency would not be required to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

This provision was amended into SB 1065 (Bower) when it was heard in this Committee last year, in response to concerns raised by the some state agencies.

- b. An agency would not be permitted to make information available only in an electronic format.

Even though this bill is intended to make records available to the public in electronic format if kept by an agency in that form, an agency may not, under this bill, frustrate the public's access to information by then converting the non-electronically formatted records into electronic format. As prevalent as electronic data processing is now, there are still those who may not have access to computer equipment to read computer disks or CDs. Thus, if public information is requested in a form other than in an electronic format, a public agency must provide such record in the non-electronic format.

~~The bill requires a public agency~~
~~However,~~ this bill would require the agency to provide information in electronic format only if requested by a member of the public. If the record is available in electronic format as well as in printed form, ~~it is not clear whether the public agency has an obligation to tell the requester that the information is available in electronic format.~~ *is required*

STET
 W
 clark

SHOULD A PUBLIC AGENCY INFORM A REQUESTER THAT THE INFORMATION REQUESTED IS AVAILABLE IN ELECTRONIC FORM?

- c. An agency would not be required to release an electronic record in electronic form if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

This limitation was added to the bill in order to alleviate concerns that electronic records, though created with taxpayer money (see ~~Comment 5~~), may have been produced using software designed specifically for the agency. This bill would give the agency the flexibility to refuse to release a requested record in electronic format, if such a release would mean that the software would also have to be released. Even without the software problem, though, an electronic record containing the data may be deciphered and the software program reconstructed (see below).

The agency also may refuse to provide the information in electronic format if the electronic record, when transmitted or provided to a requester, could

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be altered and then retransmitted, thus rendering the original record vulnerable.

These two concerns were registered by opponents of SB 1065 last year. Thus, AB 2799 includes a provision that gives the public agency the option not to provide the information if disclosing it would jeopardize the integrity or security of the system.

- a) ~~The Department of Motor Vehicles~~ ^{any agency} would not be required to provide public access to its records where access is otherwise restricted by statute.

These records would be, among others, personal information on holders of driver's licenses, and other information protected by federal and state privacy statutes.

The Governor's veto message of SB 1065 stated that many of the state's computer systems do not yet have the capacity to implement the provisions of the bill, and that he is concerned that SB 1065 would not be able to protect "the confidentiality of citizens whose personal information is maintained by the state departments including the Employment Development Department, the Department of Motor Vehicles, the Department of Health Services, and the California Highway Patrol."

Only the records of the DMV, where access to the records is restricted by statute, are exempt from this bill.

SHOULD THE OTHER AGENCIES ALSO BE EXEMPTED?

4. Costs of reproduction of records: what requester pays for

This bill would specify the copying costs that a requester would pay:

- a) If the record duplicated is an electronic record in a format used by the agency to make its own copies or copies for other agencies, the cost of duplication would be the cost of producing a copy in an electronic format.
- b) If the public agency would be required to produce a copy of an electronic record and the record is one that is produced by the public agency at otherwise regularly scheduled intervals, or if the request would require data compilation, extraction, or programming to produce the record, the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce the record.



5. Target records to be duplicated

This bill would target voluminous documents as those public records to which the public should have access in the electronic format, and those public records such as the city budget, environmental impact reports, or minutes from a Board of Supervisors' meeting as documents that should be available on disk or the Internet. Especially because these documents were created a taxpayer expense in the first place, it is argued, a person seeking copies should not be gouged by the public agency for the cost of a person standing in front of a copy machine to duplicate the record when the record could quickly be copied onto a disk or accessed on the Internet. Thus, the bill provides that the cost of duplicating a record in electronic format would be the direct cost of producing that record in electronic format, i.e., the cost of copying the CD or copying records stored in a computer into disks.

Where the records do not lend themselves to electronic format, this bill would not impose a duty on the public agency to convert the records into electronic format (just as the agency would not be permitted to make records available only in electronic format). For example, environmental impact reports, which are voluminous, normally contain maps and other fold-out attachments. Until these documents are actually produced by the public agency or their contractors in electronic format, there would be no obligation for the agency to provide the reports in disk or CD form.

However, if at some point in time these voluminous records do become available in electronic form, it is possible that public agencies will just have to create websites for posting all disclosable records accessible to the public.

6. Public agency may not delay or obstruct access to public records

This bill would provide that "Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records..." [Government Code Section 6253(d).]

Thus, any delay experienced by an agency in responding to a request could be interpreted as a violation of the Public Records Act. Under existing law, the court is required to award reasonable attorney's fees and court costs to a person who prevails in litigation filed under the PRA. But this award would be available only if the requester can prove that the agency "obstructed" the availability of the requested records for inspection or copying. Because of the change this bill would make to the referenced provision, it may invite litigation at every delay in production of records requested.

Proponents of this change, however, point to the fact that when this section was last amended, the word "delay" was replaced with the word "obstruct." The return of the word "delay" to this section, they say, would remove any



doubt that the prior substitution of "obstruct" for "delay" in subdivision (d) of Section 6253 was not intended to weaken the PRA's mandate that agencies act in good faith to promptly disclose public records requested under the Act.

An example used by proponent, counsel to The Orange County Register, is the requested records from the University of California, Irvine, for the Register's investigation and report on the abuses at the University's fertility clinic (for which the Register earned a Pulitzer Prize). The Register apparently utilized the PRA to obtain public records that were critical to the reporting. Repeated requests met with repeated months of delay, "even where the University readily conceded that the records are not exempt from disclosure." Proponent indicated, however, that the Register "is not so naïve as to believe that this amendment will solve the serious problem of administrative delay in responding to CPRA requests..."

7. "Unusual circumstance" would extend time to respond

Existing law provides for an extension of the public agency's deadline for responding to a request from 10 days to no more than 14 days more, if certain "unusual circumstances exist, such as the need to search for and collect data from field facilities separate from the office processing the request or the need for consultation with another agency that has a substantial interest in the determination of the request.

This bill would add to these "unusual circumstances," the need to compile data, write programming language or a computer program, or to construct a computer report to extract data. This provision recognizes that sometimes the information or data requested is not in a central location nor easily accessible to the agency itself, and thus would take time to produce or copy.

8. Denial of request must be in writing

Existing law requires an agency to justify the withholding of its record by demonstrating that the record requested is exempt under the PRA, or that on the facts of the particular case, the public interest served by not disclosing the information outweighs the public interest served by disclosure of the record. The PRA provision does not require this justification or denial of the request to be in writing.

This bill would expressly state that a response to a written request for inspection or copying of public records that includes a determination that the request is denied, in whole or in part, must be in writing.

End F 1



9. Withdrawn opposition

The following entities initially registered opposition to the bill for various reasons, most of them related to the proprietary software and security exemption from providing information in electronic format and to the earlier version which did not specify that electronic records or electronically formatted information must be disclosable in the first place (or not exempt from the PRA) to be available in electronic format:

The County of Los Angeles; the County of Los Angeles Sheriff's Department; California State Sheriff's Association; California State Association of Counties; California Association of Clerks and Election Officials.

The amendments last made to this bill shifted these entities' position to neutral.

H The one remaining opponent of the bill, the County of Orange, contends that the county, like many others, already provide information to the public on public records and how to access them, 24 hours a day through the Internet. "Without reasonable regulations," the county argues, "County staff could be required to spend considerable time copying and editing records, determining if they are appropriate for public disclosure and responding with written justifications if the requests are denied."

Support: Orange County Register

Opposition: County of Orange

HISTORY

Source: California Newspaper Publishers' Association (CNPA)

F2 Related Pending Legislation: SB 2027 (Sher) would also amend the Public Records Act as it relates to a person's right to litigate in the event of a denial of the person's request. The bill is now in the Assembly Judiciary Committee.

Prior Legislation: AB 1099 (Shelley) and SB 1065 (Bowen), see background)

Prior Vote: Asm. G.O. (Ayes 12, Noes 2)
Asm. Appr. (Ayes 17, Noes 2)
Asm. Flr. (Ayes 70, Noes 4)



NO ANALYSIS REQUIRED

Franchise Tax Board

Author: Shelley

Analyst: Roger Lackey

Bill Number: AB 2799

Related Bills: See Legislative History

Telephone: 845-3627

Amended Date: 05-23-2000

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Public Record Disclosure/Make Available In Electronic Format If Available & When Requested

ANALYSIS NOT REQUIRED of this bill - Not within scope of responsibility of this department.

TECHNICAL BILL - No program or fiscal changes to existing program.

BILL AS AMENDED NO LONGER WITHIN SCOPE of responsibility or program of the department.

TECHNICAL AMENDMENT - No change in previously submitted analysis required. Approved position of prior analysis is _____.

MINOR AMENDMENT - No change in previously submitted analysis required. Approved position of prior analysis is _____.

MINOR AMENDMENT - No change in approved position of Pending. See comments below.

OTHER - See comments below.

COMMENTS:

This bill would require any state or local agency that has public information in an electronic format to make that information available to the public in the electronic format in which the state agency holds the information. The requester would pay the direct cost of duplicating the public record in an electronic format.

This bill would further require a public record to be disclosed if, on the facts of the particular case, the public interest is served by disclosing the record.

The May 23, 2000, amendment changed the requirement that a state agency justify in writing withholding a requested record. The new language clarifies that a written response is required only for a written request and regardless of whether the request is denied in whole or in part.

Except for the discussion above, the department's analysis of AB 2799 as amended April 27, 2000, still applies.

LEGISLATIVE INTENT SERVICE (800) 666-1917

Board Position:

S
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NA
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 OUA

NP
 NAR
 PENDING

Franchise Tax Board Staff

Date

Roger J. Lackey
06/02/00 12:17 PM

ASSEMBLY THIRD READING
AB 2799 (Shelley)
As Amended May 23, 2000
Majority vote

GOVERNMENTAL ORGANIZATION 12-2 APPROPRIATIONS 17-2

Ayes: Wesson, Granlund, Battin, Briggs,
Cardenas, Lempert, Longville,
Machado, Maldonado, Strickland,
Wiggins, Wright

Ayes: Migden, Campbell Alquist, Aroner,
Ashburn, Cedillo, Corbett, Davis,
Kuehl, Maldonado, Papan, Romero,
Shelley, Thomson, Wesson, Wiggins,
Zettel

Nays: Brewer, Floyd

Nays: Ackerman, Brewer

SUMMARY: Provides for the release of public records in an electronic format and requires a public agency that withholds a public record to justify its withholding in writing. Specifically, this bill:

- 1) Deletes the requirement that public records kept on computer be disclosed in a form determined by the public agency. Requires a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following guidelines:
 - a) The agency must make the information available in any electronic format in which it holds the information;
 - b) Each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies; and,
 - c) An agency may not be required to reconstruct a report in an electronic format if the agency no longer has the records available in an electronic format.
- 2) Requires an agency that denies a request for inspection or copies of public records to justify its withholding in writing when the request for public records was in writing.
- 3) Specifies that this requirements of this bill shall not be construed: a) to permit an agency to make information available only in an electronic format; nor, b) to permit access to records held by the Department of Motor Vehicles that are otherwise restricted under the Public Records Act (PRA)
- 4) Specifies that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.



EXISTING LAW:

- 1) Defines "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 characteristics.
- 2) Requires public records to be open to inspection at all times during the office hours of a state or local agency and affords every person the right to inspect any public record, except as specifically provided.
- 3) Requires state and local agencies to make an exact copy of a public record available to any person upon payment of fees covering direct costs of duplication.
- 4) Requires that computer data be provided in a form determined by the agency.

FISCAL EFFECT: According to the Assembly Appropriations Committee analysis:

- 1) Assuming that agencies generally respond in writing when denying a public records request, there should be negligible fiscal impact.
- 2) Potential costs to various agencies that currently make and sell copies of public records documents for workload in redacting nondisclosable electronic records from disclosable electronic records.

COMMENTS: PRA permits a state or local agency to provide computer records in any format determined by the agency. This bill would require public agencies to provide computer records in any format that it currently uses. This bill would also prohibit an agency from delaying access to the inspection or copying of public records. This bill is an attempt to provide reasonable guidelines for public access to electronically held records and the author believes that this bill will substantially increase the availability of public records and reduce the cost and inconvenience associated with large volumes of paper records.

Some remain concerned with this bill's requirement that public records be released in any electronic format that the agency uses to hold public records. They point out that state and local agencies retain massive databases which may include disclosable as well as nondisclosable public records. Those concerned claim that separating disclosable electronic records from nondisclosable electronic records could be a costly and time-consuming process that is more vulnerable to error and may result in the unintentional release of nondisclosable records. Additionally, some note that this bill does not contain a provision authorizing agencies to charge fees covering the cost of preparing the electronic record for public release when such preparation is necessary. It is unclear how agencies currently account for public records that are required to be redacted but that are disclosed in a paper format.

The provisions of this bill regarding electronic records are identical to those contained in SB 1065 (Bowen) of 1999 that was vetoed by the Governor. The Governor indicated at the time that the state's information technology resources should be directed towards making sure that its computer systems were year 2000 compliant.

Analysis Prepared by: Richard Rios / G. O. / (916) 319-2531

FN: 0004727

LH: 266SFA - 22



SUMMARY ANALYSIS OF AMENDED BILL

Handwritten initials

Franchise Tax Board

Author: Shelley

Analyst: Roger Lackey

Bill Number: AB 2799

Related Bills: See Prior Analysis

Telephone: 845-3627

Amended Date: 06-22-2000

Attorney: Patrick Kusiak

Sponsor:

SUBJECT: Public Record Disclosure/Make Available In Electronic Format If Available & When Requested

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO Support.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED May 23, 2000, STILL APPLIES.

OTHER - See comments below.

SUMMARY OF BILL

This bill would require any state or local agency that has public information in an electronic format to make that information available to the public in the electronic format in which the state agency holds the information. The requester would pay the direct cost of duplicating the public record in an electronic format.

This bill would further require a public record to be disclosed if, on the facts of the particular case, the public interest is served by disclosing the record.

SUMMARY OF AMENDMENT

The June 22, 2000, amendments would provide that "unusual circumstances" under which an agency may delay providing a record would include the need to compile data, to write program language or a computer program, or to construct a computer report to extract data.

The amendments also would provide that a public agency would not have to make records that are exempt from disclosure available in an electronic format. In addition, the amendments would define what would constitute the cost of duplication. The amendments also would provide that a public agency could refuse to disclose an electronic record if it feels that disclosure would jeopardize or compromise the security or integrity of the original record.

As a result of the amendment, an implementation consideration has arisen and is included below.

Except for the discussion above, the department's analysis of the bill as amended May 23, 2000, still applies.

Board Position:

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NA
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 NAR
 PENDING

Legislative Director

Date

Handwritten signature and date 7/7/00

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LH: 267SFA - 23

IMPLEMENTATION CONSIDERATION

The terms "compile data" and "construct a record" are unclear. These terms could be interpreted to require a state agency to create a new public record to satisfy a request. The California Public Records Act requires state agencies to provide copies of **existing** public records not to create new public records upon request. The bill should clarify the meaning of these terms.

BOARD POSITION

Support.

At its July 5, 2000, meeting, the Franchise Tax Board voted 2-0 to support this bill, with member B. Timothy Gage abstaining.



NO ANALYSIS REQUIRED

Franchise Tax Board

Author: Shelley Analyst: Darrine Distefano Bill Number: AB 2799
 Related Bills: See Prior Analysis Telephone: 845-6458 Amended Date: 04-27-2000
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Public Record Disclosure/Make Available in Electronic Format if Available & When Requested

- ANALYSIS NOT REQUIRED of this bill – Not within scope of responsibility of this department.
- TECHNICAL BILL – No program or fiscal changes to existing program.
- BILL AS AMENDED NO LONGER WITHIN SCOPE of responsibility or program of the department.
- TECHNICAL AMENDMENT - No change in previously submitted analysis required. Approved position of prior analysis is _____
- MINOR AMENDMENT - No change in previously submitted analysis required. Approved position of prior analysis is Pending.
- MINOR AMENDMENT - No change in approved position of _____ See comments below.
- OTHER - See comments below.

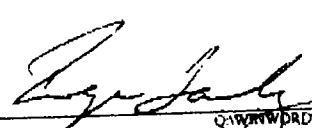
COMMENTS:

This bill would require any state or local agency that has public information in an electronic format to make that information available to the public in an electronic format in which the state agency holds the information. The requester would pay the direct costs of duplicating the public record in an electronic format.

This bill would further require a public record to be disclosed if, on the facts of the particular case, the public interest is served by disclosing the record.

The April 27, 2000, amendments deleted a provision that would have required a public record to be disclosed if, on the facts of the particular case, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.

The remainder of the department's analysis of the bill as introduced February 28, 2000, still applies.

<p>Board Position:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;"><input type="checkbox"/> S</td> <td style="width: 33%;"><input type="checkbox"/> NA</td> <td style="width: 33%;"><input type="checkbox"/> NP</td> </tr> <tr> <td><input type="checkbox"/> SA</td> <td><input type="checkbox"/> O</td> <td><input type="checkbox"/> NAR</td> </tr> <tr> <td><input type="checkbox"/> N</td> <td><input type="checkbox"/> OUA</td> <td><input checked="" type="checkbox"/> PENDING</td> </tr> </table>	<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP	<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR	<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING	<p style="text-align: right;">Franchise Tax Board Staff Date</p> <div style="text-align: center; margin-top: 20px;">  </div>
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ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Shelley

Analyst: Darrine Distefano

Bill Number: AB 2799

Related Bills: See Legislative History

Telephone: 845-6458

Introduced Date: 02-28-2000

Attorney: Patrick Kusiak

Sponsor: _____

SUBJECT: Public Record Disclosure/Make Available in Electronic Format if Available & When Requested

SUMMARY

This bill would require any state or local agency that has public information in an electronic format to make that information available to the public in an electronic format in which the state agency holds the information. The requester would pay direct costs of duplicating the public record in an electronic format.

This bill would further require a public record to be disclosed if, on the facts of the particular case, the public interest is served by disclosing the record.

EFFECTIVE DATE

This bill would be effective on January 1, 2001, and operative for all public record act requests made after that date.

LEGISLATIVE HISTORY

SB 1065 (99/00, vetoed) would have required any state or local agency that has public information in an electronic format to make that information available to the public in an electronic format.

AB 179 (97/98, vetoed) would have required any state or local agency that has public information in an electronic format to make the information available electronically.

AB 142 (95/96), which failed passage in the Assembly Committee of Governmental Organization, would have required any agency that has public information in an electronic format to make the information available in an electronic format.

SPECIFIC FINDINGS

Under current state law, any person may obtain a copy of any identifiable public record, except records exempt from disclosure, upon payment of any fees (statutory or direct costs of duplication). If the record is stored as computer data, the agency is authorized to determine the format in which the computer data are provided to a requester.

This bill would require any agency that has public information in an electronic format to provide that information in any electronic format in which it holds that information. The agency also shall provide a copy of any electronic record in any format requested if the agency uses the requested format to make copies for itself or other agencies.

Board Position:

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Department Director

[Signature]

Date

4/4/00

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This bill would provide that a public agency would not be required to reconstruct a report in an electronic format if the report were no longer available in an electronic format.

This bill would provide that direct costs of duplication include the costs related to duplicating the electronic record.

This bill would delete the existing provision authorizing an agency to determine the format in which computer data are provided.

This bill would provide for a balancing test weighing the public interest served by disclosure against the public interest served by not disclosing. This balancing test would be applied to determine whether an agency or superior court may disclose or order to be disclosed a record otherwise exempt from disclosure.

Implementation Considerations

This bill would not significantly impact the department's programs and operations.

FISCAL IMPACT

Departmental Costs

This bill would not significantly impact the department's costs since existing law allows, and this bill further specifies, that agencies can be reimbursed for direct costs of duplication.

Tax Revenue Discussion

This bill would not impact state income tax revenue.

BOARD POSITION

Pending.





**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

Date Amended:	05/23/00	Bill No:	AB 2799
Tax:	Public Records Act	Author:	Shelley
Board Position:		Related Bills:	SB 2027 (Sher)

BILL SUMMARY:

This bill provides for the release of public records in an electronic format and requires a public agency that withholds a public record to justify its withholding in writing.

ANALYSIS:

Current Law:

Under current law the Public Records Act, or PRA (commencing with Section 6250 of the Government Code), provides for public access to any record maintained by a state and local agency, unless there is a statutory exemption that allows or requires the agency to withhold the record.

A public record is defined as "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." The PRA provides that public records be open to inspection at all times during the office hours of the state or local agency and that every person has a right to inspect any public record, except as specifically provided.

Under current law, upon request, an exact copy of the record shall be provided unless impracticable to do so, and computer data shall be provided in a form determined by the agency.

Proposed Law:

This bill would amend Sections 6253 and 6255 of, and add Section 6253.2 to, the Government Code. Specifically, AB 2799 would:

- Delete the requirement that public records kept on computer be disclosed in a form determined by the public agency, and instead require a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.



guidelines: 1) the agency must make the information available in any electronic format in which it holds the information, 2) each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies, and 3) an agency shall not be required to reconstruct a report in an electronic format if the report is no longer in an electronic format.

- Require an agency that withholds a public record to justify its withholding in writing.
- Specify that the requirements of the bill shall not be construed to permit an agency to make information available only in an electronic format nor to permit public access to records held by the Department of Motor Vehicles that are otherwise restricted under the PRA.
- Specify that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

This bill would become operative on January 1, 2001.

Background:

In July 1998, the California Joint Legislative Task Force on Government Oversight issued a report entitled "The Failure of the California Public Records Act," and stated that much of the information forming the basis for state and local government decisions is not easily accessible to the public.

COMMENTS:

1. **Sponsor and purpose of the bill.** This bill is sponsored by the California Newspaper Publishers Association in an effort to ensure more useful access to public records.
2. **Portions of this bill codify existing Board practices.** The Board already provides denials of public records requests in writing.
3. **Related legislation:** This bill is similar to SB 2027 (Sher), which would establish a new appeals procedure for an agency's denial of a written request or an agency's failure to respond to a written request for a public record.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.



COST ESTIMATE:

It is not anticipated that the provisions of this bill would result in additional administrative costs. Provisions of the Public Records Act allow the Board to recover the direct costs of providing the records in an electronic format.

REVENUE ESTIMATE:

This bill would not impact state revenues.

LEGISLATIVE INTENT SERVICE (800) 666-1917



KAB

Analysis prepared by: Laurie D. Watson

LF 6-8-00
6/6/00

324-1890

TWB 6-7

05/16/00

Contact:

Margaret S. Sheppard

322-2376

sf

AT 6/7/00

6/1/00

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This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

Date Amended:	07/06/00	Bill No:	AB 2799
Tax:	Public Records Act	Author:	Shelley
Board Position:		Related Bills:	SB 2027 (Sher)

BILL SUMMARY:

This bill provides for the release of public records in an electronic format and requires a public agency that withholds a public record to justify its withholding in writing.

ANALYSIS:

Current Law:

Under current law the Public Records Act, or PRA (commencing with Section 6250 of the Government Code), provides for public access to any record maintained by a state and local agency, unless there is a statutory exemption that allows or requires the agency to withhold the record.

A public record is defined as "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." The PRA provides that public records be open to inspection at all times during the office hours of the state or local agency and that every person has a right to inspect any public record, except as specifically provided.

Under current law, upon request, an exact copy of the record shall be provided unless impracticable to do so, and computer data shall be provided in a form determined by the agency.

Proposed Law:

This bill would amend Sections 6253 and 6255 of, and add Section 6253.9 to, the Government Code. Specifically, AB 2799 would:

- Delete the requirement that public records kept on computer be disclosed in a form determined by the public agency, and instead require a public agency that keeps public records in an electronic format to make that information available in that electronic format when requested by any person and according to the following

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.



guidelines: 1) the agency must make the information available in any electronic format in which it holds the information, 2) each agency must provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies, 3) an agency shall not be required to reconstruct a report in an electronic format if the report is no longer in an electronic format, 4) if the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format, and 5) the duplication costs shall be limited to the direct cost of producing a copy of the record in an electronic format, absent specified exemptions.

- Require an agency that withholds a public record in response to a written request to justify its withholding in writing.
- Allow additional time for an agency to provide records under unusual circumstances, including the need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.
- Specify that the requirements of the bill shall not be construed to permit an agency to make information available only in an electronic format nor to permit public access to records held by any agency that are otherwise restricted under the PRA.
- Specify that, in addition to existing provisions prohibiting a public agency from obstructing the inspection or copying of public records, no agency may delay the inspection or copying of public records.

This bill would become operative on January 1, 2001.

Background:

In July 1998, the California Joint Legislative Task Force on Government Oversight issued a report entitled "The Failure of the California Public Records Act," and stated that much of the information forming the basis for state and local government decisions is not easily accessible to the public.

COMMENTS:

1. **Sponsor and purpose of the bill.** This bill is sponsored by the California Newspaper Publishers Association in an effort to ensure more useful access to public records.
2. **Amendments to this bill since our analysis of the May 23, 2000 version are minor.**
3. **It would be extremely difficult for the Board to "write programming language or a computer program, or to construct a computer report to extract data" with just an additional 14 days.** Board staff would likely need more time and resources to construct such items in an acceptable and usable form. Other portions of this bill codify existing Board practices, for example the Board already provides denials of public records requests in writing.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.



4. **Related legislation:** This bill is similar to SB 2027 (Sher), which would establish a new appeals procedure for an agency's denial of a written request or an agency's failure to respond to a written request for a public record.

COST ESTIMATE:

It is not anticipated that the provisions of this bill would result in additional administrative costs. Provisions of the Public Records Act allow the Board to recover the direct costs of providing the records in an electronic format.

REVENUE ESTIMATE:

This bill would not impact state revenues.

LEGISLATIVE INTENT SERVICE (800) 666-1917



Analysis prepared by: Laurie D. Watson TWB 7-19 324-1890 LF 7-21-00
 Contact: Margaret S. Shedd 322-2376 J 7/18/00 07/10/00 JWB
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This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Shelley Analyst: Roger Lackey Bill Number: AB 2799

Related Bills: See Prior Analysis Telephone: 845-3627 Amended Date: 07-06-2000

Attorney: Patrick Kusiak Sponsor:

SUBJECT: Public Record Disclosure/Make Available In Electronic Format If Available & When Requested

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO Support.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED June 22, 2000, STILL APPLIES.

OTHER - See comments below.

SUMMARY OF BILL

This bill would require any state or local agency that has public information in an electronic format to make that information available to the public in the electronic format in which the state agency holds the information. The requester would pay the direct cost of duplicating the public record in an electronic format.

This bill would further require a public record to be disclosed if, on the facts of the particular case, the public interest is served by disclosing the record.

SUMMARY OF AMENDMENT

The July 6, 2000, amendment added language that would provide that if a request is for information in other than in an electronic format and that requested information is also available in an electronic format, a state agency may inform the requester of the information's availability in electronic format.

In addition, the amendment would broaden the language specifying that nothing in this bill would be construed to permit public access to records held by the Department of Motor Vehicles to which access is restricted by law. The language would now apply to all state agency records.

Except for the discussion above, the analysis of AB 2799, as amended June 22, 2000, still applies.

BOARD POSITION

Support. At its July 5, 2000, meeting, the Franchise Tax Board voted 2-0 to support this bill, with member B. Timothy Gage abstaining.

Board Position:

S
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 N

NA
 O
 OUA

NP
 NAR
 PENDING

Legislative Director

Date

[Signature] 7/25/00

CH: 278SFA - 34

AB 2799 (Shelley)

None

File Item #

Assembly Floor: 70-4

[AYE: All Republicans except; NO: Ackerman, Ashburn, Brewer, and Kaloogian; ABS: Baugh, Frusetta, Margett, and Oller]

Senate Judiciary: 5-0

(AYE: Morrow; ABS: Haynes and Wright)

Vote requirement: 21

Version Date: 7/6/00

Summary

This bill would make changes in the California Public Records Act to make electronic records more readily available. Specifically, this bill would:

Mandate that public agencies make records in any electronic format in which they store the records.

Limit the cost of duplicating a copy in an electronic format to the direct cost of producing it in that format.

Require requesters of electronic records to bear the cost of constructing the record, the cost of programming and computer services necessary to produce it. However, these costs may be charged only for records produced periodically would require data programming, compilation or extraction to produce it.

Exempt electronic records from disclosure if their disclosure in electronic format would jeopardize or compromise the security of the original record or of the proprietary software in which it is maintained.

Require public agencies to justify withholding a requested record in writing by demonstrating that the public interest protected by non-disclosure clearly outweighs the interest in disclosure.

Prohibit agency delay in disclosing records unless in unusual circumstances which include the need to compile data, write programming language or to construct a report to extract data.

Require agencies denying a written request for records, in whole or in part, to respond to the request in writing.

Background

Under current law, the California Public Records Act requires that public records be made available for inspection and copying by the public, unless

LEGISLATIVE INTENT SERVICE (800) 666-1917



some specific and explicit exception would deny access. Copies are to be made available at a nominal charge. Computer records may be accessed through the system that the agency permits.

Analysis

Making records more accessible and requiring agencies to take into account the affect on accessibility will promote public knowledge about governmental action. That is a supportable goal. Because citizens have to know what government is doing and government now does so much, steps need to be taken to make information accessible in easily used ways.

Some persons are concerned that requiring law enforcement agencies to provide records electronically prevents them from redacting (removing) the sensitive parts of records that other laws may obligate them not to release. He cites victims of sex crimes, child abuse and domestic violence as examples.

The County of Orange claims that the costs of redacting exceed the amounts that legally they may charge for copies. All in all, the County believes the bill to be bad public policy.

However, the recent amendments to the bill should allay the County of Orange's objections because these amendments arguably preclude the disclosure of electronic records except to the most persistent and well heeled of requesters. It is difficult to imagine how records would ever be produced in an electronic format without costly and time-consuming litigation. This is precisely what they agents of government want to protect their activities from being known to the public.

Support & Opposition Received

Support: California Newspaper Publishers Association (Sponsor).

Opposition: County of Orange.

Consultant: *Mike Petersen*



AB 2799 (Shelley)

None

File Item #

Assembly Floor: 70-4

[AYE: All Republicans except; NO: Ackerman, Ashburn, Brewer, and Kaloogian; ABS: Baugh, Frusetta, Margett, and Oller]

Senate Judiciary: ~~X-X~~ 50

(AYE: ~~NO~~; ABS: ~~—~~)

Vote requirement: 21

Version Date: 6/22/00

76

Summary

This bill would facilitate

Mandates that public agencies make records in any electronic format in which they store the records.

Limits the cost of duplicating a copy in an electronic format to the direct cost of producing it in that format.

Requires requesters of electronic records to bear the cost of constructing the record, the cost of programming and computer services necessary to produce it. However, these costs may be charged only for records produced periodically would require data programming, compilation or extraction to produce it.

Exempts electronic records from disclosure if their disclosure in electronic format would jeopardize or compromise the security of the original record or of the proprietary software in which it is maintained.

Requires public agencies to justify withholding a requested record in writing by demonstrating that the public interest protected by non-disclosure clearly outweighs the interest in disclosure.

Prohibits agency delay in disclosing records unless in unusual circumstances which include the need to compile data, write programming language or to construct a report to extract data.

Requires agencies denying a written request for records, in whole or in part, to respond to the request in writing.

Background

Under current law, the California Public Records Act requires that public records be made available for inspection and copying by the public, unless some specific and explicit exception would deny access. Copies are to be made

LEGISLATIVE INTENT SERVICE (800) 666-1917



available at a nominal charge. Computer records may be accessed through the system that the agency permits.

Analysis

Making records more accessible and requiring agencies to take into account the affect on accessibility will promote public knowledge about governmental action. That is a supportable goal. Because citizens have to know what government is doing and government now does so much, steps need to be taken to make information accessible in easily used ways.

Some persons are concerned that requiring law enforcement agencies to provide records electronically prevents them from redacting (removing) the sensitive parts of records that other laws may obligate them not to release. He cites victims of sex crimes, child abuse and domestic violence as examples.

The County of Orange claims that the costs of redacting exceed the amounts that legally they may charge for copies.

However, the recent amendments to the bill should allay the County of Orange's objections because these amendments arguably preclude the disclosure of electronic records except to the most persistent and well heeled of requesters. It is difficult to imagine how records would ever be produced in an electronic format without costly and time-consuming litigation. This is precisely what they agents of government want to protect their activities from being known to the public.

Support & Opposition Received

Support: California Newspaper Publishers Association (Sponsor)

Opposition: County of Orange (prior to last amendments)

Consultant: *Mike Petersen*



VOTES - ROLL CALL
 MEASURE: AB 2799
 AUTHOR: Shelley
 TOPIC: Public records: disclosure.
 DATE: 06/29/2000
 LOCATION: SEN. JUD.
 MOTION: Do pass as amended, and re-refer to the Committee on Appropriations.
 (AYES 5. NOES 0.) (PASS)

AYES

Escutia Morrow O'Connell Peace
 Schiff

NOES

ABSENT, ABSTAINING, OR NOT VOTING

Burton Haynes Sher Wright

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SENATE JUDICIARY COMMITTEE
Adam B. Schiff, Chairman
1999-2000 Regular Session

AB 2799	A
Assembly Member Shelley	B
As Amended June 22, 2000	
Hearing Date: June 27, 2000	2
Government Code	7
GMO:cjt	9
	9

SUBJECT

Public Records: Disclosure

DESCRIPTION

This bill would revise various provisions in the Public Records Act (PRA) in order to make available public records, not otherwise exempt from disclosure, in an electronic format, if the information or record is kept in electronic format by a public agency. It would specify what costs the requester would bear for obtaining copies of records in an electronic format.

The bill would add, to the unusual circumstances that would permit an extension of time to respond to a request for public records, the need of the agency to compile data, write programming language, or construct a computer report to extract data. The bill would require that a response to a request for public records that includes a denial, in whole or in part, shall be in writing, and provide that the Public Records Act shall not be construed to permit an agency to delay or obstruct inspection or copying of public records.

BACKGROUND

This bill is a blend of two bills that were passed by this Committee last year, AB 1099 (Shelley), and SB 1065 (Bowen).

(more)

AB 2799 (Shelley)
Page 2

AB 1099 passed the Senate (and was chaptered) but contained provisions unrelated to electronic records. SB 1065 was

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vetoed by the Governor, who stated in his veto message that he believes the bill to be well-intentioned, but "the State's information technology resources should be directed towards making sure that its computer systems are year 2000 compliant. The author was unwilling to add language which would ensure the completion of this task before the implementation of the provisions of this bill." Most of SB 1065 was incorporated into AB 2799.

AB 2799 contains those provisions of both bills that were received without much opposition. It is sponsored by the California Newspaper Publishers Association, and is one of several bills moving through both houses that relate to public records or to the use of electronic records by public agencies.

CHANGES TO EXISTING LAW

The Public Records Act allows an agency to provide computer data in any form determined by the agency. The Act directs a public agency, upon request for inspection or for a copy of the records, to respond to a request within 10 days after receipt of the request. In unusual circumstances, which are specified in the Act, this timeline for responding may be extended in writing for 14 days. [Government Code Section 6253.]

This bill would:

- a) Require a public agency to make disclosable information available in any electronic format in which it holds the information, unless release of the information would compromise the integrity of the record or any proprietary software in which it is maintained;
- b) Add, in the definition of "unusual circumstances" for which the time limit for responding to a request for a copy of records may be extended up to 14 days after the initial 10 days, the need for the agency to compile data, to write programming language or a computer program, or to construct a computer report to extract data;

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Page 3

- c) Require a public agency to respond in writing to a written request for public records, including a denial of the request in whole or in part, and requiring that the names and titles of the persons responsible for the denial be stated therein;
- d) Provide that nothing in the Act shall be construed to permit the agency to delay or obstruct the inspection or copying of public records;
- e) Provide that a requester bear the costs of programming and computer services necessary to produce a record not otherwise readily produced, as specified;
- f) Delete the provision in current law that computer data that is a public record shall be provided in a

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form determined by the agency.

COMMENT

1. Stated need for legislation

With the advent of the electronic age, more and more people want to be able to access information in an electronic format. Apparently, there is not current authority under which a person seeking electronically available records could obtain such records in that format. This means that if an agency makes a CD or disk copies of the records, a member of the public could not obtain records in that format—the public would have to buy copies made out of the printouts from the records. The expense of copying these records in paper format, especially when the records are voluminous, makes those public records practically inaccessible to the public, according to the author and the proponents.

The author also states that the current provision in the PRA that gives a public agency the discretion to determine in which form the information requested should be provided works so that the agency can effectively frustrate the request by providing a copy of the requested record in a form different from the request, which could sometimes render the information useless.

The sponsor of this bill, the California Newspaper Publishers Association (CNPA) also contends that the 10-day period that a public agency has to respond to a request for inspection or copying of public records is

AB 2799 (Shelley)
Page 4

not intended to delay access to records. It is intended instead, when there is a legitimate dispute over whether the records requested are covered by an exemption, to provide time for the agency to provide the information or provide the written grounds for a denial. What many state agencies do, the sponsor says, is to use the 10 days as a "grace period" for providing the information, during which time many a requester (members of the public) often gives up and never acquires the record.

These two deficiencies in the Public Records Act are what this bill is intended to cure.

2. Information in electronic form to be provided in same form

This bill would require a public agency that has information constituting a public record in an electronic format to make that information available in an electronic format upon request. Additionally,
a) the agency is required to provide information in any electronic format in which it holds the information;
and



- b) the agency is required to provide a copy of an electronic record in the format requested if it is the format that had been used by the agency to create copies for its own use or for other agencies.

3. Conditions on providing records in electronic format

The bill would make conditional the requirement that a public agency comply with a request for public records held in an electronic format. These conditions are:

- a. An agency would not be required to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

This provision was amended into SB 1065 (Bowen) when it was heard in this Committee last year, in response to concerns raised by the some state agencies.

- b. An agency would not be permitted to make information available only in an electronic format.

Even though this bill is intended to make records

AB 2799 (Shelley)
Page 5

available to the public in electronic format if kept by an agency in that form, an agency may not, under this bill, frustrate the public's access to information by then converting the non-electronically formatted records into electronic format. As prevalent as electronic data processing is now, there are still those who may not have access to computer equipment to read computer disks or CDs. Thus, if public information is requested in a form other than in an electronic format, a public agency must provide such record in the non-electronic format.

However, this bill would require the agency to provide information in electronic format only if requested by a member of the public. If the record is available in electronic format as well as in printed form, it is not clear whether the public agency has an obligation to tell the requester that the information is available in electronic format.

SHOULD A PUBLIC AGENCY INFORM A REQUESTER THAT THE INFORMATION REQUESTED IS AVAILABLE IN ELECTRONIC FORM?

- c. An agency would not be required to release an electronic record in electronic form if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

This limitation was added to the bill in order to alleviate concerns that electronic records, though created with taxpayer money (see Comment 5), may have been produced using software designed specifically for

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the agency. This bill would give the agency the flexibility to refuse to release a requested record in electronic format, if such a release would mean that the software would also have to be released. Even without the software problem, though, an electronic record containing the data may be deciphered and the software program reconstructed (see below).

The agency also may refuse to provide the information in electronic format if the electronic record, when transmitted or provided to a requester, could be altered and then retransmitted, thus rendering the

AB 2799 (Shelley)
Page 6

original record vulnerable.

These two concerns were registered by opponents of SB 1065 last year. Thus, AB 2799 includes a provision that gives the public agency the option not to provide the information if disclosing it would jeopardize the integrity or security of the system.

- a) The Department of Motor Vehicles would not be required to provide public access to its records where access is otherwise restricted by statute.

These records would be, among others, personal information on holders of driver's licenses, and other information protected by federal and state privacy statutes.

The Governor's veto message of SB 1065 stated that many of the state's computer systems do not yet have the capacity to implement the provisions of the bill, and that he is concerned that SB 1065 would not be able to protect "the confidentiality of citizens whose personal information is maintained by the state departments including the Employment Development Department, the Department of Motor Vehicles, the Department of Health Services, and the California Highway Patrol."

Only the records of the DMV, where access to the records is restricted by statute, are exempt from this bill.

SHOULD THE OTHER AGENCIES ALSO BE EXEMPTED?

4. Costs of reproduction of records: what requester pays for

This bill would specify the copying costs that a requester would pay:

- a) If the record duplicated is an electronic record in a format used by the agency to make its own copies or copies for other agencies, the cost of duplication would be the cost of producing a copy in an electronic

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- format.
- b) If the public agency would be required to produce a

AB 2799 (Shelley)

Page 7

copy of an electronic record and the record is one that is produced by the public agency at otherwise regularly scheduled intervals, or if the request would require data compilation, extraction, or programming to produce the record, the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce the record.

5. Target records to be duplicated

This bill would target voluminous documents as those public records to which the public should have access in the electronic format, and those public records such as the city budget, environmental impact reports, or minutes from a Board of Supervisors' meeting as documents that should be available on disk or the Internet. Especially because these documents were created a taxpayer expense in the first place, it is argued, a person seeking copies should not be gouged by the public agency for the cost of a person standing in front of a copy machine to duplicate the record when the record could quickly be copied onto a disk or accessed on the Internet. Thus, the bill provides that the cost of duplicating a record in electronic format would be the direct cost of producing that record in electronic format, i.e., the cost of copying the CD or copying records stored in a computer into disks.

Where the records do not lend themselves to electronic format, this bill would not impose a duty on the public agency to convert the records into electronic format (just as the agency would not be permitted to make records available only in electronic format). For example, environmental impact reports, which are voluminous, normally contain maps and other fold-out attachments. Until these documents are actually produced by the public agency or their contractors in electronic format, there would be no obligation for the agency to provide the reports in disk or CD form.

However, if at some point in time these voluminous

AB 2799 (Shelley)

Page 8



records do become available in electronic form, it is possible that public agencies will just have to create websites for posting all disclosable records accessible to the public.

6. Public agency may not delay or obstruct access to public records

This bill would provide that "Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records?" [Government Code Section 6253(d).]

Thus, any delay experienced by an agency in responding to a request could be interpreted as a violation of the Public Records Act. Under existing law, the court is required to award reasonable attorney's fees and court costs to a person who prevails in litigation filed under the PRA. But this award would be available only if the requester can prove that the agency "obstructed" the availability of the requested records for inspection or copying. Because of the change this bill would make to the referenced provision, it may invite litigation at every delay in production of records requested.

Proponents of this change, however, point to the fact that when this section was last amended, the word "delay" was replaced with the word "obstruct." The return of the word "delay" to this section, they say, would remove any doubt that the prior substitution of "obstruct" for "delay" in subdivision (d) of Section 6253 was not intended to weaken the PRA's mandate that agencies act in good faith to promptly disclose public records requested under the Act.

An example used by proponent, counsel to The Orange County Register, is the requested records from the University of California, Irvine, for the Register's investigation and report on the abuses at the University's fertility clinic (for which the Register earned a Pulitzer Prize). The Register apparently utilized the PRA to obtain public records that were critical to the reporting. Repeated requests met with repeated months of delay, "even where the University readily conceded that the records are not exempt from

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Page 9

disclosure." Proponent indicated, however, that the Register "is not so naive as to believe that this amendment will solve the serious problem of administrative delay in responding to CPRA requests?"

7. "Unusual circumstance" would extend time to respond

Existing law provides for an extension of the public

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agency's deadline for responding to a request from 10 days to no more than 14 days more, if certain "unusual circumstances exist, such as the need to search for and collect data from field facilities separate from the office processing the request or the need for consultation with another agency that has a substantial interest in the determination of the request.

This bill would add to these "unusual circumstances," the need to compile data, write programming language or a computer program, or to construct a computer report to extract data. This provision recognizes that sometimes the information or data requested is not in a central location nor easily accessible to the agency itself, and thus would take time to produce or copy.

8. Denial of request must be in writing

Existing law requires an agency to justify the withholding of its record by demonstrating that the record requested is exempt under the PRA, or that on the facts of the particular case, the public interest served by not disclosing the information outweighs the public interest served by disclosure of the record. The PRA provision does not require this justification or denial of the request to be in writing.

This bill would expressly state that a response to a written request for inspection or copying of public records that includes a determination that the request is denied, in whole or in part, must be in writing.

9. Withdrawn opposition

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Page 10

The following entities initially registered opposition to the bill for various reasons, most of them related to the proprietary software and security exemption from providing information in electronic format and to the earlier version which did not specify that electronic records or electronically formatted information must be disclosable in the first place (or not exempt from the PRA) to be available in electronic format:

The County of Los Angeles; the County of Los Angeles Sheriff's Department; California State Sheriff's Association; California State Association of Counties; California Association of Clerks and Election Officials.

The amendments last made to this bill shifted these entities' position to neutral.

The one remaining opponent of the bill, the County of



Orange, contends that the county, like many others, already provide information to the public on public records and how to access them, 24 hours a day through the Internet. "Without reasonable regulations," the county argues, "County staff could be required to spend considerable time copying and editing records, determining if they are appropriate for public disclosure and responding with written justifications if the requests are denied."

Support: Orange County Register

Opposition: County of Orange

HISTORY

Source: California Newspaper Publishers' Association (CNPA)

Related Pending Legislation: SB 2027 (Sher) would also amend the Public Records Act as it relates to a person's right to litigate in the event of a denial of the person's request. The bill is now in the Assembly Judiciary Committee.

Prior Legislation: AB 1099 (Shelley) and SB 1065 (Bowen),

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Page 11

see background)

Prior Vote: Asm. G.O. (Ayes 12, Noes 2)
Asm. Appr. (Ayes 17, Noes 2)
Asm. Flr. (Ayes 70, Noes 4)

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VOTES - ROLL CALL
MEASURE: AB 2799
AUTHOR: Shelley
TOPIC: Public records: disclosure.
DATE: 05/25/2000
LOCATION: ASM. FLOOR
MOTION: AB 2799 SHELLEY THIRD READING
(AYES 70. NOES 4.) (PASS)

AYES

Aanestad Alquist Aroner Baldwin
Bates Battin Bock Briggs
Calderon Campbell Cardenas Cardoza
Cedillo Corbett Correa Cox
Cunneen Davis Dickerson Ducheny
Dutra Firebaugh Florez Floyd
Gallegos Granlund Havice Honda
House Jackson Keeley Knox
Kuehl Leach Lempert Leonard
Longville Lowenthal Machado Maddox
Maldonado Mazzone McClintock Migden
Nakano Olberg Robert Pacheco Rod Pacheco
Papan Pescetti Reyes Romero
Runner Scott Shelley Steinberg
Strickland Strom-Martin Thompson Thomson
Torlakson Vincent Washington Wayne
Wesson Wiggins Wildman Wright
Zettel Hertzberg

NOES

Ackerman Ashburn Brewer Kaloogian

ABSENT, ABSTAINING, OR NOT VOTING

Baugh Frusetta Margett Oller
Villaraigosa Vacancy

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COMPLETE BILL HISTORY

BILL NUMBER : A.B. No. 2799
 AUTHOR : Shelley
 TOPIC : Public records: disclosure.

TYPE OF BILL :

- Active
- Non-Urgency
- Non-Appropriations
- Majority Vote Required
- State-Mandated Local Program
- Fiscal
- Non-Tax Levy

BILL HISTORY

2000

July 6 Read second time, amended, and re-referred to Com. on APPR.
 July 5 From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 5. Noes 0.)
 June 22 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.
 June 22 Read second time, amended, and re-referred to Com. on APPR.
 June 8 Referred to Com. on JUD.
 May 25 In Senate. Read first time. To Com. on RLS. for assignment.
 May 25 Read third time, passed, and to Senate. (Ayes 70. Noes 4. Page 6573.)
 May 24 Read second time. To third reading.
 May 23 Read second time and amended. Ordered returned to second reading.
 May 22 From committee: Amend, and do pass as amended. (Ayes 17. Noes 2.) (May 17).
 May 8 From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 12. Noes 2.) (May 8).
 May 2 Re-referred to Com. on G.O.
 Apr. 27 Joint Rule 61 (b)(5) suspended.
 Apr. 27 From committee chair, with author's amendments: Amend, and re-refer to Com. on G.O. Read second time and amended.
 Apr. 24 In committee: Set second hearing. Failed passage. Reconsideration granted.
 Apr. 10 In committee: Set, first hearing. Hearing canceled at the request of author.
 Mar. 16 Referred to Com. on G.O.
 Feb. 29 From printer. May be heard in committee March 30.
 Feb. 28 Joint Rule 54 suspended. Assembly Rule 49(a) suspended. Read first time. To print.



AB 2799 (Shelley)

None

File Item #

Assembly Floor: 70-4

[AYE: All Republicans except; NO: Ackerman, Ashburn, Brewer, and Kaloogian; ABS: Baugh, Frusetta, Margett, and Oller]

Senate Judiciary: X-X

(AYE: ; NO:; ABS:)

Vote requirement: 21

Version Date: 6/22/00

Summary

This bill:

Mandates that public agencies make records in any electronic format in which they store the records.

Limits the cost of duplicating a copy in an electronic format to the direct cost of producing it in that format.

Requires requesters of electronic records to bear the cost of constructing the record, the cost of programming and computer services necessary to produce it. However, these costs may be charged only for records produced periodically would require data programming, compilation or extraction to produce it.

Exempts electronic records from disclosure if their disclosure in electronic format would jeopardize or compromise the security of the original record or of the proprietary software in which it is maintained.

Requires public agencies to justify withholding a requested record in writing by demonstrating that the public interest protected by non-disclosure clearly outweighs the interest in disclosure.

Prohibits agency delay in disclosing records unless in unusual circumstances which include the need to compile data, write programming language or to construct a report to extract data.

Requires agencies denying a written request for records, in whole or in part, to respond to the request in writing.

Background

Under current law, the California Public Records Act requires that public records be made available for inspection and copying by the public, unless some specific and explicit exception would deny access. Copies are to be made

AB 2799 (Shelley)

LH: 296 SRP - 18



available at a nominal charge. Computer records may be accessed through the system that the agency permits.

Analysis

Making records more accessible and requiring agencies to take into account the affect on accessibility will promote public knowledge about governmental action. That is a supportable goal. Because citizens have to know what government is doing and government now does so much, steps need to be taken to make information accessible in easily used ways.

Some persons are concerned that requiring law enforcement agencies to provide records electronically prevents them from redacting (removing) the sensitive parts of records that other laws may obligate them not to release. He cites victims of sex crimes, child abuse and domestic violence as examples.

The County of Orange claims that the costs of redacting exceed the amounts that legally they may charge for copies.

However, the recent amendments to the bill should allay the County of Orange's objections because these amendments arguably preclude the disclosure of electronic records except to the most persistent and well heeled of requesters. It is difficult to imagine how records would ever be produced in an electronic format without costly and time-consuming litigation. This is precisely what they agents of government want to protect their activities from being known to the public.

Support & Opposition Received

Support: California Newspaper Publishers Association (Sponsor)

Opposition: County of Orange (prior to last amendments)

Consultant: *Mike Petersen*



VOTES - ROLL CALL

MEASURE: AB 2799
AUTHOR: Shelley
TOPIC: Public records: disclosure.
DATE: 05/25/2000
LOCATION: ASM. FLOOR
MOTION: AB 2799 SHELLEY THIRD READING
(AYES 70. NOES 4.) (PASS)

AYES

Aanestad Alquist Aroner Baldwin
Bates Battin Bock Briggs
Calderon Campbell Cardenas Cardoza
Cedillo Corbett Correa Cox
Cunneen Davis Dickerson Ducheny
Dutra Firebaugh Florez Floyd
Gallegos Granlund Havice Honda
House Jackson Keeley Knox
Kuehl Leach Lempert Leonard
Longville Lowenthal Machado Maddox
Maldonado Mazzone McClintock Migden
Nakano Olberg Robert Pacheco Rod Pacheco
Papan Pescetti Reyes Romero
Runner Scott Shelley Steinberg
Strickland Strom-Martin Thompson Thomson
Torlakson Vincent Washington Wayne
Wesson Wiggins Wildman Wright
Zettel Hertzberg

NOES

Ackerman Ashburn Brewer Kaloogian

ABSENT, ABSTAINING, OR NOT VOTING

Baugh Frusetta Margett Oller
Villaraigosa Vacancy

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Assembly California Legislature

KEVIN SHELLEY

Majority Leader



FACSIMILE TRANSMISSION

Date: 6/23/00

To: Mike Peterson	Fax: 445-3105
	Phone:
From: Ryan Spences	Fax: 916-319-2112
	Phone: 916-319-2012
RE: AB 2799 Letters	
Number of Pages Including Cover:	
Comments: (Here are 3 letters of neutrality & one letter of opposition)	
In total, CNPA + 1 st Amendment Coalition are in support ⊕ Orange County is the only opposition.	
<i>Tranby</i>	

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SHELLEY
3160

**CARPENTER SNODGRASS
& ASSOCIATES**

June 20, 2000

JUN 20 2000

**TO: The Honorable Adam Schiff, Chairperson
Members, Senate Judiciary Committee**

FROM: Carpenter Snodgrass & Associates OPPOSE

RE: AB 2799 (Shelley) Hearing Date: June 29, 2000

On behalf of the Orange County Board of Supervisors, we urge your opposition to AB 2799 (Shelley) which would require any agency to provide electronic public records upon request.

The County of Orange, like many counties is using the Internet to broadcast information about public records and how they can be accessed by the community. This gives citizens 24 hour-a-day access to Assessor, Treasurer-Tax Collector, Purchasing and Board of Supervisors records, to name a few.

Without reasonable regulations, County staff could be required to spend considerable time copying and editing records, determining if they are appropriate for public disclosure and responding with written justifications if requests are denied.

For these reasons we urge your NO vote on AB 2799.

cc: Assemblyman Shelley

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