

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

APR 02 2019

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

Jorge Navarrete Clerk

Deputy

DECLARATION OF JUSTIN NISHIOKA

EXHIBIT B

— VOLUME VI —

(PAGES 1501-1724)

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January 28, 1999

Terry Francke
C.F.A.C.
2701 Cottage Way, Ste 12
Sacramento, CA 95825-1226

Re: Court Records

Dear Mr. Francke:

I am having a lot of trouble here in Los Angeles Municipal Court jurisdiction in reviewing files and searching the indices. The index has been removed from public access and the clerks are charging \$5 search fees. In one instance, the West Covina court, the clerks are charging \$5 per name per year searched. In addition courts are now starting to ask why the view wants to see the file and if the requester is not with a government agency the request is being denied.


I wrote to the East Los Angeles Municipal Court and complained. A copy of my complaint and the Clerk's reply is attached. The Clerk defended her clerk's conduct as "following procedures".

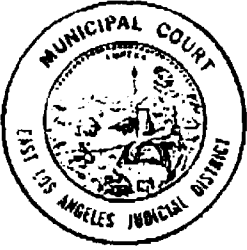
I exchanged e-mail with Jennifer Lafleur, of the San Jose Mercury News, and she replied that she has been hearing the same complaints but only from the Los Angeles area. I had written her wondering if there was a statewide problem.

I would like to know if the C.F.A.C. is aware of this problem and if anyone is doing anything about it.

Thanking you in advance for your attention to this matter, I remain,

Very truly,


ROBERT E. FIELD



**THE MUNICIPAL COURT
EAST LOS ANGELES JUDICIAL DISTRICT
214 SOUTH FETTERLY AVENUE
LOS ANGELES, CALIFORNIA 90022
VIRGINIA M. ESTRADA, COURT ADMINISTRATOR**

October 16, 1998

Robert E. Field
Robert E. Field & Associates
Public Records Research Services
300 S. Thomas Street, Suite 305
Pomona, CA 91769

Dear Mr. Field:

This is to acknowledge receipt of your letter dated September 15, 1998, as a result of an incident between yourself and two staff members of our Criminal Department.

I have completed my investigation of the incident described in your letter and have reached the following conclusion: The two employees were following procedures in an effort to determine what information you would be entitled to obtain. They conducted themselves in a diligent manner in order to provide you with that information. At no time was this an attempt on their behalf to keep information from you.

I am sorry for any inconvenience you may have experienced and do appreciate your calling this matter to my attention.

Very truly yours,

Virginia M. Estrada
Trial Court Administrator
East Los Angeles Municipal Court

VME:lg

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CERTIFIED MAIL NO. Z-214-813-637

Return Receipt Requested

September 15, 1998

Virginia Estrada, Clerk of the Court
East Los Angeles Municipal Court
214 South Fetterly
Los Angeles, CA 90022

Re: Citizen Complaint

Dear Ms. Estrada:

The purpose of this letter is to register a complaint regarding the misconduct of two of your employees; clerk MARTHA PEREZ and her supervisor RAY CHAMOU, on the afternoon of this date.

I have researched court records from Fresno to San Diego over a period of twenty-five years and this is the first complaint I have ever made to any court. This is also the first time I have been to your courthouse in twenty years. I was dressed professionally with a coat, white shirt and tie.

I am no stranger to public records. I was a successful plaintiff in the landmark case of VALLEJOS V. CALIFORNIA HIGHWAY PATROL, 89 Cal. App.3d 781; 152 Cal. Rptr. 846, which dealt in part with the definition of public records, particularly as they relate to police reports and I assisted with the research. I was also involved in another public records access case that lead directly to changes in the Brown Act dealing with fees charged by agencies for copies of reports and photographs.

Attached for your reference are copy of index search request and payment receipt from Los Angeles central court and index search payment receipt from your court.

This afternoon I went to window 6, handed clerk Perez the above-mentioned search and asked to see the file. She asked what "agency" I was with, I told her none, I was a member of the public. She asked twice more, insisting I must be with some agency. Forced to accept I was not with some law enforcement agency she then remarked that if I wasn't with any agency what did I need to see the file for? She then wanted to know what I wanted to see and why. I simply told her it is my work to research court files. Clearly annoyed she took my search result from Los Angeles, checked the computer and then told me the case number was not correct and did not belong to the name I had searched. She told me if I wanted it searched again I would have to pay a \$5.00 fee. I showed her my receipt for the earlier search in Los Angeles and she replied that I would have to pay again. I said "Ok, I need it." Ms. Perez then performed the search and came up with a correct case number. Again there was discussion as to why I wanted to see the file if I wasn't from an agency. Ms. Perez shook her head, took my search request and left the area. Her intense interest as to why I wanted the file and her obvious dissatisfaction that I was not with law enforcement lead me to believe she was going to consult a supervisor before allowing me to see the file. I waited patiently.

After a prolonged period Ms. Perez returned accompanied by Mr. Chamou who immediately demanded to know what I wanted. I told him she was helping me. He then angrily accused me of giving Ms. Perez a hard time. I was completely taken aback. I had no idea what he was talking about. He had a hard edge to his voice and a no-nonsense attitude. Ms. Perez busied herself with some papers and wouldn't look my way. I explained that I had not given her a hard time. He insisted I had, that she said I had been upset over having to pay the search fee twice. He dismissed my protestations. After some discussion we got past that, but he remained terse and angry with me. Clearly he was there to put me in my place, not to determine the facts, not to determine the problem or solve it. Apparently he believes only one side of a story is needed. This notion is hugely ironic considering where he works. Then he wanted to know what agency I was with and I explained again that I am not with an agency but I am a member of the public who reviews files as my business. As with Ms. Perez we went round on that issue again. It would appear Ms. Perez and Mr. Chamou believe only enforcement officers are entitled to view court files. Then he wanted to know why I needed to review the file and what I wanted to see. I just replied it was my work and I wanted to see whatever was available. Then, as though talking to a moron, with exaggerated patience he explained that I would only be allowed to see the docket and the complaint and nothing else. I told him I still wanted to see it. He opined that the

docket should suffice for my purposes. I persisted that I wanted to see the file. Then he remarked again about my mistreating the clerk and that made me angry, I had enough, I had done nothing, this had gone too far. None of us has ever met before. There is absolutely no reason to treat me or anyone else this way. I then asked for and received his name, the clerk's name and your name so that I might file this complaint. To his credit he unhesitatingly gave me that information. He then directed me to go pay the search fee at the cashier before allowing me to see the file.

Upon paying the fee, with him standing near the cashier and observing, I then returned to window 6. He had lost the hard edge to his voice and though being very formal his attitude was much improved. He had, on his own initiative, printed out a complete record of the docket which he handed to me without charge. To his credit I must say that was very considerate of him. I then asked to see the file but he again pointed out there was nothing in the file that was not on the docket. I had to *persist* that I wanted to see the file and was finally shown the file after he removed the police report. Even after giving me the computer printout Mr. Chamou was reluctant to let me see the file and essentially tried to talk me out of it. He held a portion of the file up to the window for me to see while explaining the information wouldn't be understandable to me and anything I might need was in the computer printout anyhow. He explained that only attorneys and court personnel were capable of understanding the information in the file. Again I persisted and he finally let me view the file. After briefly checking the file I handed it back, thanked him and left.

Here is my complaint:

1. COURT EMPLOYEES HAVE NO BUSINESS SCREENING PUBLIC RECORD REQUESTERS AS TO THEIR NEED TO KNOW. Since the Brown Act of the 1970's any person may inspect public documents without showing their "need to know." This notion of "need to know" should be foreign to them.

Besides, as you know, most requesters have no idea why their client needs the information. This is just silly and suggests to me these clerks make themselves feel important by making citizens dance and jump through hoops just to amuse themselves. At no time was there an issue involving exempted materials.

2. ANY PERSON MAY INSPECT A PUBLIC RECORD. Am I to believe that I am the first private person to ask to view a file at your court? If either of them insists they believed only law enforcement officers have access to court files then you have two employees with a serious credibility problem.

3. ANY PERSON MAY INSPECT ANY PUBLIC RECORD AND NOT BE RESTRICTED TO ABSTRACTS OR SELECTED DATA. It appears to me every effort was being made to keep the file from me. Even after giving me the computer printout Mr. Chamou was reluctant to let me see the file and essentially

employee. But guess what, I had a right to be upset if I wanted to be. Even so, I did not say or do anything wrong to Ms. Perez, even with all her nasty inquiries and snide remarks because I wasn't with an agency and why I wanted to see the file if I wasn't from an agency. But if she is so upset because I looked annoyed then she had better transfer to a position where she doesn't have to deal with people. From my daily work in courthouses I see clerks dealing with some pretty unpleasant customers who are pretty upset at fines, penalties, and so forth. If she can't handle me then she belongs somewhere else, perhaps at home. I am acutely aware of what clerks have to put up with. I see and hear people yelling at them all the time. I don't do anything to make their life more difficult, which would in any event be self-defeating to me.

I know it is difficult to hear one another through the glass so therein might lay an explanation if she thought she heard something I said to her, but I just have no other explanation for her being as upset as Mr. Chamou claimed. I categorically make no apology to Ms. Perez and I question her explanation.

I notice you have an extensive microphone and video surveillance system in place, so if there is any dispute as to what happened I assume you can independently check it through those resources.

Just as your clerks deal with rude citizens I too sometimes have to deal with rude clerks. But, I generally just engage them in some conversation and try to establish a rapport. I have a pretty thick skin and if I were to complain all the time I would probably be out of business since I would experience reduced service next time I returned to that courthouse, so I tend to shrug an unpleasant experience off.

It appears more than a little difficult to establish that kind of rapport at your courthouse, which is built more like a prison than a public place. It's hard for people on the outside to hear the clerk because of all the noise in the hallway which is noisy and echoes. The bullet-proof glass makes the relationship between clerk and customer impersonal. I noted while I was waiting that the clerks talk to one another while servicing a customer but don't engage the customer. The glass and speaker arrangement allow clerks to socialize with one another while completely ignoring the customer. It's as though the customer doesn't even exist.

I will point out that when I first approached Ms. Perez's window she was engaged in a conversation with another female employee over what was clearly a work matter. Though I could not hear them I could see them pointing at various places in a file she was working on. It is normal and customary in the workplace to acknowledge a person's presence and perhaps remark that you will be with them

soon. She did not do this though I could see that she saw me standing there. After finishing their conversation the other woman left and Ms. Perez returned to the file she was working on, making notes in it but still did not turn to me or otherwise acknowledge my presence. Only when she finished her task did she finally turn to me and acknowledge me. I regard the courtesy of acknowledgment as pretty basic stuff that I see practiced even by teenagers at entry-level jobs in fast food restaurants. One would hope for higher standards at the courthouse.

I would be grateful if you would look into this and give me the favor of a written reply as I do not tolerate such treatment as I received at your office. Please understand that I have taken some time to write you and I fully expect you to appreciate my doing so, since this reflects on you personally as well as the others in your courthouse. What clearly disturbs me the most is both employees' mantra over and over demanding to know *why I need to review the file*. The answer is clear - it is none of their business, they have more productive things to do with their time and the public does not appreciate being toyed with by their pretentious and exaggerated sense of importance as they pretend *they* make decisions on whether or not a citizen will view a public record.

You are encouraged to call me if you have any questions. The best time to reach me is between 9:00am and 10:00am when I try to be in the office to take and return phone calls. I am in the field all day, so if I am not in please leave a message as to when and where I might reach you the following day and I will make a point of stopping and calling you at whatever time is best for you.

Thanking you in advance for your prompt attention to this matter, I remain,

Very truly,

ROBERT E. FIELD

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Jeffrey A. DeLand
Chief Deputies

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C. David Dickerson
John T. Studebaker
Daniel A. Weitzman

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Honorable Debra Bowen
4040 State Capitol

Municipal Court Records - #13339

Dear Senator Bowen:

QUESTION NO. 1

May a clerk of a municipal court provide access to the index of actions only upon request?

OPINION NO. 1

A clerk of a municipal court may provide access to the index of actions only upon request, provided the index of actions is still reasonably accessible to all members of the public.

ANALYSIS NO. 1

While most public records are governed by the California Public Records Act (Ch. 3.5 (commencing with Sec. 6250), Div. 7, Title 1, Gov. C.¹), courts are expressly exempted from the provisions of that act (subd. (a), Sec. 6252). Rather, the management of trial court records is governed by Chapter 1.4 (commencing with Section 68150) of Title 8. Under those provisions, trial court records, as defined (subd. (a), Sec. 68151), including the index of actions other than traffic violation cases (paras. (10) and (11), subd. (j), Sec. 68152), must be preserved permanently so that the original records are never transferred or destroyed (subd. (d), Sec. 68151).

¹ All section references are to the Government Code, except as specified to the contrary.

In this regard, Section 68150 of the Government Code provides, as follows:

"68150. (a) Trial court records may be preserved in any form of communication or representation, including optical, electronic, magnetic, micrographic, or photographic media or other technology capable of accurately producing or reproducing the original record according to minimum standards or guidelines for the preservation and reproduction of the medium adopted by the American National Standards Institute or the Association for Information and Image Management.

"Specifications for electronic recordings made as the official record of the oral proceedings shall be governed by the California Rules of Court.

"(b) No additions, deletions, or changes shall be made to the content of the record. The records shall be indexed for convenient access.

"(c) A copy of the record preserved or reproduced according to subdivisions (a) and (b) shall be deemed the original court record and may be certified as a correct copy of the original record.

"(d) A court record preserved or reproduced in accordance with subdivisions (a) and (b) shall be stored in a manner and in a place that reasonably assures its preservation against loss, theft, defacement, or destruction for the prescribed retention period under Section 68152. Electronic recordings made as the official record of the oral proceedings shall not require a backup copy unless otherwise specified in the California Rules of Court.

"(e) The court record that was reproduced in accordance with subdivisions (a) and (b) may be disposed of in accordance with the procedure under Section 68153, unless it is subject to subdivision (f).

"(f) The following court records may be preserved or reproduced under subdivisions (a) and (b) but shall also be preserved on paper, microfilm, or in another form of communication or representation approved by and in accordance with

standards that are defined as archival by the American National Standards Institute for the duration of the record's retention period:

"(1) The comprehensive historical and sample superior court records preserved for research under the California Rules of Court.

"(2) Court records that are preserved permanently.

"Court records that must be preserved longer than 10 years but not permanently may be reproduced on media other than paper or microfilm using technology authorized under subdivisions (a) and (b). However the records shall be reproduced before the expiration of their estimated lifespan for the medium in which they are stored as specified in subdivision (g).

"(g) Instructions for access to data stored on a medium other than paper shall be documented. Each court shall conduct a periodic review of the media in which the court records are stored to assure that the storage medium is not obsolete and that current technology is capable of accessing and reproducing the records. The court shall reproduce records before the expiration of their estimated lifespan for the medium in which they are stored according to minimum standards and guidelines for the preservation and reproduction of the medium adopted by the American National Standards Institute or the Association for Information and Image Management.

"(h) Court records preserved or reproduced under subdivisions (a) and (b) shall be made reasonably accessible to all members of the public for viewing and duplication as would the paper records. Reasonable provision shall be made for duplicating the records at cost. Cost shall consist of all costs associated with duplicating the records as determined by the court." (Emphasis added.)

Thus, trial court records may be preserved by a variety of electronic and other technological means (subd. (a), Sec. 68150), but court records that must be preserved permanently, including the index of actions other than traffic violation cases (paras. (10 and (11), subd. (j), Sec. 68152), must also be preserved on paper, microfilm, or other approved medium (subd. (f), Sec. 68150). Moreover, court records must be

indexed for convenient access (subd. (b), Sec. 68150). Finally, regardless of the method of preservation, court records must be made reasonably accessible to all members of the public for viewing and duplication the same as paper records would be (subd. (h), Sec. 68150).

In addition, the Judicial Council may adopt statewide rules of court for court administration, practice, and procedure not inconsistent with statute (Sec. 6, Art. VI, Cal. Const.). Under subdivision (a) of Rule 531 of the California Rules of Court, only the clerk of the court may remove and replace papers in the files; and unless otherwise ordered by the court, filed papers may only be inspected by the public in the office of the clerk or released to a court officer or attaché for use in a court facility. Also, under Section 575.1 of the Code of Civil Procedure and Section 981 of the California Rules of Court, each trial court may adopt local rules of court, according to specified procedures, governing the supervision and judicial management of actions. However, local rules of court may not contravene statutory law or statewide rules of court regarding the fees that trial courts may charge or the right of public access to court records (see In re Jeanette H. (1990) 225 Cal.App.3d 25, 34).

Moreover, the courts have recognized a right of public access to information obtained in court proceedings that were open to the public. The court in KNSD Channels 7/39 v. Superior Court (1998) 63 Cal.App.4th 1200 summarized this right at pages 1202 to 1204, inclusive, as follows:

"The fundamental notion of public access to court proceedings is grounded in the common law of England and the United States. (Richmond Newspapers, Inc. v. Virginia (1980) 448 U.S. 555, 569 [100 S.Ct. 2814, 2823, 65 L.Ed.2d 973] ['at the time when our organic laws were adopted, criminal trials both here and in England had long been presumptively open'].) Based on this history of openness, the public's right of access to such court proceedings is now recognized as an integral part of the freedoms of speech and press guaranteed under the First Amendment to the United States Constitution. (Id. at pp. 575-581 [100 S.Ct. at pp. 2826-2829].) Similarly, the California Constitution, article I, section 2, subdivision (a), and section 15 provide for a right of access to judicial proceedings (See also Pen. Code, §686.)

"Records from judicial proceedings, including evidence introduced at such proceedings, are also subject to a public right of access. However, the

right exists not by virtue of the First Amendment (*Nixon v. Warner Communications, Inc.* (1978) 435 U.S. 589, 608-610 [98 S.Ct. 1306, 1317-1318, 55 L.Ed.2d 570]; cf. *Cox Broadcasting Corp. v. Cohn* (1975) 420 U.S. 469, 495 [95 S.Ct. 1029, 1046, 43 L.Ed.2d 328]), but rather as a continuation of the common law right to inspect and copy judicial records. (See *In re Nat. Broadcasting Co., Inc.* (D.C. Cir. 1981) 653 F.2d 609, 612 [209 App.D.C.354].) The right of access 'serves the important functions of ensuring the integrity of judicial proceedings in particular and of the law enforcement process more generally.' (*United States v. Hubbard* (D.C. Cir. 1980) 650 F.2d 293, 315 [208 App.D.C. 399], fn. omitted.)

"The common law right of access to judicial records is not absolute, but 'must be reconciled with legitimate countervailing public or private interests ...' (*In re Nat. Broadcasting Co., Inc.*, supra, 653 F.2d at p. 613.) However, the fundamental nature of the right gives rise to a 'presumption' in favor of public access. (*Richmond Newspapers, Inc. v. Virginia*, supra, 448 U.S. at p. 569 [100 S.Ct. at p. 2823].)

"California also recognizes the presumption of accessibility of judicial records in criminal cases and allows a trial court limited authority to preclude such access.' [W]here there is no contrary statute or countervailing public policy, the right to inspect public records must be freely allowed. In this regard the term "public policy" means anything which tends to undermine that sense of security for individual rights, whether of personal liberty or private property, which any citizen ought to feel has a tendency to be injurious to the public or the public good.' (*Craemer v. Superior Court* (1968) 265 Cal.App.2d 216, 222 [71 Cal.Rptr. 193]; cf. *Estate of Hearst* (1977) 67 Cal.App.3d 777, 785 [136 Cal.Rptr. 821] [in a civil case, the trial court may preclude public access to judicial records 'under exceptional circumstances and on a showing of good cause'.])" (Footnote omitted.)

Thus, in addition to the right of access to court records provided by subdivision (h) of Section 68150, the courts have recognized a right of access founded in the common law.

Accordingly, a clerk of a municipal court may provide access to the index of actions only upon request, provided the index of actions is still reasonably accessible to all members of the public.

QUESTION NO. 2

May a municipal court impose a fee for providing access to the index of actions?

OPINION NO. 2

A municipal court may not impose a fee for providing access to the index of actions.

ANALYSIS NO. 2

The fees a municipal court clerk is required or permitted to charge are set forth in Article 2 (commencing with Section 72050) of Chapter 8 of Title 8, which, in turn, incorporates various superior court fees (Sec. 72054). Those fees include a \$5 fee per file for searching records (Sec. 26854), a reasonable fee to cover the cost of preparing copies, as set by the court (Sec. 26831; see also subd. (h), Sec. 68150), a \$1.75 fee for certified copies (Sec. 26833), a \$7 fee for an abstract of judgment (Sec. 26834), a \$2 fee for authentication of documents (Sec. 26835), a 50 cent per page fee for comparing documents (Sec. 26837), and a \$20 fee for exemplification of a record (Sec. 26839). These fees are in full for all services rendered by the clerk in a civil action or proceeding (Sec. 26856). No fee is authorized for searching the index of actions.

Thus, it is our opinion that no fee may be charged for providing access to the index of actions.

QUESTION NO. 3

Are there any limitations on the amount of money a municipal court may charge for searching its paper or electronic files for a judicial record or for providing a paper or electronic copy of a judicial record?

OPINION AND ANALYSIS NO. 3

As discussed in Analysis No. 2, the fee for searching court files is \$5 per file (Sec. 26854).

There is no specific limit on the charge for preparing copies of court records. However, as discussed in Analysis No. 2, the fee for copying court records is required to be reasonable considering the costs involved, as set by the court (Sec. 26831; subd. (h), Sec. 68150).

QUESTION NO. 4

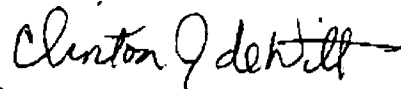
What authority, if any, do municipal court judges, clerks, or other municipal court personnel have to demand identification from a person who requests access to nonconfidential judicial records, to inquire into the requester's intended use of the information, or to condition access to those records on the surrender of that information?

OPINION AND ANALYSIS NO. 4

There is no statutory authorization or statewide rule of court requiring presentation of personal identification to examine nonconfidential court records. Because these records are required by statute to be reasonably accessible to all members of the public (subd. (h), Sec. 68150), and because, as discussed in Analysis No. 1, the courts have recognized a right of public access to information obtained in court proceedings where there is no countervailing public or private interest in confidentiality, there is no reasonable basis for limiting access to court records by requiring personal identification to examine nonconfidential court records, inquiring as to their intended use, or making release of the records conditioned on personal identification.

Very truly yours,

Bion M. Gregory
Legislative Counsel



By
Clinton J. deWitt
Deputy Legislative Counsel

CdeW:emb

UNOFFICIAL BALLOT

Display 1999-2000 Vote Information - ROLL CALL

MEASURE: SB 1065
 TOPIC: Public records: electronic format.
 DATE: 04/20/99
 LOCATION: SEN. JUD.
 MOTION: Do pass as amended, and re-refer to the Committee on Appropriations.
 (AYES 6. NOES 0.) (PASS)

AYES

Burton wright	Haynes Schiff	Peace	Sher
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NOES

ABSENT, ABSTAINING, OR NOT VOTING

Escutia	Morrow	O'Connell
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UNOFFICIAL BALLOT

Display 1999-2000 Vote Information - ROLL CALL

MEASURE: SB 1065
 TOPIC: Public records: electronic format.
 DATE: 05/17/99
 LOCATION: SEN. APPR.
 MOTION: Do pass.
 (AYES 9. NOES 3.) (PASS)

AYES

Johnston
Escutia
Vasconcellos

Alpert
Karnette

Bowen
McPherson

Burton
Perata

NOES

Johnson

Leslie

Mountjoy

ABSENT, ABSTAINING, OR NOT VOTING

Kelley

UNOFFICIAL BALLOT

Display 1999-2000 Vote Information - ROLL CALL

MEASURE: SB 1065
 TOPIC: Public records: electronic format.
 DATE: 05/25/99
 LOCATION: SEN. FLOOR
 MOTION: Senate 3rd Reading SB1065 Bowen
 (AYES 31. NOES 7.) (PASS)

AYES

Alarcon	Alpert	Baca	Bowen
Brulte	Burton	Chesbro	Costa
Dunn	Escutia	Figueroa	Hayden
Hughes	Johannessen	Karnette	Knight
Lewis	McPherson	Murray	O'Connell
Ortiz	Perata	Polanco	Poochigian
Rainey	Schiff	Sher	Solis
Speier	Vasconcellos	Wright	

NOES

Johnson	Kelley	Leslie	Monteith
Morrow	Mountjoy	Peace	

ABSENT, ABSTAINING, OR NOT VOTING

Haynes	Johnston
--------	----------

UNOFFICIAL BALLOT

Display 1999-2000 Vote Information - ROLL CALL

MEASURE: SB 1065
 TOPIC: Public records: electronic format.
 DATE: 07/12/99
 LOCATION: ASM. G.O.
 MOTION: Do pass and be re-referred to the Committee on Appropriations.
 (AYES 13. NOES 2.) (PASS)

AYES

Wesson
Hertzberg
Maldonado
Wright

Granlund
Lempert
Margett

Cardenas
Longville
Vincent

Floyd
Machado
Wiggins

NOES

Ackerman

Battin

ABSENT, ABSTAINING, OR NOT VOTING

Briggs

Cardoza

Soto

UNOFFICIAL BALLOT

Display 1999-2000 Vote Information - ROLL CALL

MEASURE: SB 1065
 TOPIC: Public records: electronic format.
 DATE: 08/18/99
 LOCATION: ASM. APPR.
 MOTION: Do pass.
 (AYES 18. NOES 3.) (PASS)

AYES

Migden	Brewer	Ashburn	Cedillo
Davis	Hertzberg	Kuehl	Maldonado
Papan	Romero	Shelley	Steinberg
Thomson	Wesson	Wiggins	Wright
Zettel	Longville		

NOES

Ackerman	Battin	Runner
----------	--------	--------

ABSENT, ABSTAINING, OR NOT-VOTING

UNOFFICIAL BALLOT

Display 1999-2000 Vote Information - ROLL CALL

MEASURE: SB 1065
 TOPIC: Public records: electronic format.
 DATE: 09/03/99
 LOCATION: ASM. FLOOR
 MOTION: SB 1065 BOWEN THIRD READING BY SHELLEY
 (AYES 68. NOES 6.) (PASS)

AYES

Alquist
 Battin
 Calderon
 Cedillo
 Davis
 Firebaugh
 Granlund

Aroner
 Baugh
 Campbell
 Corbett
 Dickerson
 Florez
 Havice

Ashburn
 Bock
 Cardenas
 Cox
 Ducheny
 Frusetta
 Hertzberg

Bates
 Brewer
 Cardoza
 Cunneen
 Dutra
 Gallegos
 Honda

House
 Leach
 Lowenthal
 Margett
 Nakano
 Papan
 Scott
 Strickland
 Vincent
 Wiggins

Jackson
 Lempert
 Machado
 Mazzoni
 Olberg
 Pescetti
 Shelley
 Strom-Martin
 Washington
 Wildman

Knox
 Leonard
 Maddox
 McClintock
 Robert Pacheco
 Reyes - -
 Soto
 Thomson
 Wayne
 Wright

Kuehl
 Longville
 Maldonado
 Migden
 Rod Pacheco
 Romero
 Steinberg
 Torlakson
 Wesson
 Zettel

NOES

Ackerman
 Runner

Baldwin
 Thompson

Briggs

Correa

ABSENT, ABSTAINING, OR NOT VOTING

Aanestad
 Oller

Floyd
 Villaraigosa

Kaloogian

Keeley

03013

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RN9901089 PAGE 1

1065

AUTHOR'S COPY

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

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. Computer data shall be provided in a form determined by the agency.

(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, 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 which 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.

(d) Nothing in this chapter shall be construed

to permit an agency to obstruct the inspection or copying of public records. Any notification of denial of any request for records 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 6253.2 is added to the Government Code, to read:

6253.2. (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record 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. Direct costs of duplication shall include the costs

associated with duplicating electronic records.

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

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

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

AUTHOR'S COPY

LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, Bowen.

General Subject: Public records: electronic format.

Existing law, the California Public Records Act, provides, among other things, that any person may receive a copy of any identifiable public record from any state or local agency upon payment of fees covering the direct costs of duplication or any applicable statutory fee. Existing law also requires computer data to be provided in a form determined by the agency.

This bill 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

03013

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RN9901089 PAGE 2

bill would impose a state-mandated local program.

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.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

Senate Bill No. 1065

Chapter Veto

Year 1999 Regular Session

Author Bowen

Date Received Sept. 10, 1999

Last Day to Act Oct. 10, 1999

Action of Governor October 10, 1999

(600) 666-1917

LEGISLATIVE INTENT SERVICE



SENATE RULES COMMITTEE

SB 1065

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 445-6614 Fax: (916) 327-4478

VETO

Bill No: SB 1065
Author: Bowen (D)
Amended: 4/27/99
Vote: 21

SENATE JUDICIARY COMMITTEE: 6-0, 4/20/99

AYES: Burton, Haynes, Peace, Sher, Wright, Schiff

NOT VOTING: Escutia, Morrow, O'Connell

SENATE APPROPRIATIONS COMMITTEE: 9-3, 5/17/99

AYES: Johnston, Alpert, Bowen, Burton, Escutia, Karnette, McPherson,
Perata, Vasconcellos

NOES: Johnson, Leslie, Mountjoy

NOT VOTING: Kelley

SENATE FLOOR: 31-7, 5/25/99

AYES: Alarcon, Alpert, Baca, Bowen, Brulte, Burton, Chesbro, Costa,
Dunn, Escutia, Figueroa, Hayden, Hughes, Johannessen, Karnette,
Knight, Lewis, McPherson, Murray, O'Connell, Ortiz, Perata, Polanco,
Poochigian, Rainey, Schiff, Sher, Solis, Speier, Vasconcellos, Wright

NOES: Johnson, Kelley, Leslie, Monteith, Morrow, Mountjoy, Peace

NOT VOTING: Haynes, Johnston

ASSEMBLY FLOOR: 68-6, 9/3/99 - See last page for vote

SUBJECT: Public records: electronic format

SOURCE: Author

DIGEST: This bill would require a public agency that keeps a record in an electronic format to make that information available in an electronic format, when requested, as follows:

1. The record would be provided in the same electronic format it is held.
2. The agency would provide a copy of the electronic record in the requested format if the format has been used to create copies for its own use.
3. The agency would not be permitted to make information available only in electronic format.

No records kept by the Department of Motor Vehicles would be accessible, if a statute prohibits access.

ANALYSIS: The Public Records Act allows an agency to provide computer data in any form the agency determines. The act directs a public agency, upon request for inspection or a copy of the records, to respond to a request within 10 days after receipt of the request.

This bill would eliminate the reference to computer data in the current law and create a separate section dealing with data in electronic format. It would require the public agency to provide records kept in electronic format to be provided in electronic format when requested. If the requested electronic format is how the data is formatted or copied for use by the agency or other agencies, the agency would be required to provide copies in that format. Authority would be given to charge for direct costs of duplication of the electronic records.

The bill would also make clear that the agency would not be permitted to make records available only in electronic format and that no records kept by the Department of Motor Vehicles would be accessible to the public, where access would be restricted by statute.

The bill provides that nothing in this bill is to be construed to require the public agency to reconstruct a report in an electronic format if the agency no longer has the report itself available in an electronic format.

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 no

current authority under which a person seeking electronically available records could obtain such records in that format. This means that if an agency makes 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 print-outs 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.

Additionally, the author claims that public agencies are making profit centers out of making copies of documents that are already available on disk or other electronic format - so that the public, having already paid for the creation of those documents, are charged a second time for getting copies of the documents. The author cites the Department of Industrial Relations, which makes approximately \$200,000 per year selling workers' compensation records.

This bill would make it possible for those records in electronic format to be available in the same format - i.e., CD or disk or whatever electronic format would be available in the future.

Target records to be duplicated

The author targets voluminous documents as those public records to which the public should have access in the electronic format, citing the city budget, environmental impact reports, or minutes from a Board of Supervisor's meeting, as documents that should be available on disk or the internet. Especially because these documents were created at 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 on to a disk or accessed on the internet. Most public agencies say they do not charge for costs of staff time and equipment when they charge duplication costs.

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. 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 records accessible to the public.

Related legislation

AB 1099 (Shelley) will do practically the same thing as SB 1065, but goes further in that it would prohibit any state or local public agency, by January 1, 2000, from leasing or purchasing any electronic data processing system that would impair or impede the public's access to the records, electronically or otherwise. In Senate Rules Committee for assignment.

Prior legislation

AB 179 (Bowen), 1997-98, was vetoed by the Governor, as follows:

"This bill would amend the California Public Records Act to require state agencies to provide "a copy of an electronic record in the form requested, unless, in light of surrounding circumstances, it is not reasonable to do so. It does not change the public's right of access to government documents, but only restricts the agency's discretion as to the form of the document made available.

"Government agencies receive hundreds of Public Records Act requests every month. They are most often not from ordinary citizens, but from political candidates or special interest groups searching for information. Government employees spend thousands of hours each year responding to the requests-segregating the requested documents from exempt documents, such as those which invade other citizens' personal privacy. Taxpayers pay for the time expended searching for and segregating these records. However, state agencies are presently permitted to determine the form in which computer data is provided.

"This bill creates a new inflexible mandate by requiring the agency to provide the electronic data in the form requested, unless it is "unreasonable" to do so, without ever defining the breadth of that exemption, thereby leaving it open to litigation. A request that an electronic record be provided in a particular form may require additional expense, burden, and time to segregate the public data from the exempt data, but the bill provides no guidance whether or to what extent that additional burden makes it 'unreasonable'.

"Agencies should make available to the public all documents to which public access is granted. But we need not add costs and rigidity to these obligations by specifying the form in which it will be done."

It passed the Senate 26-7, as follows:

AYES: Alpert, Ayala, Brulte, Burton, Calderon, Costa, Greene, Haynes, Hughes, Hurtt, Johnson, Johnston, Karnette, Kelley, Knight, Lee, Lewis, Lockyer, Maddy, McPherson, O'Connell, Rosenthal, Schiff, Sher, Solis, Watson

NOES: Johannessen, Kopp, Leslie, Monteith, Mountjoy, Rainey, Wright

NOT VOTING: Craven, Dills, Hayden, Peace, Polanco, Thompson, Vasconcellos

Assembly members who are new Senators votes:

AYES: Baca, Bowen, Escutia, Figueroa

NOES: Ortiz, Perata, Poochigian

NOT VOTING: Morrow

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

Fiscal Impact (in thousands)

Major Provisions	1999-2000	2000-01	2001-02	Fund
Revenue loss	-----	unknown	-----	Various*

*Specials, General and Local

SUPPORT: (Verified 5/19/99)

Society of Professional Journalists
Sierra Club (California)

GOVERNOR'S VETO MESSAGE:

"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."

ASSEMBLY FLOOR:

AYES: Alquist, Aroner, Ashburn, Bates, Battin, Baugh, Bock, Brewer, Calderon, Campbell, Cardenas, Cardoza, Cedillo, Corbett, Cox, Cunneen, Davis, Dickerson, Ducheny, Dutra, Firebaugh, Florez, Frusetta, Gallegos, Granlund, Havice, Hertzberg, Honda, House, Jackson, Knox, Kuehl, Leach, Lempert, Leonard, Longville, Lowenthal, Machado, Maddox, Maldonado, Margett, Mazzone, McClintock, Migden, Nakano, Olberg, Robert, Pacheco, Rod, Pacheco, Papan, Pescetti, Reyes, Romero, Scott, Shelley, Soto, Steinberg, Strickland, Strom-Martin, Thomson, Torlakson, Vincent, Washington, Wayne, Wesson, Wiggins, Wildman, Wright, Zettel

NOES: Ackerman, Baldwin, Briggs, Correa, Runner, Thompson

NOT VOTING: Aanestad, Floyd, Kaloogian, Keeley, Oller, Villaraigosa

RJG:sl 1/5/00 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

****** END ******

DEPARTMENT OF CONSUMER AFFAIRS
Fiscal Analysis of Legislation

Veto
DISTRIBUTED
9-14-99

DUE DATE: ASAP **DATE ASSIGNED:** _____
Prepared By: Stacey A. Luna *SA* **Bill Number:** SB 1065
Phone number: (915) 445-3577 **Author:** Bowen
Approved by: *[Signature]* **Date Approved:** 9-7-99

FISCAL ANALYSIS AS ENROLLED: 9/3/99 **Short Title:** Public Records: electronic format.

OFFICE OF INFORMATION SERVICES: Fiscal impact? YES NO *If Yes, include OIS workload and assumptions.*
OIS Reviewer: Conrad Lara **DATE:** 3/11/99

ANALYSIS AND FISCAL ASSUMPTIONS:

Please see attached.

SUMMARY OF FISCAL IMPACT:	
<input type="checkbox"/>	Insignificant fiscal impact (under \$10,000).
<input type="checkbox"/>	Minor fiscal impact. One-time cost of: \$ _____ . Can be absorbed within existing resources. Ongoing costs of: _____
<input checked="" type="checkbox"/>	(Other:) MINIMAL/ABSORBALE FISCAL IMPACT.

	1999/00	2000/01	ONGOING
Expenditures	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Revenue	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>

PROGRAM CONTACT: Various Board Staff

PROGRAM CONCURS: YES NO (If no, note differences as appropriate.)

LEGISLATIVE INTENT SERVICE (001) 666-1917

Existing Law

The California Public Records Act requires that any person may receive a copy of any identifiable public record from any state or local agency upon payment of fees covering the direct costs of duplication or any applicable statutory fee. Existing law also states that computer data to be provided in a form determined by the agency.

Summary of SB 1065

SB 1065, as enrolled, would require any state agency that stores public records in an electronic format to make those public records available in an electronic format when requested complying with the following:

- The information would be made available in any electronic format in which it holds the information.
- An agency would be required to provide a copy of an electronic record in the format requested if the format has been used by the agency to create copies for its own or other agency's use.
- An agency is prohibited from making information available only in an electronic format.

Assumptions

For the purpose of this analysis, the following assumptions are made:

- SB 1065 would become effective on January 1, 2000.
- The Department of Consumer Affairs' (DCA) Central Records Unit stores public records for the Bureaus with the DCA and currently provides copies of public records in the form of CD-ROM, diskette, and hard copies.
- The Boards currently provide copies of public records in the form of diskette or hardcopies.
- Fees are charged that directly offset the cost of providing copies in whichever form is requested.

Summary of Fiscal Impact

The DCA's Central Records Unit (CRU) store public records for the Bureaus only. The CRU currently has the capability to provide copies of public records in CD-ROM and diskette format for the majority of the records stored. There is a small amount of records that are currently only available in hard copy format. However, the CRU is currently working towards having all Bureau records accessible electronically.

Boards that store public records in an electronic format are able to provide requested records in the same electronic format in which they are stored and therefore comply with SB 1065.

As stated in existing law, a state agency is authorized to charge the requestor the direct costs for the duplication, time expended searching for and segregating records.

As enrolled, SB 1065 would have minimal and absorbable fiscal impact.

Veto



October 5, 1999

The Honorable Gray Davis
 Governor of The State of California
 State Capitol Building
 State Capitol, First Floor
 Sacramento, CA 95814

Dear Governor Davis,

The doors to California's open records are closing day-by-day.

That's why I'd like to urge you to sign two bills currently on your desk, SB 48 and SB 1065. In addition, as vice-president of the California Society of Newspaper Editors, I intend to raise the issue to get the organization's support next Tuesday.

Senate bill 48 allows citizens to appeal to the Attorney General's office for an opinion, should a request for information be denied. And it allows a judge to impose fines of up to \$10,000 for information withheld in bad faith. The opinions do not compel agencies to release information and fines are at the discretion of the judge. But they do give public agencies incentive to follow the law.

Senate Bill 1065 requires that an agency share information in the electronic formats it already uses. It adds no extra work. It eliminates the evasive technique of releasing information in an overwhelming pile of paperwork instead of an easily searchable electronic format.

There is little controversy in SB 48 and SB 1065. These laws don't expand the amount of information public agencies must release. They merely strengthen what the Act calls a "fundamental right" of all Californians.

LEGISLATIVE INTENT SERVICE (800) 666-1917



The Honorable Gray Davis
Page 2

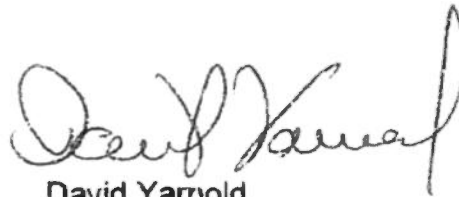
Thank you for your consideration.

Sincerely,

THE BOARD MEMBERS OF CSNE



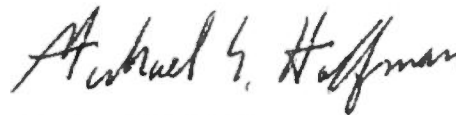
Mark S. Vasche
CSNE President
Executive Editor, Modesto Bee



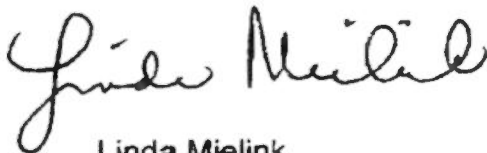
David Yarnold
CSNE Vice-President
Executive Editor, San Jose
Mercury News



Diane Barney
Managing Editor
The Reporter




Michael E. Hoffman
New Media Manager
Ventura County Star



Linda Mielink
Managing Editor
The Paradise Post



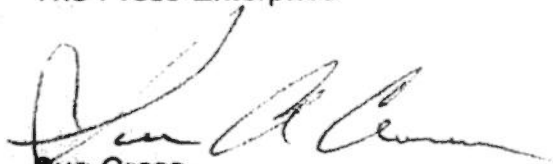
Sharon Rosenhouse
Managing Editor/News
San Francisco Examiner



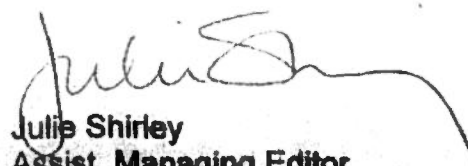
Orlando Ramirez
Food Editor
The Press-Enterprise



Robert Sworford
Managing Editor
The Press Democrat



Sue Cross
Chief of Bureau
Associated Press, Los Angeles



Julie Shirley
Assist. Managing Editor
The Desert Sun



GOVERNOR GRAY DAVIS

October 10, 1999

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

(800) 666-1917

LEGISLATIVE INTENT SERVICE



AB 75 sign
 X AB 137 veto
 AB 290 signed
 X AB 387 sign
 AB 431 (signed message)
 AB 543
 AB 758 (sign)
 AB 850 (signed)
 AB 883 sign
 AB 990 (sign)
 AB 1055 signed
 X AB 1206 signed
 X AB 1207 veto
 AB 1231 sign
 AB 1314 sign
 AB 1375 vetoed (needs msg)
 AB 1497 (sign)
 C AB 1551
 AB 1571
 AB 1663 ~~veto~~

CAB 1677
 AB 1678
 CAB 1695
 AB 1696 veto

X SB 99 veto
 X SB 162 sign
 SB 821
 SB 926 signed
 SB 974 signed?
 X SB 993 veto
 X SB 1016 veto
 X SB 1065 veto
 SB 1091 signed?
 SB 1131
 SB 1206 veto
 SB 1252 signed
 SB 1306 signed?
 C SB 1307
 SB 1308 sign

AB 500 (veto w/msg)

SB 852

Rachel's bills that went to LA

With MG

AB 75 ✓

~~AB 431~~ ✓

~~AB 756~~ ✓

~~AB 850~~ ✓

~~AB 990~~ ✓

~~[REDACTED]~~ ✓

~~AB 1514~~ ✓

~~[REDACTED]~~ ✓

~~AB 1497~~ ✓

~~[REDACTED]~~ ✓

~~AB 1063~~ ✓

SB 99 ✓

SB 821 ✓

~~SB 926~~ ✓

~~[REDACTED]~~ ✓

SB 1091 ✓

~~[REDACTED]~~ ✓

SB 1306 ✓

~~SB 1308~~ ✓

Going with Rachel

~~[REDACTED]~~
~~[REDACTED]~~
~~[REDACTED]~~

IF READY THE FOLLOWING BILLS WILL ALSO GO (I will let you know)

~~[REDACTED]~~
~~[REDACTED]~~
~~[REDACTED]~~
SB 162
~~[REDACTED]~~

Bills that went
w/ Lana
AB 290
AB 1078
SB 1307

Rachel Harris

From: Jennifer Whiting
Sent: Monday, October 04, 1999 8:43 AM
To: Legislation Unit
Subject: Bills taken to LA 10/03/99

Lana transported the following bills to LA for us:

AB 33	AB 58	AB 62	AB 92	AB 118	AB 133
AB 144	AB 162	AB 170	AB 195	AB 232	AB 271
AB 512	AB 297	AB 344	AB 370	AB 403	AB 472
AB 924	AB 539	AB 673	AB 714	AB 738	AB 921
	AB 923	AB 1168	AB 1319	AB 1541	AB 1670
SB 172	SB 240	SB 297	SB 323	SB 330	SB 341
SB 397	SB 514	SB 525	SB 599	SB 627	SB 645
SB 662	SB 747	SB 751	SB 774	SB 808	SB 927
SB 934	SB 948	SB 1048	SB 1119	SB 1126	SB 1210
SB 1221	SB 1233	SB 1262	SB 1397		

Linda took the following bills with her to LA:

AB 61	AB 503	AB 1355	AB 1383	AB 1391	AB 1473
AB 1564					
SB 4	SB 42	SB 177	SB 216	SB 253	SB 346
SB 354	SB 418	SB 430	SB 474	SB 529	SB 729
SB 754	SB 989	SB 1001	SB 1147		

LEGISLATIVE INTENT SERVICE (800) 666-1917



House	Bill	Author	Description	Deputy	Vote Information Senate	Vote Information Assembly	DoF	CoC	Sen	Consent/ Discuss	Proposed Action
AB	33	Soto	School-parent compacts: Parent/Teacher Involvement Program Gary Hart Bill	Tanya	25-14	52-27	\$\$		SK		
AB	47	Cardoza	Williamson Act: cancellation fees	Linda	30-2	77-0			LL		
AB	56	Mazzoni	State Department of Education: English language education	Tanya	30-4	76-3					
AB	78	Carson-Martin	State agency recycling	Rachel	23-13	52-24					
AB	91	Hertzberg	Public school employers: joint powers agencies	Bill	23-14	52-24	\$\$				
AB	92	Floyd	Inspector General for Veterans Affairs	Chad	33-1	75-0					
AB	97	Torlakson	Taxation: low-income housing	Linda	40-0	68-0			LL	Consent	Sign
AB	99	Cedillo	Public Employees' Retirement System: benefits	Bill	27-7	74-1					
AB	103	Migden	HIV test results: public health reporting	Fig	23-16	61-18			SK		
AB	107	Wright	Schools: hazardous materials	Rachel	22-10	51-27	\$\$		LL		
AB	139	Havice	State employees: State Bargaining Unit 7	Bill	32-2	69-5					
AB	144	Migden	Academic assessment	Tanya	22-13	55-23					
AB	145	Vincent	Insurance taxation: credit		36-0	78-0					
AB	162	Runner	Controlled substances: ephedrine: retail distributors	Nolice	40-0	76-1					
AB	194	Longville	Vehicles: offenses: court clerk: forwarding records	Nolice	31-0	72-4					
AB	195	Wright	Prisoners: local reimbursement	Nolice	40-0	80-0	\$\$				
AB	217	Wildman	Health care coverage: Medi-Cal	Fig	24-13	51-28					
AB	228	Migden	Election ballots and voter pamphlets	Bill	22-17	47-33					
AB	247	Kuehl	Minors	Fig	40-0	80-0					
AB	248	Torlakson	Natural Hazard Disclosure Statements	Linda	33-2	80-0					
AB	297	Thomson	Surface mining	Linda	37-0	80-0			LL	Consent	Sign
AB	308	Longville	Transportation: funding	Linda	26-10	50-29					
AB	311	Honda	State Teachers' Retirement System: board	Tanya	25-11	50-24	\$\$				
AB	312	Honda	Community day schools	Tanya	40-0	56-19					
AB	315	Wright	Horse racing: proposition wagers	Nancy	34-1	67-7					
AB	329	Scott	Insurance: compensation: fees	Fig	28-9	48-29					
AB	344	Knox	Education: academic personnel files	Bill	40-0	74-4					
AB	349	Torlakson	Property tax revenue allocations: Teeter Plan counties: revenue shift reduction		37-0	78-0			LL	Discuss	(Veto)
AB	361	Steinberg	Health care service plans: mergers, acquisitions, changes in control	Fig	22-14	49-28					
AB	361	Nakano	School administrators: evaluation of certificated employees	Tanya	24-13	77-1	\$\$				
AB	366	Scott	State employees: health benefits	Bill	32-0	74-2	\$\$				
AB	370	Wright	Child support	Ann	40-0	68-0			SK		
AB	370	Wright	School facilities: site confirmation	Rachel	24-10	53-25	\$\$		LL		

House	Bill	Author	Description	Deputy	Vote Information Senate	Vote Information Assembly	DoF CoC	Sen Consent/ Discuss	P-posed Action
AB	304	Kuehl	Health facilities: nursing staff	Fig	21-17	46-29	\$\$ J-K	LS	
AB	305	Dutra	Special education	Tanya	40-0	68-0			
AB	403	Romero	Law enforcement: domestic violence	Nolice	40-0	68-0			
AB	406	Knox	New area codes: telephone number assignment	Linda	36-0	78-1		LL	
AB	420	Wildman	Community colleges: faculty	Tanya	25-8	54-26	\$\$		Sign
AB	452	Mazzoni	Long-term care programs	Fig	40-0	74-1		LL	Discuss
AB	470	Wildman	Public works: design-build contracts	Tanya/Bill	33-2	73-4		LL	
AB	487	Margett	Parks and recreational facilities: employees and volunteers: criminal record requests	Nolice	40-0	76-0			
AB	508	Leonard	Trial court funding	Ann	40-0	78-0		LL	
AB	527	Baugh	Grand juries	Ann	29-4	71-5		SK	Discuss (Veto)
AB	530	Papan	Local government finance		31-4	69-7		LL	
AB	542	Trotter	Local government finance	Rechel	23-12	50-28			
AB	543	Trotter	Local government finance	Bill	33-4	55-21			
AB	574	Hertzberg	Elections: nomination papers: costs	Bill	21-14	50-28		LL	
AB	575	Aroner	Public contracts: responsible bidder	Fig	25-5	69-5			
AB	601	Cedillo	Child welfare services	Linda	28-8	56-22	\$\$	LL	
AB	607	Aroner	Housing and community development: adaptive reuse	Fig	30-5	80-0	\$\$	TG	Consent Veto
AB	612	Jackson	Foster Children's Health Care Services Act	Chad	32-6	62-16		LL	
AB	614	Runner	Armories: homeless shelters	Tanya	40-0	80-0			
AB	630	Cardenas	School districts: governing boards: video surveillance	Tanya	23-12	64-13			
AB	635	Campbell	Instruction: honors courses: statewide standards	Fig/Linda	40-0	75-0		LL	Consent
AB	645	Honda	Food facilities	Tanya	32-5	70-5			
AB	646	Bates	Minors: special education	Tanya	40-0	68-0			
AB	670	Papan	School safety: missing children	Linda	39-0	69-6		LL	
AB	673	Honda	Transit districts: property acquisition	Ann	25-12	56-17			
AB	695	Mazzoni	Child visitation and exchange program	Tanya	33-1	76-0			
AB	714	Firebaugh	School facilities: construction and modernization	Nancy	28-2	62-13			
AB	724	Dutra	California Gambling Control Commission	Linda	33-2	77-0		VH	Consent
AB	731	Wesson	State government: Year 2000 Problem Government	Bill	40-0	71-0			Sign
AB	743	Keeley	Omnibus Act of 1999	Bill	29-0	72-3			
AB	749	Wesson	County employee retirement fund transfers: securities	Fig	40-0	71-0		LL	Consent
AB	756	Keeley	State employment: supervisors	Fig	33-1	63-15			Sign
AB	784	Romero	Alcoholic beverage control: minors: penalties: controlled substances: destruction	Fig	32-0	76-0			Consent
AB	789	Campbell	Budget Act of 1999: augmentation Medi-Cal	Fig	40-0	68-0			
AB	799	Campbell	Medi-Cal: benefits	Fig	40-0	68-0			



House	Bill	Author	Description	Deputy	Vote Information	DoF CoC Str	Sen	Consent/ Discuss	Proposed Action
					Senate Assembly				
AB	782	Pacheco, Rod	District attorneys: relocation expenses	Notice	40-0		TC	Pull	Veto?
AB	813	Cmte. on Public Employment & Retirement	Public Employees' and Judges' Retirement Systems: benefits: administration	Bill	40-0		LL	Consent	Sign
AB	817	Cmte. on Public Employment & Retirement	Legislative retirement	Bill	40-0		LL	Consent	Sign
AB	838	Longville	Local agencies		40-0		LL		
AB	853	Havice	School finance	Tanya	26-8				
AB	912	Maldonado	Caregiver background checks: fee waiver	Fig	40-0				
AB	917	Hertzberg	Presidential primaries	Bill	24-14	\$\$			
AB	919	Dutra	Land use: local agencies	Linda	27-9		LL		
AB	921	Kesley	Apprenticeship programs	Bill	48-31		LL		
AB	924	Cmte. on Public Safety	Controlled substances: gamma-butyrolactone	Notice	32-0				
AB	953	Dickson	Special education finance: declining enrollment: necessary small special education local plan areas	Tanya	40-0				
AB	963	Shelley	Marine resources: Marine Life Protection Act	Linda	27-12				
AB	1012	Tortakson	Transportation: project delivery: funding	Linda	40-0				
AB	1020	Corbett	Special education: foster parents	Fig/Tanya	40-0				
AB	1026	Mazzoni	English language instruction	Tanya	24-14	\$\$			
AB	1039	Aroner	CaWORKS program	Fig	22-11				
AB	1046	Firebaugh	Homeowner associations: reporting		40-0		LL	Consent	Sign
AB	1050	Wright	Insurance: fraudulent claims	NE/fig	29-7				
AB	1078	Papan	Department of Motor Vehicles: confidentiality of records	Linda	29-2				
AB	1089	Shelley	Elections: ballots	Bill	29-10				
AB	1152	Ackerman	Courts: funding: public guardians	Ann	40-0		LL	Consent	Sign
AB	1154	Tortakson	School safety	Tanya	40-0		LL	Consent	Sign
AB	1155	Tortakson	Transportation tax: election: expenditure plan		26-7		LL	Consent	Veto
AB	1160	Shelley	Long-term health care facilities: skilled nursing facilities	Fig	31-0				
AB	1188	Runner	Undetectable knives	Notice	39-0	\$\$	LL	Consent	Sign
AB	1202	Firebaugh	Hemodialysis: technicians training	Fig	40-0		LL	Consent	Sign
			Environmental health and safety	Rachel	21-8	\$\$			
AB	1228	Cmte. On Agriculture	Agriculture: plant and animal pest control	Chad	36-0				

Bills on the Governor's Desk

House	Bill	Author	Description	Deputy	Vote Information Senate	Vote Information Assembly	DoF	CoC	Sen	Consent/ Discuss	Proposed Action
AB	1232	Crnte. on Agriculture	Pierce Disease research	Chad	40-0	80-0					
AB	1242	Lempert	Teacher credentialing: California Preliminary (CAP) credential	Tanya	33-1	79-0					
AB	1252	Wildman	Podiatric fees; workers' compensation; doctors of podiatric medicine	Bill/Fig	30-6	74-1					
AB	1253	Nakano	Health services pilot program: uninsured working poor families	Fig	23-13	48-32					
AB	1310	Granlund	Medi-Cal: orthotics and prosthetics	Fig	38-0	75-2	\$\$				
AB	1318	Correa	Early Intervention for School Success Program	Tanya	34-3	65-13					
AB	1332	Lowenthal	Nonhazardous waste: determination	Linda	28-5	64-14					
AB	1345	Nakano	Attorney General: antitrust account	Ann	25-13	55-21					
			Advertising, telephone directory listings, business location registration	Revel	22-12	69-3					
AB	1381	Steinberg	Property and Business Improvement District Law of 1994: benefits assessments		40-0	71-0		LL		Consent	Sign
AB	1385	Battin	Indian tribes: tribal-state gaming compacts		32-0	51-17				Consent	
AB	1387	Florez	Public employee disability benefits	Bill	22-15	54-23					
AB	1406	Crnte. on Governmental Organization	Horse racing	Nancy	40-0	72-7					
AB	1409	Crnte. on Governmental Organization	Gambling	Nancy	28-7	69-7					
AB	1410	Margett	Construction contracts: progress payments	Bill	24-7	71-5					
AB	1430	Bates	Prescriptions: electronic transmissions		40-0	79-0			VH		Discuss
AB	1432	Oller	Insurance: service of process	Fig/Ann	40-0	76-0					
AB	1451	Thomson	Certificated employees: teachers' salaries	Tanya	27-4	74-3	\$\$				
AB	1474	Cardoza	Vehicles: license fees and taxes: highway access limits: exception	Linda	32-1	77-0					
AB	1480	Cardoza	Williamson Act: agricultural conservation easement	Linda	36-1	69-5					
AB	1485	Granlund	Schoolbus certificates	Linda	40-0	79-0			LL	Consent	Sign
AB	1488	Machado	State employees: State Bargaining Unit 14 and 15	Bill	32-2	71-5					
AB	1492	Thomson	Traumatic brain injury project	Fig	29-3	70-9					
AB	1498	Ducheny	Outdoor science programs		29-11	71-7					
AB	1500	Wesson	Family preservation services	Fig	40-0	76-1					
AB	1502	Washington	Confidential funds: peace officers	Notice	33-3	64-11					
AB	1511	Florez	Joint powers authority: mutual water company	Linda	23-9	46-28			LL		

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House	Bill	Author	Description	Deputy	Vote Information	DoF	CoC	Sen	Consent/ Discuss	Proposed Action
AB	1517	Firebaugh	Gambling: progressive pot games		Senate 21-12 Assembly 56-14					
AB	1534	Runner	Microbusiness development	Fig	40-0 77-2					
AB	1553	Caldron	Local government: redevelopment	LAH	37-0 76-3					
AB	1555	Longville	Local government	Susan	22-9 50-12			LL		
				Mike	23-9 48-31			LL		
					40-0 77-2		O-K			
AB	1584	Machado	Sale Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act	Linda	30-6 68-11		O-K			
AB	1627	Machado	School facilities: Tracy Joint Unified School District	Tanya	40-0 80-0			LL	Consent	Sign
AB	1636	Mazzoni	Tax assistance		40-0 75-0					
AB	1637	Comte. on Revenue & Taxation	Tentative minimum tax		23-1 72-3					
AB	1638	Comte. on Revenue & Taxation	State Board of Equalization: sales and use taxes: excise and special taxes		40-0 79-0			LL	Consent	Sign
AB	1639	Comte. on Public Employment & Retirement	State employees: State Bargaining Unit 8	Bill	32-1 71-6					
AB	1652	Steinberg	Labor: violations	Bill	23-12 45-31		J-K	LL		
AB	1657	Comte. on Utilities and Commerce	Capital facilities fees: municipally owned utilities: public utility districts	Linda	26-6 78-2					
AB	1658	Comte. on Utilities and Commerce	Public utilities	Linda	40-0 68-0					
AB	1659	Comte. on Human Services	Care facilities	Fig	40-0 76-0			LL	Consent	Sign
AB	1671	Comte. on Judiciary	Family law: child custody and support	Ann	40-0 79-0			LL	Consent	Sign
AB	1672	Comte. on Judiciary	Civil actions: eminent domain: waste management	Ann	35-0 68-0					
AB	1673	Comte. on Judiciary	Courts: services	Ann	40-0 80-0			LL	Consent	Sign
AB	1675	Comte. on Judiciary	Civil procedure	Ann	40-0 80-0					
					40-0					
				Rachel	40-0 75-0			LL	Consent	Sign

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LH: 1547

Bills on the Governor's Desk

House	Bill	Author	Description	Deputy	Vote Information		DoF	CoC	Sen Stff	Consent/ Discuss	Proposed Action
					Senate	Assembly					
		Comte. on Local Government	Local Government Omnibus Act of 1999	Rachel	37-1	76-0					
AB	1679	Comte. on Information Technology	Regulated substances: local agencies	Linda	40-0	80-0			LL	Consent	Sign
AB	1685	Comte. on Information Technology	Department of Information Technology	Linda	40-0	70-7			VH		
		Comte. on Information Technology	Vehicle license fees: offset internationally registered vehicles	Rachel	40-0	78-0			BS	TBD	
SB	30	Peace	Commercial law: secured transactions	Linda	39-0	77-0	\$\$				
SB	45	Sher	Solid waste management	Mike	38-1	76-0			SK	Consent	Sign
SB	46	Sher	Class size reduction: community college facilities	Linda	40-0	76-0			SK	TBD	
SB	54	O'Connell	State contracts: participation goals	Tanya	36-0	75-0	\$\$				
SB	73	Murray	Hate crimes: hate crime prevention and prosecution	Bill	23-14	61-16					
SB	80	Hayden	Equal opportunity in education	Nolice	27-11	67-9					
SB	81	Hayden	Income and bank and corporation taxes: IRS restructuring and reform	Tanya	25-12	59-18	\$\$				
SB	94	Chesbro	Health care service plans: disability insurers: Medicare supplements	LARRH	40-0	78-0			SK	Consent	Sign
SB	106	Parata	Child development: California Early Start Program	Fig	28-3	79-0			LL		
SB	114	Escutia	Local government	Fig	24-9	46-29					
SB	156	Figueroa	Automobile insurance: infoline policies	Fig	31-5	75-2					
SB	161	Monteith	Employees: inspection of personnel records by employees	Rachel	39-0	75-4			LL		
SB	171	Escutia	Drugs: hospitals: physicians	Ann	24-10	51-26			LL		
SB	172	Escutia	Red imported fire ants	Ann	34-1	47-32			LL		
SB	188	Levitt	Deceased personalities	Bill	24-13	50-26					
SB	204	Lewis	Public Employees' Retirement system: benefits	Fig	39-0	78-0			SK	Consent	Sign
SB	209	Burton		Chad	39-0	79-0	\$\$				
SB	234	Hughes		Ann	36-0	75-1			SK		
SB				Bill	24-5	59-19	\$\$				



House	Bill	Author	Description	Deputy	Vote Information	DeF	Sen	Consent/	Proposed
					Senate	CoC	Stf	Discuss	Action
					Assembly				
SB	246	Solis	California Firefighters' Memorial Fund: vehicle special license plates	Linda	40-0		SK	Consent	Sign
SB	267	Lewis	Charter schools: funding	Tanya	36-0				
SB	281	Chesbro	Veterans: California Veterans' Home: Morale, Welfare, and Recreation Fund	Chad	40-0		SK	Consent	Sign
SB	284	Kelley	Secretary of State	Fig/Tanya	40-0		TF	Consent	
SB	305	Vasconcellos	Parenting education		25-11	\$\$			
SB	316	Chesbro	State and local government		39-0	\$\$	LL		
SB	334	Alpert	Youthful offenders: education	NE/TL	27-0	\$\$			
SB	339	Burton	State employees: compensation	Bill	35-0				
SB	340	Beca	Alcoholic beverages: minors: license revocations: off-sale licenses: applications and acknowledgement	Nancy	40-0		SK	Consent	Sign
SB	341	Figueras	Sex offenders: juveniles	Notice	40-0		SK	Consent	Sign
SB	343	Hughes	Family school partnerships	Tanya	28-10	\$\$			
SB	346	Johnson	Horse racing: imported races		39-0				
SB	350	Murray	Presidential primary delegates and alternates	Bill	39-0		SK	Pull	
SB	354	Perata	Horse racing: imported races	Nancy	40-0				
SB	366	Alpert	Pupil testing	Tanya	27-2				
SB	372	Murray	Transportation: Los Angeles Metropolitan Authority: transportation zones	Bill	22-13				
SB	374	Lewis	Insurance claims: priorities: life insurers	Fig	40-0		SK	TBD	
SB	377	Polanco	Criminal conduct of state employees	Notice	40-0				
SB	388	Ortiz	State employees: State Bargaining Units 1,3,4,11 and 15	Bill	31-1				
SB	402	Romero	Vehicles: driver's license violations	Linda	40-0				
SB	406	Alpert	Secretary of State: fees	Mike	30-7				
SB	410	Escutia	School facilities: summer school	Tanya	27-10	\$\$			
SB	416	Perata	Gambling: establishments	Nancy	28-10				
SB	424	O'Connell	School employees	Tanya	26-12				
SB	428	Perata	Transportation: San Francisco Bay Area Water Transit Authority	Linda	22-7	\$\$	LL		(Veto)
SB	433	Johnson	Child custody	Fig/Ahn	40-0				
SB	460	Hayden	Employee wages	Bill	23-12				
SB	465	Appropriations	Claims against the state: appropriation		36-0		SK	Consent	Sign
SB	474	Crrite	Horse racing: allocation of funds	Nancy	40-0				
SB	477	Johnson	State employees: excluded employees: pay increase	Bill	35-0	\$\$			
SB		Brulte							



House	Bill	Author	Description	Deputy	Vote Information	DoF CoC	Sen Consent/ Discuss	Proposed Action
SB	460	Solis	Health care coverage	Fig	Senate 23-15 Assembly 46-30			
SB	508	Ortiz	State property: employment standards: safety and health standards: health care and community service work	Bill	22-14	45-27		
SB	527	Speier	Automobile insurance: low-cost policies	Ann	30-1	50-28	LL	
SB	532	Comte. On Transportation	Transportation	Linda	40-0	77-0	SK TBD	
SB	533	Comte. On Transportation	Vehicles	Linda	40-0	77-0	SK Consent	Sign
SB	538	O'Connell	Health authorities	Fig	39-0	80-0	SK Consent	Sign
SB	565	Costa	State facilities: Department of Transportation: study School personnel: disruptions or threats: mandatory reporting of missing children	Linda	35-1	74-6	\$\$	
SB	570	Alarcon	Families for Literacy Program	TL/NE	40-0	71-0		
SB	571	Alarcon	Alcoholic beverages	Tanya	28-6	74-4		
SB	587	Burton	Youth Authority: costs	Nancy	38-0	64-6		
SB	599	Costa	Trial court funding	Notice	40-0	65-0		
SB	600	Costa	Office of Multicultural Health	Ann	40-0	80-0	\$\$	
SB	613	Solis	Child care facilities: fingerprinting and criminal record information	Fig	25-14	49-24		
SB	615	Burton	Primary drinking water standards	Bill	29-2	77-3		
SB	618	Chesbro	Armories: homeless shelters: adult education	Fig	39-0	80-0		
SB	635	Sher	Higher education labor relations	Linda	40-0	74-3		
SB	644	Chesbro	School finance: home-to-school transportation	Fig	32-5	58-20		
SB	645	Burton	Open-space subventions: farmland security zone contracts	Bill	22-16	51-25		
SB	646	Costa	Vehicles: financial responsibility	Tanya	40-0	77-0	\$\$	
SB	649	Costa	State Energy Resources Conservation and Development Commission: grant program	Linda	39-0	70-8		
SB	652	Speier	Unemployment disability	Ann	31-4	76-3	VH	Signing Message: Ma
SB	655	Peace	CaWORKS: food stamps: general assistance	Linda	31-2	76-1		
SB	656	Solis	Economic development lenders	Bill	24-14	49-27		
SB	659	Wright	Search warrants: foreign corporations	Fig	30-4	60-8		
SB	661	Alarcon	Uniform Child Custody Jurisdiction and Enforcement Act	Notice	34-2	58-20	LL	
SB	662	Figueroa	Education: California State University	Ann	40-0	77-0	SK TBD	Consent Sign
SB	668	Sher	Corporate tax	Tanya	40-0	76-4	SK	
SB	679	Johnson		Rechal	30-1	76-1		

Bills on the Governor's Desk

House	Bill	Author	Description	Deputy	Vote Information Senate	Vote Information Assembly	DoF Co-C	Sen Co-C	Consent/ Discuss	Proposed Action
SB	703	Poochigian	Veterans: World War II Memorial	Chad	39-0	76-0				
SB	713	Burton	State Teachers' Retirement: benefits	Bill	39-0	74-5				
SB	736	Cmte. on Budget & Fiscal Review	Budget Act of 1999: augmentation and reappropriation		39-0	74-5				
SB	746	Schiff	Sexually violent predators	Notice	40-0	71-2				
SB	747	Burton	Peace officer training	Notice	39-0	77-2				
SB	754	Hayden	Los Angeles River	Linda	26-10	47-30				
SB	767	Cmte. on Budget & Fiscal Review	Budget Act of 1999: augmentation		33-3	60-14				
SB	780	Burton	Medi-Cal: Downey Community Hospital Foundation meetings	Fig	39-0	77-1	\$\$			
SB	781	Speier	Housing subsidies: counties	Fig	26-12	47-30	\$\$	LL		
SB	792	Ortiz	Child custody: reports of child abuse	Ann	32-5	79-0				
SB	794	Speier	State government: employees: contract provisions	Bill	40-0	78-1				
SB	800	Dunn	Public Employees' Retirement System: local safety members	Bill	25-3	61-15				
SB	808	Peace	California Infrastructure and Economic Development Bank: eligible projects	Linda	36-0	79-0		SK	TBD	
SB	810	Costa	Alcoholic beverages: advertising restrictions		39-0	64-7				
SB	821	Shaw	Air pollution	Rachel	22-13	79-0				
SB	828	McPherson	Pesticides: county agricultural commissioners: credit card costs	Chad	21-12	76-0			Consent	Sign
SB	831	Baca	Agricultural land	Linda	38-0	71-6		LL		
SB	832	Cmte. on Public Safety	Criminal law	Notice	40-0	74-0		SK	TBD	
SB	833	Ortiz	State Teachers; Retirement System: benefits	Bill	28-9	70-5	\$\$			
SB	835	Figueroa	Cosmetic surgery: education and training	Fig	33-3	69-5		VH	Signing Message: We	
SB	836	Figueroa	Advertising: trade/business: referral services	Fig	40-0	74-0		TF	Consent	Sign
SB	850	Brute	Medi-Cal: reimbursement: dental services	Fig	21-16	45-30				
SB	858	Hughes	Guide, signal, and service dog food allowance	Fig	38-0	77-1				
SB	859	Hughes	Economic development: Lynwood	Fig	39-0	77-0				
SB	867	Poochigian	Special education	Linda	28-9	53-26		LL		
SB	868	Wright	Office of the Inspector General	Tanya	40-0	80-0				
SB	870	Vasconcelos	Long-term care insurance	Notice	40-0	75-0				
SB	873	Vasconcelos	Sentencing: prior convictions: joint study	Fig	26-11	59-15				
SB	874	Escutia	Family Law Information Centers	Notice	21-14	41-28				
SB	874	Escutia	Family Law Information Centers	Ann	40-0	75-1		SK	TBD	



House	Bill	Author	Description	Deputy	Vote Information	DoF	Sen	Consent/ Discuss	Proposed Action
					Senate	Assembly	CoC		
SB	987	Ortiz	Foster care	Fig	35-2	76-4			
SB	900	Escutia	Class Size Reduction Program: Montebello Unified School District	Tanya	40-0	74-0	SS		
SB	903	McPherson	Kinship support services	Fig	39-0	79-0			
SB	908	Murray	Family Friends Project: additional sites: furling	Fig	39-0	64-14			
			Contractors: express trust funds: liens	Rachel	21-14	52-23			
SB	927	McPherson	California Newspaper Project: State Librarian		40-0	80-0			
SB	928	Burton	Transportation: financing	Linda	35-2	74-0			
SB	938	Solis	Alternative payment programs	Fig/Tanya	21-11	78-0			
SB	940	Speier	Insurers: fees	Fig	23-15	48-27			
SB	941	Speier	Insurance: licensees	Fig	40-0	74-0	SK	TBD	
SB	955	Escutia	Child welfare services: out-of-home care	Fig	27-11	75-3			
SB	970	Costa	Water rights	Linda	40-0	77-0	TF	Consent	
SB	982	Leslie	Local government finance: property tax revenue allocations: Counties of Placer and San Joaquin	Linda	39-0	77-2			
SB	985	Johnston	Agricultural preserves: public use	Linda	39-0	59-15			
SB	988	Karnette	Substance abuse: adult recovery maintenance facilities	Fig	22-9	66-8			
SB	1005	Escutia	Education: school facilities: contamination	Rachel	23-10	44-32	SS		
SB	1006	Costa	Child welfare training	Fig	26-10	73-2			
SB	1006	Costa	Drinking water: water softening and conditioning devices	Linda	23-12	56-21	LL		
SB	1013	Sher	Retail food facilities: inspection information	Fig	24-11	65-12	VH	TBD	
SB	1019	Vasconcellos	Employee retirement	Rachel	40-0	65-11	VH	Discuss (Veto)	
SB	1025	Johnson	Public officers: Santa Clara County	Notice	25-7	49-25	LL		
SB	1030	Polanco	Political Reform Act of 1974: lobbyist, lobbying firms, and lobbyist employers: website directory	Bill/Linda	40-0	80-0	SK	TBD	
SB	1030	Johnson	Business tax: information requirements	Tanya	23-12	45-29			
SB	1041	Vasconcellos	Education: school facilities: funding	Tanya	40-0	75-0			
SB	1047	Murray	School nutrition	Tanya	25-12	54-25			
SB	1053	Prochigian	Health insurance Act of 1998	Fig	39-0	70-8			
SB	1054	Penabaz	Health coverage: choice of providers	Fig	40-0	73-4			
SB	1054	Penabaz	Taxation: contributions: California Mexican American Veterans Memorial Beautification and Enhancement	Linda	23-7	71-7	VH	Discuss (Veto)	
			Public officers: Santa Clara County	Rachel	31-7	68-11			



House	Bill	Author	Description	Deputy	Vote Information Senate	Vote Information Assembly	DoF CoC	Sen Consent/ Discuss	Proposed Action
SB	1074	Comte. on Public Employment & Retirement	State Teachers' Retirement System	Bill	40-0	74-0		SK	TBD
SB	1088	Burton	Residential real property: rent control: tenant rights: discrimination	Ann	24-13	46-30			
SB	1104	Cheabro	Developmental services	Fig	33-0	79-0	\$\$		
SB	1106	Perata	State funds: appropriations	Mike	32-1	64-15		LL	
SB	1121	Alarcon	California Debt Limit Allocation Committee: rental housing	Linda	28-12	67-9	\$\$	LL	
SB	1125	Polanco	Bank and corporation taxes: deductions: insurance company dividend expense		37-1	79-0	\$\$		
SB	1126	Costa	Criminal procedure: arraignment: audiovideo	Notice	40-0	67-0			Consent
SB	1135	Murray	Mail ballot elections	Bill	22-13	48-30			
SB	1137	Vasconcellos	Employment training	Fig	28-7	67-6		VH	TBD
SB	1156	Sher	San Francisco Bay Area Conservancy Program	Linda	39-0	54-24			
SB	1162	Burton	Account: appropriation	Ann	39-0	76-0		SK	TBD
SB	1176	Vasconcellos	Minors: contracts	Notice	40-0	79-0			
SB	1186	Ortiz	Department of the Youth Authority	Linda	33-4	77-3			
SB	1191	Perata	Rice straw						
SB	1191	Perata	Hereditary and congenital diseases: hemoglobin disorders	Fig	39-0	80-0			
SB	1196	Morrow	Court consolidations: marshal's office	Ann	40-0	77-0		LL	
SB	1207	Polanco	Gambling: slot machines	LARRH	24-7	67-7			
SB	1219	Schiff	Initiative, referendum, recall, nominating, and other election- related petitions	Bill	31-0	73-4			
SB	1229	Comte. on Revenue & Taxation	Income and bank and corporation taxes		29-10	56-18			
SB	1231	Comte. on Revenue & Taxation	Taxation		40-0	77-0		SK	Consent Sign
SB	1249	Escutia	Human services programs	Fig	40-0	76-0		SK	Consent Sign
SB	1259	Sher	Climate change	Linda	25-12	49-26			
SB	1268	Comte. on Health and Human Services	California Children and Families First Act of 1988	Fig	25-12	50-27			
SB	1268	Services	California Children and Families First Act of 1988	Fig	27-11	76-3			

House	Bill	Author	Description	Deputy	Vote Information Senate	Vote Information Assembly	DoF CoC	Sen Stf	Consent/ Discuss	Proposed Action
SB	1270	Cmte. on Health & Human Services	Interstate adoption assistance agreements; social service regulations Higher education labor relations; definition of "employee"	Fig	40-0	76-0		SK	Consent	Sign
SB	1279	Polanco	Vehicles: violations	Bill	22-12	49-30				
SB	1282	Lewis	Community college facilities; modernization projects	Notice	40-0	77-0		SK	Consent	Sign
SB	1283	Polanco	Occupational therapy; licensure	Tanya	22-12	63-16	\$\$			
SB	1287	Murray			27-11	59-20				
SB	1302	Cmte. on Revenue and Taxation	Sales and use taxes; fuel taxes	Mike	37-0	80-0		SK	Consent	Sign
		Cmte. on Professions	Licensed professionals	Rachel						
						Consent				
									46	

ENROLLED BILL MEMORANDUM TO GOVERNOR

BILL NO: SB 1065

AUTHOR: Bowen

DATE: September 23, 1999

SENATE: 31-7 (see vote sheet)

ASSEMBLY: 68-6 (see vote sheet)

This bill would amend the Public Records Act (Act) to require state and local agencies that store public information in electronic form to make that information available to the public in electronic form.

SPONSOR: Author

SUPPORT: Department of Health Services
Health and Human Services Agency
Department of Pesticide Residue
State Water Resources Control Board
California Environmental Protection Agency
Department of Parks and Recreation
Resources Agency
California Newspaper Publishers Association
Sierra Club

OPPOSITION: California Department of Corrections
California Youth Authority
Board of Prison Terms
Youth and Adult Correctional Agency
Department of Motor Vehicles
Department of Corporations
Business, Transportation, and Housing Agency
Department of General Services
State and Consumer Services Agency
Department of Finance
Department of Consumer Affairs defers to
Department of General Services
Franchise Tax Board- No recommendation
Department of Industrial Relations defers to
Department of Information Technology
California Assessor's Association Legislative Committee
Orange County Board of Supervisors

STATE FISCAL IMPACT: Indeterminable

LEGISLATIVE INTENT SERVICE (800) 656-1917



ARGUMENTS IN SUPPORT: Both government and private business have found it no longer makes sense – electronically or functionally – to keep information printed on paper locked up in metal file cabinets. Instead, virtually every state and local agency governed by the Act is now holding a significant portion of the public's records electronically. This bill helps clarify those statutes that govern how those records should be released.

ARGUMENTS IN OPPOSITION:

- This bill would remove all public entities' ability to protect themselves from "counterfeit" documents. Public entities should be allowed to retain the discretion to respond to requests for electronic information in an unalterable format to prevent intentional or accidental manipulation and alteration of information by the recipient in a manner that may then be transmitted to others with the implication that the public entity produced the counterfeit document.
- The physical nature of electronic records may complicate the "reasonable segregation" requirement of the Act, create confusion, and result in the accidental public disclosure of exempt information. Such an inadvertent disclosure may have an impact on the legal interests of all concerned parties, resulting in legal actions and associated costs.
- The bill raises concerns about data base security. For example, it could result in data being merged into other unknown data bases, and could result in the use of records and documentation for purposes unrelated to that specified in the original request.
- This bill would eliminate an agency's flexibility in responding to large public records requests or those with a significant amount of non-disclosable information. By allowing the requestor the choice of electronic format, public agencies may be forced to provide the request electronically, even in such cases where it would be more expensive and burdensome to do so.
- If programming expenses for selecting, sorting, manipulating, and masking records are not considered within the definition or not funded through any applicable statutory fees, agencies may be burdened with this additional effort without reimbursement.

BACKGROUND INFORMATION: AB 179 (Bowen) 1997, and SB 74 (Kopp) 1997, were identical bills that required state agencies to provide a copy of a requested public record in an electronic form, unless unreasonable to do so, provided that the form was one already used by the agency. Both these bills were vetoed by Governor Wilson.



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~Current Session Legislation~

Measure Vote

Measure: SB 1065

Author: Bowen

Topic: Public records: electronic format.

Date: 09/03/99

Location: ASM. FLOOR

Motion: SB 1065 BOWEN THIRD READING BY SHELLEY
(AYES 68. NOES 6.) (PASS)

AYES

Alquist Aroner Ashburn Bates Battin Baugh Bock Brewer Calderon Campbell Cardenas
Cardoza Cedillo Corbett Cox Cunneen Davis Dickerson Ducheny Dutra Firebaugh
Florez Frusetta Gallegos Granlund Havice Hertzberg Honda House Jackson Knox
Kuehl Leach Lempert Leonard Longville Lowenthal Machado Maddox Maldonado
Margett Mazzoni McClintock Migden Nakano Olberg Robert Pacheco Rod Pacheco
Papan Pescetti Reyes Romero Scott Shelley Soto Steinberg Strickland Strom-Martin
Thomson Torlakson Vincent Washington Wayne Wesson Wiggins Wildman Wright
Zettel

NOES

Ackerman Baldwin Briggs Correa Runner Thompson

ABSENT, ABSTAINING, OR NOT VOTING

Aanestad Floyd Kaloogian Keeley Oiler Villaraigosa

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~Current Session Legislation~

Measure Vote

Measure: SB 1065

Author: Bowen

Topic: Public records: electronic format.

Date: 05/25/99

Location: SEN. FLOOR

Motion: Senate 3rd Reading SB1065 Bowen
(AYES 31. NOES 7.) (PASS)

AYES

Alarcon Alpert Baca Bowen Brulte Burton Chesbro Costa Dunn Escutia Figueroa
Hayden Hughes Johannessen Karnette Knight Lewis McPherson Murray O'Connell
Ortiz Perata Polanco Poochigian Rainey Schiff Sher Solis Speier Vasconcellos Wright

NOES

Johnson Kelley Leslie Monteith Morrow Mountjoy Peace

ABSENT, ABSTAINING, OR NOT VOTING

Haynes Johnston

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E-MAIL
SENATOR.BOWEN@SEN.CA.GOV

California State Senate

SENATOR
DEBRA BOWEN

TWENTY-EIGHTH SENATORIAL DISTRICT

REPRESENTING THE COMMUNITIES OF
CARSON, COMPTON, EL SEGUNDO, HARBOR CITY, HERMONA BEACH, LOMITA, LONG BEACH,
MANHATTAN BEACH, MARINA DEL REY, PALM VERDES ESTATES, PLAYA DEL REY, REDONDO
BEACH, TORRANCE, VENICE, WESTCHESTER, AND WILMINGTON.

CHAIRWOMAN
ENERGY, UTILITIES, &
COMMUNICATIONS

MEMBER
AGRICULTURE &
WATER RESOURCES

APPROPRIATIONS

CONSTITUTIONAL
AMENDMENTS

HOUSING & COMMUNITY
DEVELOPMENT

NATURAL RESOURCES
& WILDLIFE

REVENUE & TAXATION

September 13, 1999

The Honorable Gray Davis
State Capitol
Sacramento, CA 95814

Dear Governor Davis:

I'd like to respectfully request your signature on my SB 1065, which will be enrolled to you in the coming days.

As you know, SB 1065 requires state and local agencies to make public records available in electronic form to anyone who requests them under the following guidelines:

1. The agency has the record in an electronic format;
2. The agency only has to provide an electronic copy if the requested format is one that has been used by the agency to create copies for its own use or to provide to other agencies.
3. The cost of obtaining the record is limited to the direct cost of duplicating the electronic record.

As you know, when a person requests a paper copy of a public record, the agency can't charge any more than the direct cost of duplication. This is based on the principle that as taxpayers, we've already paid to "create" the record – therefore we shouldn't have to pay a second time (beyond the cost of duplication) to get a copy of the public record.

The same principle should apply to electronic copies of records. SB 1065 doesn't mandate that state and local agencies computerize all of their records. It simply says that if agencies have the public records in an electronic format, they have to provide a copy of the record in that format to anyone who wants it – and they can't charge any more than the cost of duplication.

Will This Be Costly For Agencies To Comply With?

Using the true definition of "cost" – which is spending money out of pocket that an agency wouldn't have had to otherwise spend – there should be minimal, if any, cost to comply with this law because agencies can charge fees to cover the cost of duplication.

While state agencies haven't commented on the bill, the Department of Finance has stated the DMV estimates its costs to be \$166,300 in "one-time" costs and \$39,600 annually. I disagree with the one-time cost estimate, because the bill only applies to



The Honorable Gray Davis
September 13, 1999
Page 2

public records that agencies are storing already. As for the \$39,600 figure, that isn't a "cost" – it's a "loss of profit" figure that DMV is citing because under the "cost of duplication" limitation in the bill, the agency will no longer be able to charge and pocket any dollars that it currently charges over and above the cost of duplication.

As you may know, in 1997 the Department of Industrial Relations opposed a similar bill, AB 179 (Bowen), because of the "direct cost of duplication" provision. The Department argued that the bill would have precluded it from making some \$200,000 in pure profit from selling electronic copies of workers' compensation public records to private sector companies that wanted that data in an electronic format. The Department was accurate, AB 179 would have prevented it from profiting from the sale of public records – which is one of the main goals of this year's SB 1065.

I would argue that in the long run, SB 1065 will save agencies money. The major reason we're computerizing records and processes at the state and local level is to save time, money, and resources – and to increase the speed and efficiency of state and local government. Making public records available to citizens in an electronic format will benefit citizens as well, because getting a 300-page environmental impact report on a computer disk is a lot more "user friendly" than getting a 300-page paper copy of it.

Both the League of California Cities and the California State Association of Counties are neutral on the bill because they recognize it won't force them to computerize in places where it doesn't make sense, nor will it cost them additional time or money to comply with the measure.

Why Shouldn't Agencies Charge More To Businesses That May Sell The Information?

Some argue that when selling public information, state and local agencies should be able to charge more than the cost of duplication if the entity buying the information is a business that's going to turn around and re-package it for sale.

This is the exact same question the Legislature faced in 1993 with AB 1624 (Bowen), which put the Legislature's internal computer system including bills, analyses, voting records, and much more up on the Internet. Some people wanted to charge profit-making entities (such as Legitech) more money for the system since they were going to re-package it and sell it for a profit.

I refused to set up a two-tiered structure in AB 1624 and I refused to establish one in SB 1065 because, again, this is public information that the taxpayers already paid to create and we shouldn't charge people different amounts for public information based on how they intend to use the information.

Frankly, as long as people can get public information from state and local agencies at cost, it probably cuts down on the profit that a private company can make by re-



The Honorable Gray Davis
September 13, 1999
Page 3

selling the same information. A company may "add value" to the raw data before selling it, but then consumers have a choice – they can pay less and get the raw data from the government agency, or they can pay more to the private vendor and get the "added value" that may be more "user friendly" as it applies to their needs.

Orange County's Opposition

The leading opposition to SB 1065 comes from the Orange County Board of Supervisors, which has written to you in hopes that you will veto the measure in order to "protect" its Geographical Information System (GIS), which was developed over the last ten years at a cost of \$3.4 million. The County argues that if the proprietary software for these maps is made available to the public, there is nothing to prevent entrepreneurs from packaging the materials and offering them for sale in competition with the County.

I'd respond to that in several ways:

First, SB 1065 only "jeopardizes" Orange County's desire to make a profit from selling electronic copies of public records. It was county – and state, if you believe the state funds most county operations – tax dollars that paid to create the GIS program, so selling people copies of the electronic data at the cost of duplication doesn't jeopardize anything.

Second, existing law – which is unchanged by this bill – states that GIS proprietary software is not a public record and therefore is not available to the public.

Third, state and local agencies shouldn't be selling anything to turn a profit, especially when we're talking about public records that were created by taxpayer dollars.

Fourth, the notion that Orange County – or any taxpayer-funded agency – should be in "competition" with the private sector is preposterous on its face. The Public Records Act requires that records be made available to the public – that is one of government's jobs here in California, not "competing" with the private sector for business.

Fifth, Orange County argues the data and the software are inextricably tied together. However, arguably all computer software and data are tied together to some extent. Orange County's representatives had asked that I exempt GIS data or data held in a proprietary format from the provisions of SB 1065. I declined because I believe such an exemption would provide an incentive to agencies to spend time and money developing proprietary software for everything in order to sell data at a profit. Simply put, such an exemption effectively defeats the purpose of the Public Records Act, which is to make public records – paid for and developed with taxpayer dollars – available to the public.



The Honorable Gray Davis
September 13, 1999
Page 4

What the Orange County Board of Supervisors fails to tell you in its letter is the real reason behind its opposition to SB 1065. Orange County has contracted with a private company in Costa Mesa, Digital Map Products, to act as the County's agent to sell the GIS data to realtors and anyone who wants to buy it. The County gave an exclusive license to Digital Map Products and receives a commission every time the company finds a customer, which appears to be in violation of Government Code Section 6270, which reads:

GOV 6270. (a) Notwithstanding any other provision of law, no state or local agency shall sell, exchange, furnish, or otherwise provide a public record subject to disclosure pursuant to this chapter to a private entity in a manner that prevents a state or local agency from providing the record directly pursuant to this chapter

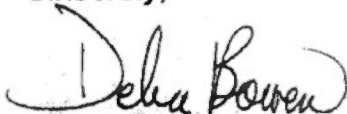
What's more, the licensing agreement with Digital Maps requires the County to use its taxpayer-funded employees to continually update the data for the private company to sell. According to the enclosed July 13th article from the Orange County Register, the County has employees working "full time on keeping the map's database current."

If SB 1065 prevents Orange County from profiting on the sale of public data – setting aside the proprietary software issue for a moment – the bill would nullify that contract and all future contracts the County may want to enter into regarding the for-profit sale of public records.

SB 1065 brings California's landmark Public Records Act into the 21st century and will serve to expand access to government in an era when more and more people feel disconnected from elected officials and government bureaucracies at the state and local levels.

Thank you for taking the time to review and consider SB 1065. If you have any questions, please don't hesitate to call me at (916) 445-5953.

Sincerely,



Debra Bowen
Senator, 28th District
(D-Redondo Beach)

DB:elg



Records-access proposal threatens county map plan

Orange
County
Register

7-13-99

GOVERNMENT: Sale of costly geographic data local officials have gathered would be barred.

By DANIEL M. WEINTRAUB
The Orange County Register

SACRAMENTO — County Surveyor John Canas has built a map for the next century, a flashy high-tech product that can tell you just about anything you need to know about the lay of the land in Orange County.

State Sen. Debra Bowen, meanwhile, is trying to bring California's Public Records Act into the computer age, giving the state's citizens the same access to electronic records that they now have for information stored on paper.

The two may be on a collision course.

Canas and the Orange County Board of Supervisors say Bowen's bill would undermine their mapping project, forcing them to give away years of work and a multimillion-dollar investment for the price of a computer disk. They fear that private companies might snap up the county's software for next to nothing and go into competition with the government.

Bowen, a Democrat from Marina del Rey, says that's the point.

"We don't want a public agency to make a profit from selling public records," Bowen said. "We want competition."

Bowen's bill cleared the Assembly Governmental Organization Committee on Monday and seems headed for passage in the Legislature. If it becomes law,

the measure will require government agencies to give the public access to computerized records for no more than the cost of copying them. The same standard has long applied to paper records.

Orange County's concerns were belittled by the committee at Monday's hearing. Assemblyman Dick Floyd, D-Harbor City, said he thought the county's arguments were "specious and silly."

Assemblyman Brett Granlund, R-Yucaipa, said the suggestion that a government agency should profit from such an investment was ridiculous.

"It's like the school system coming here and saying, 'We've invested in the kids' education and we want a cut of anything they do,'" he said.

But county officials say it's not that simple.

Their map — officially called a Geographical Information System — cost \$2.6 million to develop.

It is built on a massive database that begins with 640,000 parcels of land in Orange County. It includes information about the land's owners, any dwellings, offices, stores or factories built on that land, its tax status and loans. Layered on top of that is information about public services, such as police and fire stations, soils, vegetation and more.

All of this information is stored on a computer that can spit out answers to every conceivable geographic question.

If someone wants to know how many homes in a three-square-mile area have four bedrooms, two bathrooms, a loan of more than \$200,000 and are within five miles of an earthquake fault, Orange County's computer has the answer.

"It's state-of-the-art technology," Canas said.

Currently, the county sells the data for between \$1 and \$2 per parcel, depending on how much

information a customer needs. A private company in Costa Mesa, Digital Map Products, is licensed to market the map for the county and gets a cut of the fee every time it finds a customer.

Digital Map's general manager, Jim Skurzynski, says he doesn't fear a loss of business if the county is forced to give away the information he now is selling. But he said his product could become worthless if the county employees who now work full time keeping the map's database current are diverted to making copies of it for others.

"The quality of that database is very important to us," he said.

Orange County's objection to Bowen's bill is a narrow one. Only a few hundred customers — mostly developers and other government agencies — use the map in a typical year.

But Bowen says the problem reflected in Orange County's objection is likely to spread as more public records are kept on computer.

If the government isn't stopped from turning a profit on the information it collects, she said, agencies will have an incentive to duplicate what Orange County has done with property records. Police reports, school test scores and other useful data might soon be available only at a price, she said.

"A lot of agencies are going to be deciding whether to computerize their records," Bowen said. "You don't want the decision based on whether or not they can make a profit."

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Legislative Counsel of California

BION M. GREGORY

Sacramento, California
September 29, 1999

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Honorable Gray Davis
Governor of California
Sacramento, CA

REPORT ON ENROLLED BILL

S.B. 1065

BOWEN. Public Records.

SUMMARY:

See Legislative Counsel's Digest on the bill as adopted.

FORM:

Approved.

CONSTITUTIONALITY:

Approved.

TITLE:

Approved.

CONFLICTS:

This bill and Assembly Bill No. 515, which is also before the Governor, would both add a Section 6253.2 to the Government Code with different substantive provisions that are not in conflict.

The numbering of sections in statutes is a purely artificial and unessential arrangement resorted to for purposes of convenience only (Estate of Bull (1908) 153 Cal. 715, 717). There is no constitutional or statutory provision that precludes the enactment of sections of the same number.

Noted 9/28/99
mm

Report on S.B. 1065 - p. 2

Thus, if both bills are chaptered, there will be two sections in the Government Code numbered 6253.2 that will both be given effect.

Bion M. Gregory
Legislative Counsel

By *Paul Antilla*
Paul Antilla
Deputy Legislative Counsel

PA:lfg

Two copies to Honorable Debra Bowen and
Honorable Roderick D. Wright,
pursuant to Joint Rule 34.

LEGISLATIVE INTENT SERVICE (800) 668-1917



ENROLLED BILL REPORT

14 J 10/3

Subject SB 1065 Public Records Act Electronic Data	SB number SB1065
	Author Bowmen

SUMMARY:

This bill requires public agencies to make public records available, when requested, in the electronic format in which they hold the information. It 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.

RECOMMENDATIONS AND SUPPORTING ARGUMENTS: SIGN

The intent of this bill is to increase public access to computerized information kept by public agencies; it is likely there will be increased requests for data. Because there is no appropriation included in the bill, the costs of providing the data will need to be recovered through fees paid by the requestor. It is already current practice within DHS that requests for electronic public records to be made available upon request (using existing DHS electronic formats). DHS position was neutral in the original bill analysis.

LEGISLATIVE HISTORY:

In 1998, AB 179 (Bowen), which was similar to this bill but required records to be provided in the electronic format requested, was vetoed by Governor Wilson.

Related bill AB 1099 Author: Shelley (D). This bill revises the Public Records Act to require a public agency to provide computerized data in the same format used by the public agency, to segregate confidential data where appropriate and allow access to the rest, and to prohibit the acquisition of an electronic data processing system that would impair the public's access to the data.

Related bill SB 48 Author: Sher. This bill establishes a procedure in the California Public Records Act for appealing a public agency denial of a written request to disclose public records.

PROGRAM BACKGROUND:

Multiple DHS program systems have information that can be requested by the public. The bill allows for required fees as required by legislation "Existing law, the California Public Records Act, provides, among other things, that any person may receive a copy of any identifiable public record from any state or local agency upon payment of fees covering the direct costs of duplication or any applicable statutory fee."

Sign

Recommendation <input checked="" type="checkbox"/> Sign <input type="checkbox"/> Does not impact DHS; Defer to: _____ <input type="checkbox"/> Veto No recommendation		Assembly Votes Floor: <u>68-6</u> Policy Committee: <u>13-2</u> Fiscal Committee: <u>18-3</u> Senate Votes <u>31-7</u> <u>9-3</u>	
Program contact Byron Roberts Department Director	(916) 654-0280 391-6376-H	Legislative Office contact Charleen Milburn	Telephone number (916) 657-2843-W 484-0817-H
Date <i>[Signature]</i> 9/9/99		Date <i>[Signature]</i> 2/13/99	

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SPECIFIC FINDINGS:

_____ Requires Regulations	_____ Requires Legislative Report
_____ Requires/Impacts Commissions, Boards	_____ Urgency Clause
_____ Chaptering Problem(Describe in Legislative History)	

There are no Chaptering problems with the other bills.

The department currently provides information in the format as requested and charges actual cost for the service. There is no change in how the department will handle statutory required fee collection and confidential information.

FISCAL IMPACT:

There is no fiscal impact to the department. Because there is no appropriation included in the bill, the costs of providing the data will need to be recovered through fees paid by the requestor. Department of Health Services policy already includes charging for data requests. The administrative accounts receivable processes are in place therefore, there is no fiscal impact to DHS.

PROS:

Department will meet the expectations of the public.

CONS:

Staff will be directed away from DHS work to accommodate requests. There are no new positions added to cover this workload.

PROponents:

The author believes that the same rules that apply to paper public records should apply to copies of electronic records. According to the author, taxpayers that pay for the equipment that public agencies use to create and store public records should be able to receive copies in whatever format is currently available to the agency. The author argues that public agencies shouldn't be permitted to profit from the sale of electronic copies of public records.

OPponents:

Orange County is opposed to the bill based on its analysis that, as currently drafted, SB 1065 subjects proprietary software developed by the county to the Public Records Act. The county is particularly concerned with its Geographical Information System (GIS), a software program that enables the county to produce maps of subdivisions, flood channels, and parcel maps, which it provides to the public in paper format. According to the county, the GIS was extremely costly to develop and the requirement that the GIS software be disclosed to the public would enable private entrepreneurs to use the software to directly compete with the county in selling the maps. The City of San Diego is opposed based on its belief that the bill will result in increased costs to provide public records.

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VETO MESSAGE

BOWMEN-SB 1065

I am returning Senate Bill No. 1065 without my signature.

This bill is to increase public access to computerized information kept by public agencies; it is likely there will be increased requests for data. Because there is no appropriation included in the bill, the costs of providing the data will need to be recovered through fees paid by the requestor.

Without new positions added to cover this potential new workload, I believe this bill will have a significant impact on the ability of state works to perform their current duties and responsibilities. State staff will be directed away from state work to accommodate additional requests.

Providing requested information under the Public Records Act is a priority. Adequate staffing should be made available to meet the public requests for this service.

Sincerely,

Gray Davis



California Environmental Protection Agency
Enrolled Bill Report

DEPARTMENT OF PESTICIDE REGULATION	AUTHOR Bowen	BILL NUMBER SB 1065
SPONSOR Author	RELATED BILLS AB 1099	AMENDED DATE September 3, 1999 - Enrolled
SUBJECT Public Records: Electronic Format		

SUMMARY

This bill would require State and local agencies to provide copies of identifiable public records in an electronic format if the agencies have the record in that format, and the records requester asks for the record in an electronic format. An agency would have to provide the copy in the format requested if the agency uses that format to create copies for its use or the use of other agencies.

BACKGROUND

AB 1099 (Shelley) is also under consideration by the Legislature. AB 1099 would prohibit State and local agencies from acquiring an electronic data processing system for handling public records unless the agency determines the system will not impair or impede the agency's ability to provide electronic copies and allow public inspection of the records. The bill would require public record computerized data to be provided in any form requested, provided the form requested is used by the agency for conducting its business or making copies for use by it or another agency.

AB 179 (Bowen) from the 1997-98 Legislative session would have required State and local agencies "to provide a copy of an electronic record in the form requested, unless, in light of surrounding circumstances, it is not reasonable to do so[.]" Governor Wilson vetoed this bill and his veto message read, in part: "A request that an electronic record be provided in a particular form may require additional expense, burden, and time . . . [and] the bill provides no guidance whether or to what extent that additional burden makes it 'unreasonable.'"

ANALYSIS

Under existing law, public agencies can decide the form in which they will provide copies of identifiable,

(continued)

DEPARTMENT RECOMMENDATION		AGENCY RECOMMENDATION	
<input checked="" type="checkbox"/> Sign	Defer to _____	<input checked="" type="checkbox"/> Sign	Defer to _____
<input type="checkbox"/> Veto		<input type="checkbox"/> Veto	
<input type="checkbox"/> No EBR Required		<input type="checkbox"/> No EBR Required	Position of: _____
DIRECTOR	DATE	AGENCY SECRETARY	DATE
Paul Helliker	9/9/99	Winston H. Chetox	9/11/99

ANALYSIS (cont'd)

disclosable public records. Under this bill, public agencies would have to provide the record in an electronic format if the record is in an electronic format and the requester asks for the record in an electronic format. Upon the requester's payment of the required fee for the costs of duplicating the record, the agency would provide the copy of the record in the particular chosen electronic format if that format is used by the agency to make copies for its use or the use of other agencies. The bill clarifies that if a public agency at one time maintained the requested records in electronic format, but no longer maintains the records in that format, the agency is not required to reconstruct the records in electronic format. (However, the bill does not mitigate the difficulty agencies would face in redacting nondisclosable information from electronic records before releasing them.)

If the record contained information that is protected from disclosure and needed to be redacted before releasing the record to the public, it could be more difficult or perhaps impossible to redact information when providing an electronic copy than when providing a paper copy of the record.

LEGISLATIVE HISTORY

- September 3 In Senate. To enrollment.
- September 3 Read third time. Passed. (Ayes 68. Noes 6.) To Senate.
- August 19 From Appropriations Committee: Do pass. (Ayes 18. Noes 3.)
- July 12 From Governmental Organization Committee: Do pass, but first be re-referred to Committee on Appropriations. (Ayes 13. Noes 2.)
- June 17 To Committee on Governmental Organization
- May 25 Read third time. Passed. (Ayes 31. Noes 7.) To Assembly.
- May 18 From Appropriations Committee: Do pass. (Ayes 9. Noes 3. Page 1215.)
- April 27 Read second time. Amended. Re-referred to Committee on Appropriations.
- April 26 From Judiciary committee: Do pass as amended, but first amend, and re-refer to Committee on Appropriations. (Ayes 6. Noes 0.)

FISCAL IMPACTS

The bill would provide that direct costs of duplication include the costs associated with duplicating electronic records. Since the Department of Pesticide Regulation (DPR) is not required to provide copies of records in any electronic format it does not use, and can include the costs associated with duplicating electronic records in the direct costs of duplicating the record requested, any additional costs to DPR from the bill should be recoverable.

ECONOMIC IMPACTS

The bill is not expected to have any economic impact on businesses.

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LEGAL IMPACTS

If the bill were interpreted to force the release of confidential information in an electronic format, a serious legal conflict would arise. Existing authority to withhold confidential information would need to prevail when such a conflict arises, resulting in release of an electronic format.

OTHER AFFECTED DEPARTMENTS' ROLES/VIEWS

All public agencies will be affected.

ARGUMENTS

Pro: Proponents would argue the bill will allow record requesters to obtain in an electronic format copies of an identifiable record kept by an agency in an electronic format instead of in a form in which the agency wants to provide the copies.

Con: Opponents would argue an agency should have the discretion to provide a copy of an identifiable record in the form it chooses, even if the agency has the record in an electronic format.

Proponents- California Newspaper Publishers Association
Sierra Club

Opponents- City of San Diego
Orange County Board of Supervisors

<u>VOTES</u>	<u>Policy</u>	<u>Fiscal</u>	<u>Floor</u>
Assembly	13 - 2	18 - 3	68 - 6
Senate	6 - 0	9 - 3	31 - 7

Opponents believe that this bill would make proprietary software, specifically software developed by counties at significant cost, subject to the Public Records Act. Further, the bill would enable private entrepreneurs to use county software to compete with the county in selling maps of subdivisions, flood channels, and parcel maps, which are currently provided to the public in paper format.

RECOMMENDATION

This bill would require State and local agencies to provide copies of identifiable public records in an electronic format when those records are retained and requested in an electronic format. An agency would provide the copy in the format requested if the agency uses that format to create copies for its use or the use of other agencies. This bill streamlines the dissemination and utilization of public records maintained by State agencies in electronic format. However, this bill could be interpreted to require the release of confidential information otherwise protected under existing law due to the potential difficulty in redacting such information from a record in an electronic format. We, therefore, reluctantly recommend that the Governor **SIGN** this bill.

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Contact Name	Agency	Work Telephone Number	Pager Number	Home Telephone Number
Steven C. Monk Legislative Director	Department of Pesticide Regulation	(916) 445-3976	(916) 553-0622	(916) 681-2538
Paul E. Helliker Director	Department of Pesticide Regulation	(916) 445-4000	(916) 847-7395 (cell) 1-888-421-2597 (pager)	(916) 457-7407
Patry Zwarts Acting Legislative Director	California Environmental Protection Agency	(916) 322-7326	(916) 731-0506	(916) 452-9464
Winston H. Hickox Agency Secretary	California Environmental Protection Agency	(916) 323-2514	(916) 798-3363 (cell)	(916) 323-2514

LEGISLATIVE INTENT SERVICE (800) 666-1917

S. B. 1065 - Bowen

An act relating to Public Records

To the Members of the Senate:

I am returning Senate Bill 1065 without my signature.

SB 1065 subjects proprietary software developed by local agencies to the requirements of the Public Records Act. Local agencies are particularly concerned with their Geographical Information Systems (GIS), a software program that enables counties to produce maps of subdivisions, flood channels, and parcel maps, which it provides to the public in paper format. The GIS was extremely costly to develop and the requirement that the GIS software be disclosed to the public would enable private entrepreneurs to use the software to directly compete with the county in selling the maps. Further, this bill could be interpreted to require the release of confidential information otherwise protected under existing law due to the potential difficulty in redacting such information from a record in an electronic format.

I, therefore, cannot support this bill.

Sincerely,

GRAY DAVIS

LEGISLATIVE INTENT SERVICE (800) 666-1917



California Environmental Protection Agency
Enrolled Bill Report

Department/Board STATE WATER RESOURCES CONTROL BOARD	Bill Number SB 1065
Subject Public Records: Electronic Format	Author Bowen
Sponsor	Related Bills AB 1099 (Shelley)

SUMMARY

SB 1065 would amend the Public Records Act (PRA) to require an agency to provide electronic format data in an electronic format upon request.

BACKGROUND

The California PRA requires state and local agencies to make their records open to public inspection at all times during office hours, except as specifically exempted from disclosure by law. The PRA also provides that computer data must be provided in a form determined by the agency, and that the agency may charge a fee to cover the direct costs of duplication (Government Code Section 6253 (b)). Recent case law holds that direct costs of duplication mean the costs of running a copy machine and the expense of the person operating it. Direct costs of duplication do not include costs for retrieval, inspection and handling of the file from which the copy is extracted. (*North County Parents Organization v. Dept. of Education*, 28 Cal. Rptr. 2d 359, (1994)). This case law has imposed an additional financial burden on agencies that routinely receive a large number of requests for their records.

Most public records requests received by the State Water Resources Control Board (SWRCB) and the Regional Water Quality Control Boards (RWQCBs) are for access to RWQCBs' records. Most are requests for identifiable, noncontroversial public records, and each RWQCB has designated staff to handle such routine requests. More complicated requests are forwarded to the Office of Chief Counsel at the SWRCB for a determination of disclosure or nondisclosure. Very few requested records require redaction or reprogramming.

Another Public Record Act bill this session, AB 1099 (Shelley), is very similar to SB 1065. AB 1099 would amend the Public Records Act (PRA) to require that computerized data be provided in any form or format requested from among any of the forms or formats used by the agency. It imposes further requirements for notification of denial for public records requests. AB 1099 also prohibits a public agency, after January 1, 2000, from acquiring any electronic data processing system unless it first determines that the system will not hinder the ability to allow public inspection of public records, and to provide electronic copies of the records. Finally,

Board/Department/Office Recommendation		Agency Recommendation	
<input checked="" type="checkbox"/> Sign	<input type="checkbox"/> Defer to	<input checked="" type="checkbox"/> Sign	<input type="checkbox"/> Defer to
<input type="checkbox"/> Veto	<input type="checkbox"/>	<input type="checkbox"/> Veto	<input type="checkbox"/>
<input type="checkbox"/> No EBR req'd	<input type="checkbox"/>	<input type="checkbox"/> No EBR req'd	<input type="checkbox"/>
Chair/Director <i>Walter Peltz</i>	Date <i>9/8/99</i>	Agency Secretary <i>Winston H. Victor</i>	Date <i>9/16/99</i>

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AB 1099 amends the PRA definition of "computer software" to include proprietary information. AB 1099 is currently in the Senate Third Reading File.

Past attempts to amend the public records act include last session's AB 179 (Bowen) and SB 74 (Kopp), both of which were vetoed by Governor Wilson because of fears that they would add costs and rigidity to public agencies' obligations under the Public Records Act.

ANALYSIS

SB 1065 would amend the Public Records Act (PRA) to require an agency to provide electronic format data in an electronic format upon request. The agency would be required to make the information available in any electronic format in which it holds the information, and to provide a copy of an electronic record in the format requested if that format has been used by the agency to create copies for its own use or to provide to other agencies. Agencies would not be allowed to make records available only in an electronic format, nor are they required to provide access to records that are restricted by statute. Finally, the bill allows for duplication costs of electronic records, and specifies that a public agency is not required to reconstruct a report if it no longer retains the report in an electronic format. The SWRCB does not object to any of the provisions of this bill.

FISCAL AND ECONOMIC IMPACT

While there may be a workload associated with this bill, it does not appear substantial. Costs incurred could be at least partially offset by allowing recovery of the direct costs of duplication, as stated in proposed Section 6253.2(a)(2) that "direct costs of duplication shall include the costs associated with duplicating electronic records."

OTHER AFFECTED DEPARTMENTS ROLES/VIEWS:

All state and local agencies subject to the California Public Records Act.

PROS/CONS

Pro: This bill would better assure public access to electronic records maintained by public agencies. Agencies should be encouraged to share electronic information since it is a cheaper medium to copy and distribute, and (with appropriate software) usually easier to use, search, and/or manipulate.

Taxpayers that pay for the equipment that public agencies use to create and store public records should be able to receive copies in whatever format is currently available to the agency. Public agencies should not be permitted to profit from the sale of electronic copies of public records.

Con: The bill merely codifies the common practice of sharing electronic data in the format in which it is already stored. In addition, the bill may subject proprietary software developed by the state or local agency to the Act, and it may result in increased costs to provide public records.

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SUPPORT/OPPOSITION

- Support:**
- CA Newspaper Publisher's Assoc.
 - Society of Professional Journalists
 - Sierra Club (California)

- Oppose:**
- Orange County
 - City of San Diego

VOTES:

	Policy	Fiscal	Floor
Assembly	13-2	18-3	68-6
Senate	6-0	9-3	31-7

Explanation of "No" Votes -- We understand that some legislators voted no because this bill is substantially the same bill as AB 179 (Bowen), which Governor Wilson vetoed last year because of fears that it would add costs and rigidity to public agencies' obligations under the Public Records Act. Others were swayed by the Orange County argument that the bill does not exempt proprietary software developed by the state or local agencies.

RECOMMENDED POSITION - Sign. The bill improves public access to electronic public records.

Title	Name	Office	Home	Pager/cell
Secretary, Cal/EPA	Winston Hickox	323-2514	484-0356	798-3363
Executive Director, State Water Board	Walt Pettit	657-0941	362-2208	
Legislative Director, Cal/EPA	Patty Zwarts	322-7326	452-9464	731-0506
Legislative Director, State Water Board	Tom Jones	657-1247	452-2489	523-8148

All telephone numbers are in the 916 area code.

LEGISLATIVE INTENT SERVICE (800) 666-1917

Veto Message for SB 1065

I am returning SB 1065 without my signature.

SB 1065 would amend the Public Records Act to require an agency to provide electronically formatted data in an electronic format upon request.

The bill could add costs and rigidity to public agencies' obligations under the Public Records Act. Because there is no exclusion for proprietary software, the bill also may subject such software developed by the state or local agency to the Act.

(800) 566-1917

LEGISLATIVE INTENT SERVICE



ENROLLED BILL REPORT

AGENCY RESOURCES	BILL NUMBER SB 1065
DEPARTMENT PARKS AND RECREATION	AUTHOR Bowen

SUMMARY:

This bill would amend the Public Records Act to require state and local agencies that store public information in an electronic format to respond to requests for public information in any electronic copy format created by those agencies for internal or external use.

Specifically, this bill:

1. Deletes a provision of the Public Records Act that authorizes public agencies to determine the form in which they provide computer data that is subject to public records disclosure.
2. Requires public agencies that have public records in an electronic format to :
 - a. make the records available in any electronic format in which they hold the information; and
 - b. provide a copy of the 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. Specifies that direct costs of duplication shall include the costs associated with duplicating electronic records.
4. Clarifies that no provision requiring an agency to provide an electronic record shall be construed to require the public agency to reconstruct a report in an electronic format if the agency no longer has the report available in an electronic format.
5. Clarifies that no provision requiring an agency to provide an electronic record shall be construed to permit public access to records held by the Department of Motor Vehicles to which access is otherwise prohibited.

IMPACT ASSESSMENT:

The Department of Parks and Recreation (DPR) agrees that the public should have convenient access to information; however, it must be noted that this bill would remove all public entities' ability to protect themselves from "counterfeit" documents. Public entities should be allowed to retain the discretion to respond to requests for electronic information in an unalterable format to prevent intentional or accidental manipulation and alteration of information by the recipient in a manner that may then be transmitted to others with the implication that the public entity produced the counterfeit document. The Administration may wish to consider "clean up" legislation in the next year to provide that protection.

For information Contact: Cindy Shamrock, Deputy Director, Legislation
Phone: (Office) 653-6887, (Pager) 855-1407, (Home) 391-3735, (Fax) 657-3903
Prepared by: B. Schleich Date: September 7, 1999

Agency: (Vacant) Deputy Secretary, Legislation
Phone: (Office) 653-6698, (Pager) 697-9700

RECOMMENDATION

Sign

DEPARTMENT HEAD	DATE	AGENCY HEAD	DATE
Rusty Areias Rusty Areias, Director	9/8/99	[Signature]	

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FISCAL IMPACT:

Unknown; the primary cost created by the bill would be those associated with refuting bogus disseminations misrepresented as official agency records.

ARGUMENTS:

PRO:

Supporters of this bill include:
California Newspaper Publishers Association
Sierra Club

The author believes that the same rules that apply to paper public records should apply to copies of electronic records. According to the author, taxpayers that pay for the equipment that public agencies use to create and store public records should be able to receive copies in whatever format is currently available to the agency. The author argues that public agencies shouldn't be permitted to profit from the sale of electronic copies of public records.

CON:

Opponents of this bill include:
City of San Diego
Orange County Board of Supervisors

Orange County contends that, as currently drafted, the bill subjects proprietary software developed by the County to the Public Records Act. Specifically of concern is the County's Geographical Information System (GIS), a software program that enables the County to produce maps of subdivisions, flood channels, and parcel maps, which it provides to the public in paper format. According to the county, the GIS was extremely costly to develop and the requirement that the GIS software be disclosed to the public would enable private entrepreneurs to use the software to directly compete with the County in selling the maps.

The City of San Diego is opposed based on its belief that the bill will result in increased costs to provide public records.

RECOMMENDATION:

Sign.

REASON FOR RECOMMENDATION:

The benefits to providing timely and useful public information outweighs the concerns over manipulation of data in an attempt to mislead the public.

FINAL VOTE:

	<u>yes</u>	<u>no</u>
Assembly	68	6
Senate	31	7

LEGISLATIVE INTENT SERVICE (800) 566-1817

PROPOSED VETO MESSAGE
SB 1065

To the Members of the Senate:

I am returning SB 1065 without my signature.

This bill would remove the discretion of all public agencies to respond to requests for electronic information in an unalterable format to prevent intentional or accidental alteration of information prior to further dissemination of the information. This could lead to consequences that would be harmful to both the agencies involved and to the public. While I fully support the public's right to know, it is imperative that public entities be given the flexibility to control the format of the information provided to ensure that the public is receiving accurate information.

In addition, the bill makes no distinction between providing information to the public and providing free materials and programs for use in private enterprise. Again, the public should have ready access to information at a minimum of cost, however, private enterprise should not be allowed to capitalize on publicly funded information systems without sharing a reasonable portion of the costs of development.

Sincerely,
GRAY DAVIS

ENROLLED BILL REPORT

STATE OF CALIFORNIA

AGENCY YOUTH AND ADULT CORRECTIONAL AGENCY	BILL NUMBER Senate Bill 1065
DEPARTMENT, BOARD OR COMMISSION CORRECTIONS	AUTHOR Bowen

SUMMARY

Senate Bill (SB) 1065 would require that unless prohibited by law, any agency that has information constituting an identifiable public record that is in an electronic format shall make that information available in an electronic format when requested by any person.

HISTORY, SPONSORSHIP and RELATED BILLS

Senate Bill 1065 was sponsored by the author. The bill was approved by the following votes, with all "no" votes cast by Republicans with the exceptions of Senator Peace and Assemblyman Correa.

Senate Judiciary 6-0	Assembly Governmental Organization 13-2
Senate Appropriations 9-3	Assembly Appropriations 18-3
Senate Floor 31-7	Assembly Floor 68-6

Other related bills are:

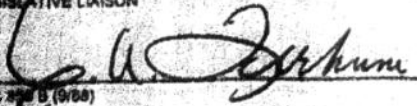

AB 179 (Bowen) 1997, and SB 74 (Kopp) 1997, were identical bills that required state agencies to provide a copy of a requested public record in an electronic form, unless unreasonable to do so, provided that the form was one already used by the agency. Both of these bills were vetoed by the Governor.

SB 143 (Kopp) 1998, (Chapter 620) required that computer data shall be provided in a form determined by the agency.

AB 1099 (Shelley) 1999, would require that a state or local agency provide computerized data in any form or format that is requested from among any of the forms or formats used by the agency. This bill failed passage in the Senate on September 1, 1999; reconsideration was granted, and the bill is now on the Senate Inactive File.

RECOMMENDATION

VETO THE BILL

LEGISLATIVE LIAISON 	DATE 9.8.99	AGENCY 	DATE 9/9/99
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CDC 300 6 (9/88)

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IMPACT ANALYSIS

Existing law, Government Code (GC) Section 6253 currently states that 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, with specified exceptions. This code also provides that except for records that are exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records, shall make any reasonably segregable portion of the record promptly available to any person. Public agencies are only allowed to charge the requestor for the direct cost of duplication, which does not reimburse the agency for the costs of searching for the document and reviewing it for information protected from release. Upon request, an exact copy shall be provided unless impracticable to do so. Computer data shall be in a form determined by the agency.

Currently, as required by GC 6253, agencies such as CDC determine which form computer data information shall be provided in. This may be in electronic or "hard copy" format.

SB 1065 adds Section 6253.2 to the Government Code, which would provide that an agency shall make the information available in any electronic format in which it holds the information. In addition, 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. Direct costs of duplication shall include the costs associated with duplicating electronic records.

CDC is a clearinghouse for large amounts of information. The Department must maintain records for each of its 160,000 inmates in order to properly house them and calculate their release dates as provided for by law. CDC has extremely large databases in order to store the required records. Large portions of these databases are protected as confidential because they constitute personal, medical, and criminal offender record information. An electronic record used by CDC may already contain a combination of protected data as well as data that could be provided as a public record. Due to the non-reimbursable cost involved in developing a computer program to redact the portions of data which are exempt from disclosure, CDC now provides the requestor their request in paper format (at 30 cents per page for duplication only) with the exempted data redacted by hand.

If a request is small or does not require the redacting of data exempt from disclosure, CDC is not opposed to providing public records in electronic format upon request. However, SB 1065 would eliminate an agency's flexibility in



Enrolled Bill Report
SB 1065 (Bowen)
Page 3

responding to large public records requests or those with a significant amount of non-disclosable information. By allowing the requestor the choice of electronic format, CDC may now be forced to provide the request electronically, even in such cases where it would be more expensive and burdensome to do so.

FISCAL IMPACT

The provisions of this act may require CDC to redirect existing resources from other critical priorities to provide a public requestor the required information. Additionally, although SB 1065 allows an agency to charge a requestor for the costs associated with duplicating electronic records this authority is not fully defined. Current law only allows a charge related to the direct duplication, or copying, of hard copy public records. Based on this analogy, SB 1065 will only authorize an agency to charge a requestor for the cost of a computer disk. This will leave the extensive programming costs and redacting costs unreimbursed.

ARGUMENTS PRO AND CON

PRO: The author believes that the same rules that apply to paper public records should apply to copies of electronic records.

CON: Allowing a requestor to determine the format in which to receive a public record may require additional expense, burden, and time.

RECOMMENDATION

Veto the Bill. SB 1065 does not expand the public's access to information. It only allows a requestor to increase the unreimbursed cost to a public agency for complying with public record requests.

PROPOSED VETO MESSAGE

SENATE BILL 1065 (BOWEN)

To the Members of the California Senate:

I am returning Senate Bill 1065 without my signature.

Currently the Public Records Act authorizes public agencies to determine the form in which they provide computer data that is subject to public records disclosure. Senate Bill 1065 would instead require State and local agencies to make public records available in any electronic format when requested.

While being fully supportive of the Public Records Act, this bill does not increase public access to information. It only involves whether documents are provided in paper or electronic format.

Removing an agency's flexibility on the format in which information is provided may lead to increased unreimbursable costs to state and local agencies.

Sincerely,

Gray Davis



**YOUTH AND ADULT CORRECTIONAL AGENCY
1999 Legislative Staff**

YACA	Robert Presley Agency Secretary	Office phone:	(916) 323-6001
		Cell phone:	(916) 804-9771
		Home phone:	(916) 641-6685
		Home (alternate)	(909) 684-9628
		Pager:	(916) 594-2097
YACA	Terri Delgadillo Deputy Secretary, Legislation	Office phone:	(916) 323-6004
		Direct phone	(916) 323-6006
		Cell phone	(916) 718-5250
		Home phone	(916) 446-8813
		Pager	(800) 791-6510
YACA	Morgan Gabriel Legislative Coordinator	Office phone:	(916) 323-6004
		Home phone	(916) 429-7192
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		Pager	N/A
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		Pager	N/A
BPT	Jim Nielsen Chairman	Office phone:	(916) 324-0557
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		Pager	(916) 592-8968

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YOUTH AND ADULT CORRECTIONAL AGENCY
1999 Legislative Staff

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**YOUTH AND ADULT CORRECTIONAL AGENCY
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YOUTH AND ADULT CORRECTIONAL AGENCY
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ENROLLED BILL REPORT

AGENCY Youth and Adult Correctional Agency	BILL NUMBER SB 1065
DEPARTMENT Youth Authority	AUTHOR Bowen

BILL SUMMARY

This bill would require any agency that stores public information in electronic format to make that information available in an electronic format among any of the forms used by the agency for the conduct of its own business or for use by another agency.

BACKGROUND

1. Bill Sponsors: Author
2. Support: California Newspaper Association, Sierra Club
3. Opposition: City of San Diego, Orange County Board of Supervisors
4. Prior Legislation: AB 179 (Bowen) - Similar to this bill, was vetoed by Former-Governor Wilson
5. Related Legislation: AB 1099 (Shelley)
6. State Agencies Affected: All
7. State Mandate Involved: Yes
8. Governor Appointments: No
9. CYA Report Required: No

VOTES

Senate Judiciary:	6 Ayes	0 Noes	0 Not Voting	0 Absent
Senate Appropriations:	9 Ayes	3 Noes	1 Not Voting	0 Absent
Senate Floor:	31 Ayes	7 Noes	2 Not Voting	0 Absent
Assembly Governmental Organization:	13 Ayes	2 Noes	3 Not Voting	0 Absent
Assembly Appropriations:	18 Ayes	3 Noes	0 Not Voting	0 Absent
Assembly Floor:	68 Ayes	6 Noes	6 Not Voting	0 Absent

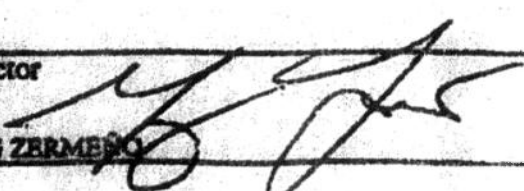

SPECIFIC FINDINGS

Current law provides that any person may receive a copy of any public record from any State or local agency upon payment of fees covering the direct costs of duplication or any applicable statutory fee. Each agency has 10 days to determine whether the request seeks copies of public information in its possession. The agency must notify the requestor as soon as a determination has been made and give reasons for the decision.

This bill would require any agency, unless otherwise prohibited by law, to make available public records in electronic format when requested by any person and would require the agency to comply with the following:

- Make information available in any electronic format in which it holds the information.

CONTINUED

Director  GREG ZERMEÑO	RECOMMENDATION		
	VETO THE BILL		
	DATE	AGENCY SECRETARY	DATE
	9/8/99		9/9/99

LH: 1590 PE - 63

- Provide a copy in a requested format, if it is one that has been created or used for other agencies.

DISCUSSION

1. Need Purpose

As technology continues to reshape the way we conduct business, citizens are continuously seeking a more advanced means to communicate. The author of this bill is providing citizens alternate methods in receiving or obtaining public information other than the traditional "hard-copy" documents. The purpose of this bill is to provide any person requesting public information to also have the choice of receiving it electronically, provided the agency stores its information electronically.

2. Impact

The impact of this bill on the Department could be considerable. Most of the information kept by the Department in electronic form contains confidential information, exempt from the Public Records Act, intermingled with public information. This is true of offender, staff and victim information. The Department would only be reimbursed for the "direct costs" of making copies, interpreted as covering the cost of the media (paper, disks, tapes, etc.) and perhaps the processing costs (Data Center charges). Staff time would be needed to analyze how to extract and exclude the confidential information, to prepare a computer program to accomplish the extraction, and to perform and validate the success of the extraction. Depending on the request, this could result in a large number of non-billable staff hours.

In addition, providing the data to a requestor electronically would require giving them the file layout or definition, with confidential information blanked out. Given the state of computer security in today's technology, anyone knowing the layout of the original files could possibly breach file security and threaten the integrity of Department's production files.

3. Arguments Pro/Con

Pro: This bill would provide another communication medium between the requestor and agency, reduce the production of "hard copies" (paper), and increase the usefulness of the data (digitized information).

Con: This bill would result in an increase in workload for Department staff to prepare an electronic file for the requestor and may create data security problems.

FISCAL/SOCIO-ECONOMIC IMPACT

Because the Department would not be able to choose the format of electronic data to supply to a requestor, the staff time to analyze, prepare, validate and deliver data files from which legally confidential information is removed could be considerable. Skilled technical staff are already over committed in terms of existing workload. Responding to requests under this bill could delay or jeopardize needed Department projects. In addition, there is no way to predict this workload. The requirement to respond within 10 days will make it necessary to drop whatever project is underway in order to meet the needs of the requestor.

LEGAL IMPACT

It is unlikely that this bill would have any significant legal impact on the Department. The proposed language will not put State law in conflict with federal law.

RECOMMENDATION

VETO THE BILL

LEGISLATIVE INTENT SERVICE (800) 666-1917



SB 1065 (BOWEN)

VETO MESSAGE

I am returning SB 1065 (Bowen) without my signature.

This bill would require any agency that stores public information in electronic format to make that information available in any electronic format among any of the forms used by the agency for the conduct of its own business or for use by another agency.

I am concerned with the impact this bill could have on the numerous government agencies that receive frequent public records act requests. Under current law, government agencies are only able to recapture the direct cost of providing a public record, but not the staffing cost associated with making that record available. Whereas "paper" public records act requests requiring redacting of confidential information is a somewhat simple function, "electronic" public records requiring redacting of confidential information would be a significant undertaking. Staff time would be needed to analyze how to extract and exclude confidential information, to prepare a computer program to accomplish the extraction, and to perform and validate the success of the extraction. Depending on the request, this could result in a large number of non-billable staff hours for a governmental agency.

In addition, providing the data to a requestor electronically would require giving the requestor the file layout or definition, with the confidential information blanked out. Given the state of computer security in today's technology, anyone knowing the layout of the original files could possibly breach file security and threaten the integrity of a governmental agency's production files.



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ENROLLED BILL REPORT

AGENCY

YOUTH AND ADULT CORRECTIONAL AGENCY

BILL NUMBER

SB 1065

DEPARTMENT, BOARD OR COMMISSION

BOARD OF PRISON TERMS

AUTHOR

Bowen

SUMMARY

Existing law, the California Public Records Act, provides, among other things, that any person may receive a copy of any identifiable public record from any state or local agency upon payment of fees covering the direct costs of duplication or any applicable statutory fee. Existing law also requires computer data to be provided in a form determined by the agency.

This bill 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.

ANALYSIS & FISCAL IMPACT

Assembly Appropriations Committee claims that there would be potential revenue loss to various agencies that currently make and sell copies of public records documents but these would be offset by workload savings from providing electronic rather than paper copies of public records. However, in order to comply with the provisions of this legislation, the Board would have to establish a specific management information systems section to organize and process the electronic data format of all public records requests.

The establishment of the management information section would consist of 1.0 Research Manager II, 3.0 Research Analyst II's, and 1.0 Office Technician. The estimate, which includes salaries, staff benefits, operating expenses, computers, furniture, copier, fax, printer, software, and Teale Data Center costs would total approximately \$500,000.

RECOMMENDATION

VETO

RECOMMENDATION:

VETO

DEPARTMENT HEAD

DATE

AGENCY SECRETARY

DATE

[Signature]

7/2/97

[Signature]
Robert Presley

9/9/99

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ENROLLED BILL REPORT

Business, Transportation & Housing Agency

DEPARTMENT 	AUTHOR Bowen	BILL NO. SB 1065
SPONSOR Author	RELATED BILLS AB 1099, SB 48	DATE LAST AMENDED 04/27/99
SUBJECT Public records: electronic format		

This analysis only addresses those provisions impacting the Department of Motor Vehicles (DMV).

SUMMARY: SB 1065 would require the department, upon request, to provide public record information in any electronic format in which it holds the information.

IMPACT ASSESSMENT: The California Vehicle Code contains provisions regarding information to be collected and to whom it may be disseminated which are specific to the Department of Motor Vehicles. These provisions are based on the Information Practices Act, the Public Records Act and the federal Drivers Privacy Protection Act.

The department currently provides record information in an electronic format (magnetic tape or on-line direct access) to large volume requesters who have established a "commercial requester account", posted a bond, and show that they have a statutorily authorized right to obtain the information requested. Other requests are handled on a case by case basis, using a paper (hard copy) request system that must meet statutory guidelines requiring proper identification of the requester and notification to the recordholder prior to release.

SB 1065 would require the department, upon request, to provide public record information in any electronic format in which it holds the information. Additionally, the bill specifies that a public agency is not required to reconstruct a report in an electronic format if the agency no longer maintains the report in an electronic format.

The department would incur implementation costs of \$166,310 and \$39,614 annually thereafter to provide for the dissemination of information to one-time requesters in an electronic format.

ARGUMENTS PRO:

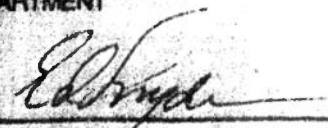
- SB 1065 may provide the public with a wider variety of access alternatives in obtaining information from the department's data files.
- Once initial programming has been completed to provide access through various types of inquiry alternatives, subsequent information requests can be accommodated with only minor expenditures.

There is no known support for this legislation.

VOTE: ASSEMBLY FLOOR Aye <u>68</u> No <u>6</u>	VOTE: SENATE FLOOR Aye <u>31</u> No <u>7</u>
Policy Cmte. Aye <u>18</u> No <u>3</u>	Policy Cmte. Aye <u>9</u> No <u>3</u>

RECOMMENDATION:

VETO

DEPARTMENT	DATE	AGENCY	DATE
	9/10/99 <i>WPC</i>	María Contreras-Sweet <i>SF</i>	9/10/99

ARGUMENTS AGAINST:

- The bill raises concerns about data base security. For example, passage of AB 1065 could result in data being merged into other unknown data bases, and could result in the use of DMV records and documentation for purposes unrelated to that specified in the original request.
- The costs associated with creating computer programming to accommodate the new requesters may exceed the fees assessed, especially if a majority of the requesters ask for customized information on a "one time only" basis.
- While some state departments might have the flexibility and capability to meet the requirements of this bill with minor costs, many smaller departments do not have such resources and this bill would place costly administrative burdens on those departments.

Orange County and the City of San Diego are opposed to this bill.

RECOMMENDATION: VETO

SB 1065 would require the department, upon request, to provide public record information in any electronic format in which it holds the information. While this bill may provide the public with greater access to information contained on the department's records in a format which is more readily usable by the requester, it also raises the costs of providing that service and presents administrative burdens in many cases.

There are additional concerns raised whether the receiver of this electronic information will manipulate and reuse that data for purposes unrelated to the stated purpose under which the original release was authorized.

For further information, please contact:

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Evening telephone: (916) 428-8375

For technical information, please contact:

Candy Wohlford
Communications Programs Division
Day telephone: (916) 657-7722
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Bill Cather
Assistant Director, Legislation
Day telephone: (916) 657-6518
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Beeper: (916) 551-6730

LEGISLATIVE INTENT SERVICE (800) 960-1947

VETO MESSAGE
SB 1065

To the Members of the California Assembly:

I am returning Senate Bill 1065 without my signature.

While SB 1065 may provide the public with greater access to information contained in the files of state agencies, the costs associated with accommodating these requests may exceed any savings created merely to ensure that a one-time requester may obtain record information in an electronic format.

I am very committed to improving customer service in my administration, however, I think the accountability for such service starts with the Executive Branch and the methods used should not be legislatively mandated. There are operational and administrative costs to providing information in particular format, paper or electronic, and those costs need to be considered in this business decision. While some state departments might have the flexibility and capability to meet the requirements of this bill with minor costs, many smaller departments do not have such resources and this bill would place costly administrative burdens on those departments.

Cordially,

Gray Davis

DEPARTMENT CORPORATIONS	AUTHOR Bowen	BILL NO. SB 1065
SPONSOR Senator Bowen	RELATED BILLS AB 142 (Bowen - 1995); AB 2989 (Bowen - 1996); AB 179 (Bowen - 1997); SB 74 (Bowen - 1997); AB 1099 (Shelley - 1999)	DATE LAST AMENDED April 27, 1999
SUBJECT Public Records: Electronic Format		

SUMMARY

Amends the California Public Records Act to require any state or local agency that has identifiable public records in an electronic format to make that information available in electronic format, unless otherwise prohibited by law.

ANALYSIS

Under existing law, the California Public Records Act ("PRA") provides, among other things, that any person may receive a copy of an identifiable, "non-exempt" public record from a state or local agency, upon request and payment of any statutorily mandated fee and any reasonable fees necessary to cover the direct costs of duplication. A "non-exempt" public record is a public record that is not exempt from disclosure by an express provision of law. Further, the PRA requires that if portions of the records are exempt from disclosure, any portions of such records that can be reasonably segregated are to be similarly provided, upon request, after the exempted portions have been deleted. Finally, the PRA requires that, upon request, an exact copy of the non-exempt public record shall be provided unless impracticable to do so and that computer data is to be provided in a form determined by the agency.

SB 1065 would delete the requirement that computer data be provided in a form determined by the agency and, instead, provide that, unless otherwise prohibited by law, any state agency that has identifiable public records in electronic format shall make that information available in electronic format when requested by any person and, when applicable, shall make the information available in any electronic format in which it holds the information and 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.

VOTE: SENATE FLOOR	AYE 31 NO 7	VOTE: ASSEMBLY FLOOR	AYE 68 NO 6
POLICY. COMTE	AYE 6 NO 0	POLICY. COMTE	AYE 13 NO 2
RECOMMENDATION VETO			
DEPARTMENT WILLIAM KENEFICK Acting Commissioner of Corporations & Assistant Commissioner, Office of Policy	DATE 9-8-99	AGENCY Maria Contreras Sweet	DATE 7/7/99
		BY:	DATE:
			LH: 1602 PE - 75

LEGISLATIVE INTENT SERVICE (800) 666-1917

In addition, SB 1065 would provide that (1) direct costs shall include costs associated with duplicating electronic records, (2) nothing in the bill shall be construed to require a public agency to reconstruct a report in electronic format if it no longer has the report in electronic format, (3) nothing in the bill shall be construed to permit an agency to make information available only in an electronic format, and (4) nothing in the bill shall be construed to permit public access to the Department of Motor Vehicles' records which access is otherwise restricted by statute.

The purpose of this bill is to help the public obtain information from governmental entities in electronic format—a form that is useful to them.

COST

The estimated cost to the Department of Corporations as a result of this bill appears to be minor, which when considered separately is absorbable within current resources. However, the combination of these costs with those of the numerous other bills that may be enacted this session could result in a request by the Department of Corporations for additional resources. It should also be noted that any new requirements "absorbed" by the Department of Corporations have the potential to divert staff or other resources from activities that may also be considered priorities.

LEGISLATIVE HISTORY

The vote history can be found on the front page of the Enrolled Bill Report.

The author, Senator Bowen, is the sponsor of this bill.

The author's office claims that 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 no current authority under which a person seeking electronically available records could obtain such records in that format. This means that if an agency makes 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 print-outs 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.

Additionally, the author claims that public agencies are making profit centers out of making copies of documents that are already available on disk or other electronic format – so that the public, having already paid for the creation of those documents, are charged a second time for getting copies of the documents. This bill would make it possible for those records in electronic format to be available in the same format – i.e., CD or disk or whatever electronic format would be available in the future.

Related bills include the following:

AB 142 (Bowen - 1995): Would have required that, unless otherwise prohibited by law, any state agency in possession of public records in an electronic format shall, upon request, make that information available in an electronic format. AB 142 died in committee.

AB 2989 (Bowen - 1996): Would have enacted the Paper Reduction Act of 1996 to require that all public records which exist in an electronic format be available electronically. AB 2989 failed in committee.

AB 179 (Bowen - 1997): Would have amended the PRA to, among other things, require agencies to provide a copy of an electronic record in the form requested, unless, in light of surrounding circumstances, it is not reasonable to do so, provided that the requested form is one which is used by the agency. AB 179 was vetoed by former Governor Wilson and the Governor stated as follows in his veto message:

"Government agencies receive hundreds of Public Records Act requests every month. They are most often not from ordinary citizens, but from political candidates or special interest groups searching for information. Government employees spend thousands of hours each year responding to the requests segregating the requested documents from exempt documents, such as those which invade other citizens' personal privacy. Taxpayers pay for the time expended searching for and segregating these records. However, state agencies are presently permitted to determine the form in which computer data is provided.

This bill creates a new inflexible mandate by requiring the agency to provide the electronic data in the form requested, unless it is 'unreasonable' to do so, without ever defining the breadth of that exemption, thereby leaving it open to litigation. A request that an electronic record be provided in a particular form may require additional expense, burden, and time to segregate the public data from the exempt data, but the bill provides no guidance whether or to what extent that additional burden makes it 'unreasonable'.

Agencies should make available to the public all documents to which public access is granted. But we need not add costs and rigidity to these obligations by specifying the form in which it will be done."

SB 74 (Kopp - 1997): Contained similar provisions to AB 179 (Bowen - 1997) and was vetoed by former Governor Wilson for the exact same reasons as AB 179.

AB 1099 (Shelley - 1999): Amends the PRA to (1) provide that a copy of computerized data shall be provided in any form or format that is requested from among any of the forms or formats used by the agency for the conduct of its business or for the making of copies for its own use or the use of any other agency and (2) prohibit a state or local agency from purchasing, leasing,

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creating, or otherwise acquiring any electronic data-processing system for the storage, manipulation, or retrieval of public records if it significantly impairs public examination or electronic copying of public records.

ARGUMENTS PRO & CON

A. Arguments in Support of the Bill:

From the perspective of the general public, this bill allows for the economic and convenient public disclosure of identifiable, non-exempt electronic public records in electronic format. Copying a public record that is in electronic format to the same format (e.g., from CD to CD or disk to disk) should be easier, faster, and less expensive to do than copying from electronic format to paper or from paper to paper.

In support of this bill are the California Newspaper Publishers Association and the Sierra Club.

B. Arguments in Opposition to the Bill:

This bill does not allow for the recovery of staff time and equipment to duplicate and, if necessary, segregate the data, only for the recovery of direct costs. Thus, this bill could be very costly or burdensome to agencies that have records in electronic format, but no or inadequate means of duplicating and segregating non-exempt public records.

The physical nature of electronic records may complicate the "reasonable segregation" requirement of the PRA, create confusion, and result in the accidental public disclosure of exempt information. Such an inadvertent disclosure may have an impact on the legal interests of all concerned parties, resulting in legal actions and associated costs.

Local agencies argue that the bill would result in increased costs to provide public records, and would subject proprietary software developed by a local agency at a significant cost to the PRA thereby enabling private entrepreneurs to use the software to directly compete with the local agency.

In opposition to this bill are the City of San Diego and the Orange County Board of Supervisors.

RECOMMENDATION

Insofar as the Department of Corporations is concerned, a VETO is recommended on SB 1065 because this bill creates an inflexible mandate on state agencies to provide electronic data in the form requested, which can require additional expense, burden, and time on state agencies to comply with a request for public records under the PRA. State agencies should have the flexibility to provide non-exempt public records in a manner that is efficient and cost effective.

Enrolled Bill Report
September 7, 1999

5

SB 1065
Last Amended April 27, 1999

The ultimate goal should be to ensure that public records are made readily available to the public, and not in what form those records should be made available.

A proposed veto message is attached.

Contact: GERARDO PARTIDA
Title: Senior Corporations Counsel
Phone No.: (916) 322-3675

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VETO MESSAGE
SENATE BILL NO. 1065

To the Members of the California State Senate:

I am returning Senate Bill No. 1065 without my signature.

This bill would amend the California Public Records Act to require any state or local agency that has identifiable public records in an electronic format to make that information available in electronic format, unless otherwise prohibited by law.

While I believe in and support the public's right of access to government documents, I also believe that state and local agencies should have the flexibility to provide non-exempt public records in a manner that is efficient and cost effective. I am concerned that this bill creates a rigid and inflexible mandate on state and local agencies to provide electronic data in the electronic form requested, which may require additional expense, burden, and time to segregate the public data from the exempt data.

Not only will this bill be costly and burdensome to agencies that have records in electronic format but no or inadequate means of duplicating and/or segregating the non-exempt public records, it would also impair the public's ability to get the public records in a timely fashion. The goal should be to ensure that public records are made readily available to the public, and not in what form those records should be made available.

Cordially,

GRAY DAVIS
Governor



DEPARTMENT GENERAL SERVICES	AUTHOR Bowen	BILL NUMBER SB 1065 (LAV 4/27/99)
SPONSOR Author	RELATED BILLS See Legislative History	
SUBJECT Public records; electronic format		

BILL SUMMARY:

Senate Bill (SB) 1065 would make various changes to the California Public Records Act (Act) by providing that agencies that have public records available in electronic format make that information available in an electronic format when requested.

LEGISLATIVE HISTORY:

Assembly Bill (AB) 1099 (Shelley, 1999) is similar to SB 1065 in that it requires state agencies to provide computerized data in a format chosen by the requester if the agency uses that format in the course of its normal business. It would also prohibit an agency from acquiring electronic data processing equipment unless it determines that the system will not impede public access to public records.

Senate Bill 48 (Sher, 1999) would provide an administrative appeals process for persons who are denied access to public records. The appeals process would be handled by the Attorney General's office.

Senate Bill 143 (Kopp, Chapter 620, Statutes of 1998) made various changes to the Act including the establishment of a comprehensive index of public records within the Act that are exempt from disclosure under current law and contained in various other codes.

Assembly Bill 179 (Bowen, 1997) would have required state agencies to disclose computerized data in a format chosen by the requestor unless determined unreasonable to do so. This bill was vetoed by Governor Wilson (see attached veto message).

Senate Bill 74 (Kopp, 1997) was similar to AB 179 and would have required state agencies to disclose computerized data in a format chosen by the requestor unless determined unreasonable to do so. This bill was vetoed by Governor Wilson (see attached veto message).

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VOTE: Assembly Floor: Aye <u>68</u> No <u>6</u> Policy Committee: Aye <u>13</u> No <u>2</u> Fiscal Committee: Aye <u>18</u> No <u>3</u>		VOTE: Senate Floor: Aye <u>31</u> No <u>7</u> Policy Committee: Aye <u>6</u> No <u>0</u> Fiscal Committee: Aye <u>9</u> No <u>3</u>	
RECOMMENDATION TO GOVERNOR: SIGN <u>[Signature]</u> VETO <u>X</u>		DEFER TO OTHER AGENCY	
DEPARTMENT DIRECTOR: <u>[Signature]</u> DATE: <u>9-8-99</u>		AGENCY SECRETARY: <u>[Signature]</u> DATE: <u>9-10-99</u>	

Senate Bill 323 (Kopp, 1996) was similar to AB 179 and SB 74 and was vetoed by the Governor (see attached veto message).

Assembly Bill 2989 (Bowen, 1996) was the "Paper Reduction Act of 1996" and, among other things, required that reports required by law shall be submitted on paper and electronically sent to the State Librarian. This bill failed passage in the Assembly Governmental Organization Committee.

Assembly Bill 142 (Bowen, 1995) made changes to the Act relative to the availability of records contained in electronic format and established conditions under which "vital records" could be disclosed to the public. This bill was never heard and ultimately died in the Assembly Governmental Organization Committee.

PROGRAM HISTORY:

The Department of General Services (DGS) incorporates six operating divisions composed of 23 offices that provide a broad range of business services to government. The DGS' functions include: procurement and contracting for goods and services; real estate and design services for state buildings; telecommunications; fleet management; information services; printing; architectural services; energy efficiency; and building maintenance.

By meeting these varied responsibilities for centralized management review and support, the DGS seeks to increase effectiveness and economy in the administration of state government and to maintain responsive working relationships with client agencies.

The State Board of Control (Board) Victims of Crime (VOC) Program reimburses victims for specified net out-of-pocket losses incurred as a result of a crime. Reimbursable expenses include medical expenses, mental health counseling, funeral/burial costs, and wage or support losses not otherwise covered by insurance or other sources. The VOC Program's revenue source, the Restitution Fund (Fund), receives its revenue primarily from state penalties assessed on court-ordered fines.

The Board's Government Claims program processes, approves, and pays claims against the state in accordance with Government Code Section 980 et seq.

SPECIFIC FINDINGS:

1. Under existing law, the California Public Records Act provides that upon request and payment of duplication fees, state and local agencies must make non-exempt records available to the public. Among other things, the Act provides that "Computer data shall be provided in a form determined by the agency" (Government Code Section 6253). This language was originally put in statute in 1988 (Government Code Section 6256). In one of the early versions of SB 143 (Kopp, 1998) the language was deleted but, at the request of the DGS, the language was reinstated in the bill and subsequently remained in statute.

SB 1065 would repeal that language and create a new section of law relative to the accessibility of electronic records.



2. Specifically, SB 1065 would provide that agencies that have public records available in electronic format make that information available in electronic format when requested and, when applicable, comply with the following:
- a. make the information available in any electronic format in which it holds the information;
 - b. provide a copy of an electronic record in the format requested if that format is one already used by the agency to create copies for itself or other agencies;
 - c. duplication costs would include the costs associated with duplicating electronic records;
 - d. an agency would not be required to reconstruct a report in an electronic format if it is no longer available in that format;
 - e. an agency would not be permitted to make information available only in an electronic format;
 - f. statutorily restricted Department of Motor Vehicle records would not be accessible.

CONCERNS:

The Act dictates that state and local agency records deemed eligible for public disclosure shall be provided to a requester generally within ten days of the request. In 1998, SB 143 updated the Act to provide that electronic records, when eligible for disclosure, shall be provided to a requester in a format determined by the agency.

Senate Bill 1065 would instead mandate that electronic records eligible for disclosure be provided in a format determined by the requester. This mandate has been proposed three times. It was vetoed twice and subsequently amended out of SB 143 before it reached Governor Wilson's desk. Each time, opposition from state agencies contributed to this provision's failure.

Requiring that electronic records be provided in a format determined by the requester would burden the DGS, and presumably other state and local agencies, with the responsibility of compiling and sorting the information to fit the requester's specifications. These responsibilities are especially onerous when records must be painstakingly filtered to strike out information exempt from disclosure requirements or not pertinent to a given individual request.

Senate Bill 1065 would limit the formats available to the requester to those regularly used by a state agency for its own business or for making copies for another agency. However, as with previous proposals, this bill contains no clear definition for what constitutes regular

use. With such a lack of clarity, a requester may claim access to information the Act never intended to make publicly available, such as the identities and treatment information of crime victim applicants to the VOC. This information could be in the form of unfiltered spreadsheets or databases that the requester argues constitute a format used by a state agency for its own business. Without safeguards against such claims, this bill could subject the VOC Program and the Government Claims Program to increased litigation to resolve ambiguity in the Act.

All state agencies should be allowed to maintain discretion in determining the format of electronic records disclosed under the Act. This existing discretion is already circumscribed by a clear mandate elsewhere in statute that state agencies shall not inhibit access to public information guaranteed by the Act.

REGULATIONS:

Existing law permits agencies to adopt requirements for themselves if those requirements provide for greater, faster, or more efficient access to records than is required by statute.

LEGISLATIVELY MANDATED REPORTS: N/A

COMMISSIONS AND BOARDS: N/A

FISCAL IMPACT:

Existing law provides that an agency may only recover the direct costs of duplicating a record. SB 1065 provides that these direct costs shall include "... costs associated with duplicating electronic records." This would seemingly not cover the cost of staff who must painstakingly review and pull the information being requested in order to comply with the requester's choice of formats.

PRO AND CON ARGUMENTS:

Arguments in Support of the Bill:

The business of government should be open and accessible to the public. Today, the vast majority of records created by state agencies are in an electronic format and easier to retrieve and reproduce. The public should have access to these records when available.

Arguments in Opposition to the Bill:

Under current law, state agencies may determine what format computer data is to be provided. While fulfilling requests for public information electronically is a worthy policy for state agencies to pursue, it is not good policy to eliminate an agency's discretion in determining the most appropriate format to provide that information.



PROPOSERS/OPPONENTS:

Sponsor: Author

Support: California Newspaper Publishers Association
Sierra Club

Opposition: City of San Diego
Orange County
California State Association of Counties

RECOMMENDATION: VETO

Rather than improve existing law, SB 1065 makes ambiguous existing provisions that allow state agencies discretion in determining the format for electronic records to be disclosed to the public under the California Public Records Act. The Department of General Services, therefore, recommends that this measure be VETOED.

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VETO MESSAGE
Senate Bill 1065, As Amended April 27, 1999

I am returning Senate Bill 1065 without my signature.

This bill would amend the California Public Records Act to require that state agencies that have public records available in electronic format, make that information available in an electronic format when requested.

Under existing law, state agencies may determine what format computer data is to be provided. While fulfilling requests for public information electronically is a worthy policy for state agencies to pursue, it is not good policy to eliminate an agency's discretion in determining the most appropriate format to provide that information.

All state agencies should be allowed to maintain discretion in determining the format of electronic records disclosed under the Act. This existing discretion is already circumscribed by a clear mandate elsewhere in statute that state agencies shall not inhibit access to public information guaranteed by the Act. To that end, I believe SB 1065 will not improve existing law, but will simply make existing provisions ambiguous.



BILL NUMBER: AB 179
VETOED DATE: 10/12/1997

To the Members of the California Assembly:

I am returning Assembly Bill No. 179 without my signature.

This bill would amend the California Public Records Act to require state agencies to provide "a copy of an electronic record in the form requested, unless, in light of surrounding circumstances, it is not reasonable to do so..." It does not change the public's right of access to government documents, but only restricts the agency's discretion as to the form of the document made available.

Government agencies receive hundreds of Public Records Act requests every month. They are most often not from ordinary citizens, but from political candidates or special interest groups searching for information. Government employees spend thousands of hours each year responding to the requests--segregating the requested documents from exempt documents, such as those which invade other citizens' personal privacy. Taxpayers pay for the time expended searching for and segregating these records. However, state agencies are presently permitted to determine the form in which computer data is provided.

This bill creates a new inflexible mandate by requiring the agency to provide the electronic data in the form requested, unless it is "unreasonable" to do so, without ever defining the breadth of that exemption, thereby leaving it open to litigation. A request that an electronic record be provided in a particular form may require additional expense, burden, and time to segregate the public data from the exempt data, but the bill provides no guidance whether or to what extent that additional burden makes it "unreasonable."

Agencies should make available to the public all documents to which public access is granted. But we need not add costs and rigidity to these obligations by specifying the form in which it will be done.

Cordially,

PETE WILSON



BILL NUMBER: SB 74
VETOED DATE: 10/12/1997

To the Members of the California Senate:

I am returning Senate Bill No. 74 without my signature.

This bill would amend the California Public Records Act to require state agencies to provide "a copy of an electronic record in the form requested, unless, in light of surrounding circumstances, it is not reasonable to do so..." It does not change the public's right of access to government documents, but only restricts the agency's discretion as to the form of the document made available.

Government agencies receive hundreds of Public Records Act requests every month. They are most often not from ordinary citizens, but from political candidates or special interest groups searching for information. Government employees spend thousands of hours each year responding to the requests-segregating the requested documents from exempt documents, such as those which invade other citizens' personal privacy. Taxpayers pay for the time expended searching for and segregating these records. However, state agencies are presently permitted to determine the form in which computer data is provided.

This bill creates a new inflexible mandate by requiring the agency to provide the electronic data in the form requested, unless it is "unreasonable" to do so, without ever defining the breadth of that exemption, thereby leaving it open to litigation. A request that an electronic record be provided in a particular form may require additional expense, burden, and time to segregate the public data from the exempt data, but the bill provides no guidance whether or to what extent that additional burden makes it "unreasonable."

Agencies should make available to the public all documents to which public access is granted. But we need not add costs and rigidity to these obligations by specifying the form in which it will be done.

Cordially,

PETE WILSON



BILL NUMBER: SB 323
VETOED DATE: 09/29/96

To the Members of the California Senate:

I am returning Senate Bill No. 323 without my signature.

This bill would provide that if an agency decides to withhold any record based on statute or public interest, the agency must identify in writing the statute or public interest served by nondisclosure of the record.

SB 323 adds to the obligations of governmental agencies which are already under the heavy burden of responding to Public Records Act requests. Under current law, an agency must determine, within 10 days of any request for a copy of agency records, whether to comply with the request and must state the reasons for declining to do so. This bill would require that where the agency decides to withhold the record under Section 6255, it specify the public interest in nondisclosure as well as state the public interest in disclosure.

Governmental agencies receive hundreds of Public Records Act requests every month. They are most often not from ordinary citizens, but from political candidates and special interest groups searching for information. Government employees spend thousands of hours each year responding to the requests - many broad and unfocused - at the cost of doing their other responsibilities.

This bill imposes an additional and unreasonable burden on record-keeping to not only state the reasons for a denial, but to specify the specific public interest in nondisclosure of the documents and the public interest in disclosure at the risk of waiving the privilege of confidentiality for the records requested. It is a significant and unnecessary, additional bureaucratic burden that provides no commensurate benefit to the public to justify the time and tax money that would have to be expended to comply with the requirement.

Cordially,

PETE WILSON



DEPARTMENT OF FINANCE ENROLLED BILL REPORT

AMENDMENT DATE: April 27, 1999

BILL NUMBER: SB 1065

RECOMMENDATION: Veto

AUTHOR: D. Bowen

ASSEMBLY: 68/6

SENATE: 31/7

BILL SUMMARY

PUBLIC RECORDS: ELECTRONIC FORMAT

This bill would modify the California Public Records Act to require state and local agencies that have identifiable public information in electronic form to make that information available to the public in electronic form. Existing law allows the agency to provide the electronic data in the form determined by the agency. The proposed amendment would require the agency to make the information available in any electronic format in which it holds the information or in a form that has been used by the agency for its own use or for other agencies. Agencies are not required to reconstruct records in an electronic form that is no longer available in the agency and agencies cannot restrict the information availability to only electronic form. Consistent with current law, agencies can charge for the direct costs of duplicating the records or applicable statutory fees.

FISCAL SUMMARY

The cost implications of this bill cannot be determined.

COMMENTS

The Department of Finance recommends that this bill be vetoed since it may result in some unfunded costs to the agencies because the bill is unclear on what expenses are considered "direct costs for duplication of electronic records." If programming expenses for selecting, sorting, manipulating, and masking records are not considered within the definition or not funded through any applicable statutory fees, agencies may be burdened with this additional effort without reimbursement. The Department of Motor Vehicles also anticipates additional workload because electronic data may be easier for the public to use and may result in new types of requests. While not providing a specific breakdown of the new workload, the Department of Motor Vehicles estimates one-time costs of \$166,300 and annual costs of \$39,600 in order to comply with the provisions of this legislation.

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Analyst/Principal	Date	Program Budget Manager	Date
(0992) D. Leibrick	9/10/99	Robert J. Straight	9.10.99
Department Director			Date
<i>Tim Lutz</i>	9/15/99		

BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)

Form DF-43

AUTHOR

AMENDMENT DATE

BILL NUMBER

D. Bowen

April 27, 1999

SB 1065

ANALYSIS

A. Programmatic Analysis

This bill could provide greater access to information maintained by the various agencies by providing the information in a form that may be more economical and convenient to requesters.

B. Fiscal Analysis

The fiscal impact of this bill is unknown at this time. The bill in its present form is ambiguous as to whether the programming expenses incurred by the agencies in selecting, sorting, manipulating, and masking the data are part of the direct costs associated with duplicating electronic records, which can be reimbursable costs. Without clarification, agencies may incur minor to substantial non-reimbursable expenses to comply with this bill.

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)							Fund Code
	LA	(Dollars in Thousands)							
	CO	PROP							
	RV	98	FC	1999-2000	FC	2000-2001	FC	2001-2002	
9990/Var Depts	SO	No							0001
				----- See Fiscal Analysis -----					

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SUGGESTED VETO MESSAGE

SB 1065

(as amended April 27, 1999)

I am returning Senate Bill No. 1065 without my signature.

This bill is unnecessary and may cause state and local agencies to incur minor to substantial non-reimbursable expenses to comply with this bill. Existing law already provides access to public records in electronic form, as determined by the agency.

DEPARTMENT Consumer Affairs	AUTHOR Bowen	BILL NUMBER SB 1065
SPONSOR Author	RELATED BILLS AB 1099	
SUBJECT Public Records: Electronic Format		

BILL SUMMARY: This bill amends the Public Records Act to require state and local agencies to make public records available in an electronic format when requested by a member of the public.

LEGISLATIVE HISTORY:

AB 179 (Bowen) 1997/98, Vetoed
 SB 74 (Kopp) 1997/98, Vetoed
 AB 1099 (Shelley) currently in Senate Third Reading

PROGRAM HISTORY:

AB 179 (Bowen), vetoed in the 1997/98 session was very similar to this bill. The veto message stated that the bill created a new and inflexible mandate requiring agencies to provide the electronic data in any format requested, unless it was "unreasonable" to do so, without defining the scope of what constitutes "unreasonable", thereby leaving it open to litigation.

SB 74 (Kopp), vetoed in the 1997/98 session also would have required copies of public records to be provided in an electronic format when requested, unless in light of surrounding circumstances it was unreasonable to do so. The veto message was the same as for AB 179.

AB 1099 (Shelley), would also require public records to be provided in the format requested and would prohibit any state or local agency from leasing or purchasing any electronic data processing system that would impair the public's access to public records.

According to the author, the increased use of computers to store and process public records should also allow the public to obtain records in an electronic format, if requested. Making the records easily available to the public in an electronic format would encourage the public to participate in the workings of government to a greater degree. The author maintains that it would decrease agency costs to provide the information electronically rather than on paper.

SPECIFIC FINDINGS:

This bill deletes the flexibility of state agencies to provide copies of public records in any format determined by the agency. The bill would require that when a public record is stored in an electronic format, the state agency would be required to provide copies of that record in an

VOTE: Assembly Floor: Aye <u>68</u> No <u>6</u> Policy Committee: Aye <u>13</u> No <u>2</u> Fiscal Committee: Aye <u>18</u> No <u>3</u>		VOTE: Senate Floor: Aye <u>31</u> No <u>7</u> Policy Committee: Aye <u>6</u> No <u>0</u> Fiscal Committee: Aye <u>9</u> No <u>3</u>	
RECOMMENDATION TO GOVERNOR: SIGN _____ VETO _____		DEFER TO OTHER AGENCY General Services AGENCY SECRETARY _____	
DEPARTMENT DIRECTOR <i>Denis Brown</i>		DATE: <i>9/8/99</i>	

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electronic format if requested. The agency would only be required to provide the record in the electronic format which holds the information. Nothing in the provisions would be construed to require the agency to reconstruct reports in an electronic format if the agency no longer has the report itself available in an electronic format.

Existing law allows an agency to impose a fee covering the direct costs of duplication, or a statutory fee, if applicable. This bill would clarify that the direct costs of duplication include the costs associated with duplicating electronic records. Nothing in the provisions would be construed to permit an agency to make information available only in an electronic format. Records held by the Department of Motor Vehicles, to which access is otherwise restricted, are exempted from these provisions.

The provisions of this bill take away a state agency's express authority to determine the form in which it provides copies of computerized data. The Central Records Unit within the Department of Consumer Affairs (Department) stores files on microfilm and currently, requesters of public records are, by necessity, provided paper copies. The Central Records Unit indicates that it has the capability to provide some of the microfilm records on a CD-ROM format and plans to expand that capability to all the public records within the next two years. However, the boards may use other types of electronic formats to store records and usually have to segregate disclosable information from the non-disclosable information. That process takes time and can be cumbersome. There is also a concern that a requester will use burdensome record requests to intimidate, retaliate, and harass an agency by jamming up agency resources when there is a disciplinary dispute with the requester.

The provisions in this bill and also in AB 1099 (Shelley) suggest that a requester's interest in obtaining copies of public records in a format requested is to be weighted more than the agency's interests in managing its workload.

REGULATIONS: N/A

LEGISLATIVELY MANDATED REPORTS: N/A

COMMISSIONS AND BOARDS: N/A

The provisions of this bill would impact all boards and bureaus within the Department.

FISCAL IMPACT: Fiscal is attached.

PRO AND CON ARGUMENTS:

Arguments in Support of the Bill:

Proponents argue that government is making use of computer technology at an increasing rate to conduct the people's business and government should be able to respond to a public request in an electronic medium. Making public records available electronically encourages the public to participate in their government and could establish a cost-effective method of disseminating information.

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Arguments in Opposition to the Bill:

Opponents argue that this bill takes away an agency's discretion regarding the form used to provide copies of public records. Requests for public records do not always come from ordinary citizens, but from special interest groups, political candidates, newsgathering groups, and from entities that have a dispute with a particular agency and use the records requests to harass the agency. Government employees spend several hundred hours each year responding to public record requests and segregating disclosable information from the non-disclosable. Taxpayers ultimately shoulder the burden for the state time expended to perform the searches. Opponents argue that they recognize that eventually, the majority of records will be computerized and agencies will be able to accommodate requests for public records in a wide variety of electronic formats without much trouble. However, until all state agencies are fiscally able to attain electronic capabilities they should have the discretion to provide public records in a format they determine is appropriate.

PROPONENTS/OPPONENTS:

Sponsor Author

Support: CA Newspaper Publishers Association (9/8/99)

Opposition: Orange County Board of Supervisors

SIGNIFICANT VOTE COUNT:

This bill received six "NO" votes on the Assembly Floor, five of them from Republicans. The assumption from the Republican Caucus is that the negative votes resulted from the Orange County opposition and the belief that this mandate would be very costly for counties.

RECOMMENDATION:

The Department of Consumer Affairs **DEFERS A RECOMMENDATION** on SB 1065 to the Department of General Services (DGS) which is preparing an enrolled bill report. The DGS has expressed many of our same concerns.

RENA M. KIMBALL
Department Analyst
Office: 322-1203
Pager: n/a
Home: (209)748-5571

LYNN MORRIS
Assistant Deputy Director
Office: 327-5196
Cellular: 600-2149
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HAPPY CHASTAIN
Deputy Secretary, Legislation
Office: 653-3111
Pager: 213-9261
Cellular: 213-9261
Home: 443-1366

VETO MESSAGE
Senate Bill 1065, As Amended April 27, 1999

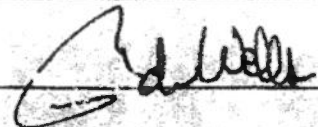
I am returning Senate Bill 1065 without my signature.

This bill would require state agencies to provide copies of public records that are stored electronically, in an electronic format, if requested.

I am supportive of efforts to provide greater accessibility for the public to obtain information regarding the workings of the government. Access to information provides consumers a basis for making informed decisions and to participate in government decisions.

However, I am vetoing this bill because it removes state agency flexibility to determine the manner in which they respond to requests for public records. The discretion does not change the public's right of access to government documents, but removing the discretion only restricts an agency's ability to provide the record in a form that accommodates the workload and resources available. Not all agencies are equal in their ability to segregate the disclosable information from the non-disclosable due to older computer equipment and programs. These agencies must spend much more time and resources to comply with numerous record requests. Agencies must retain the flexibility to provide the records in a form that best suits their circumstances.

**DEPARTMENT OF CONSUMER AFFAIRS
Fiscal Analysis of Legislation**

DUE DATE: ASAP **DATE ASSIGNED:** _____
Prepared By: Stacey A. Luna **Bill Number:** SB 1065
Phone number: (915) 445-3577 **Author:** Bowen
Approved by:  **Date Approved:** 9-7-99

FISCAL ANALYSIS AS ENROLLED: 9/3/99 **Short Title:** Public Records: electronic format.

OFFICE OF INFORMATION SERVICES: Fiscal impact? YES NO *If Yes, include OIS workload and assumptions.*
OIS Reviewer: Conrad Lara **DATE:** 3/11/99

ANALYSIS AND FISCAL ASSUMPTIONS:

Please see attached.

SUMMARY OF FISCAL IMPACT:	
<input type="checkbox"/>	Insignificant fiscal impact (under \$10,000).
<input type="checkbox"/>	Minor fiscal impact. One-time cost of: \$ _____ . Can be absorbed within existing resources. Ongoing costs of: _____
<input checked="" type="checkbox"/>	(Other:) MINIMAL/ABSORBALE FISCAL IMPACT.

	1999/00	2000/01	ONGOING
Expenditures	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Revenue	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>

PROGRAM CONTACT: Various Board Staff

PROGRAM CONCURS: YES NO (If no, note differences as appropriate.)

LEGISLATIVE INTENT SERVICE (800) 666-1917

Existing Law

The California Public Records Act requires that any person may receive a copy of any identifiable public record from any state or local agency upon payment of fees covering the direct costs of duplication or any applicable statutory fee. Existing law also states that computer data to be provided in a form determined by the agency

Summary of SB 1065

AB 1065, as enrolled, would require any state agency that stores public records in an electronic format to make those public records available in an electronic format when requested complying with the following:

- The information would be made available in any electronic format in which it holds the information.
- An agency would be required to provide a copy of an electronic record in the format requested if the format has been used by the agency to create copies for its own or other agency's use.
- An agency is prohibited from making information available only in an electronic format.

Assumptions

For the purpose of this analysis, the following assumptions are made:

- SB 1065 would become effective on January 1, 2000.
- The Department of Consumer Affairs' (DCA) Central Records Unit currently provides copies of public records in the form of CD-ROM, diskette, and hard copies.
- The Boards currently provide copies of public records in the form of diskette or hardcopies.
- Fees are charged that directly offset the cost of providing copies in whichever form is requested.

Summary of Fiscal Impact

The DCA's Central Records Unit currently has the capability to provide copies of public records in CD-ROM and diskette format for the majority of the records stored. There is a small amount of records that are currently only available in hard copy format. However, the Central Records Unit is currently working towards having all records accessible electronically.

Boards that store public records in an electronic format are able to provide requested records in the same electronic format in which they are stored and therefore comply with SB 1065.

As stated in existing law, a state agency is authorized to charge the requestor the direct costs for the duplication, time expended searching for and segregating records.

As enrolled, SB 1065 would have minimal and absorbable fiscal impact.

BILL NUMBER: AB 179
VETOED DATE: 10/12/1997

To the Members of the California Assembly:

I am returning Assembly Bill No. 179 without my signature.

This bill would amend the California Public Records Act to require state agencies to provide "a copy of an electronic record in the form requested, unless, in light of surrounding circumstances, it is not reasonable to do so..." It does not change the public's right of access to government documents, but only restricts the agency's discretion as to the form of the document made available.

Government agencies receive hundreds of Public Records Act requests every month. They are most often not from ordinary citizens, but from political candidates or special interest groups searching for information. Government employees spend thousands of hours each year responding to the requests--segregating the requested documents from exempt documents, such as those which invade other citizens' personal privacy. Taxpayers pay for the time expended searching for and segregating these records. However, state agencies are presently permitted to determine the form in which computer data is provided.

This bill creates a new inflexible mandate by requiring the agency to provide the electronic data in the form requested, unless it is "unreasonable" to do so, without ever defining the breadth of that exemption, thereby leaving it open to litigation. A request that an electronic record be provided in a particular form may require additional expense, burden, and time to segregate the public data from the exempt data, but the bill provides no guidance whether or to what extent that additional burden makes it "unreasonable."

Agencies should make available to the public all documents to which public access is granted. But we need not add costs and rigidity to these obligations by specifying the form in which it will be done.

Cordially,

PETE WILSON



BILL NUMBER: SB 74
VETOED DATE: 10/12/1997

To the Members of the California Senate:

I am returning Senate Bill No. 74 without my signature.

This bill would amend the California Public Records Act to require state agencies to provide "a copy of an electronic record in the form requested, unless, in light of surrounding circumstances, it is not reasonable to do so...." It does not change the public's right of access to government documents, but only restricts the agency's discretion as to the form of the document made available.

Government agencies receive hundreds of Public Records Act requests every month. They are most often not from ordinary citizens, but from political candidates or special interest groups searching for information. Government employees spend thousands of hours each year responding to the requests--segregating the requested documents from exempt documents, such as those which invade other citizens' personal privacy. Taxpayers pay for the time expended searching for and segregating these records. However, state agencies are presently permitted to determine the form in which computer data is provided.

This bill creates a new inflexible mandate by requiring the agency to provide the electronic data in the form requested, unless it is "unreasonable" to do so, without ever defining the breadth of that exemption, thereby leaving it open to litigation. A request that an electronic record be provided in a particular form may require additional expense, burden, and time to segregate the public data from the exempt data, but the bill provides no guidance whether or to what extent that additional burden makes it "unreasonable."

Agencies should make available to the public all documents to which public access is granted. But we need not add costs and rigidity to these obligations by specifying the form in which it will be done.

Cordially,

PETE WILSON



ENROLLED BILL REPORT

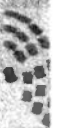
Analyst Roger Lackey
Work Phone 845-3627

AGENCY	State and Consumer Services	BILL NUMBER SB 1065
DEPARTMENT, BOARD, OR COMMISSION	Franchise Tax Board	AUTHOR Bowen

(Handwritten initials: RB)

(SEE ATTACHED)

LEGISLATIVE/INTELLIGENCE SERVICE (800) 666-1917



ASSEMBLY Policy 13-2 Fiscal 18-3 SENATE Policy 6-0 Fiscal 9-3 Floor 31-7

RECOMMENDATION
SIGN VETO NO RECOMMENDATION DEFER TO DGS

Leg. Assoc. FTS Contact Person
Name (Office)
Name (Home)

Happy Christian, Deputy Secretary, Legislative
(916) 663-3111 (Office) (916) 211-1111 (Pager)
(916) 443-1225 (Home) (916) 663-3111 (Cellular)

DATE
9/7/99

AGENCY SIGNATURE
(Handwritten signature)
DATE
LH 628 PE - 101

ENROLLED BILL REPORT

Analyst: Roger Lackey
Work Phone: 845-3627

Department, Board Or Commission	AUTHOR	Bill Number
Franchise Tax Board	Bowen	SB 1065

SUBJECT

Public Records/State Agencies Make Available in Electronic Format

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 not permit an agency to make information available only in an electronic format.

EFFECTIVE DATE

This bill would be effective on January 1, 2000.

LEGISLATIVE HISTORY

AB 1099 (1999/2000), Shelley, would add specific requirements relating to the form in which computerized data may be provided to the public; AB 179 (97/98 -- vetoed), Bowen, 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 --vetoed), Bowen, would have required any agency that has public information in an electronic format to make the information available in an electronic format.

IMPACT ASSESSMENT

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 is 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. This bill would not permit an agency to make information available only in an electronic format.

NOTE	ASSEMBLY Policy 13-2 Fiscal 18-3	SENATE Policy 6-0 Fiscal 9-3 Floor 31-7	
RECOMMENDATION	SIGN _____	VETO _____	NO RECOMMENDATION _____
Johnnie Lou Ross, FTB Contact Person (978) 845-4333 (Office)	Executive Officer <i>[Signature]</i>	LH: 1629 PE - 102	

LEGISLATIVE INTENT SERVICE (800) 666-1917

This bill would provide that a public agency would not be required to reconstruct a report in an electronic format if the agency no longer had the report itself 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 law authorizing an agency to determine the format in which computer data is provided.

Implementation Considerations

This bill would not significantly impact the department's programs and operations.

Fiscal Impact on State Budget

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 Estimate

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

RECOMMENDATION

No recommendation.

ENROLLED BILL REPORT

DIR

DEPARTMENT INDUSTRIAL RELATIONS	AUTHOR Bowen	BILL NUMBER SB 1065
---	------------------------	-------------------------------

SUBJECT Public Records

Summary:

This bill specifically requires -

- 1) all State agencies that have public information in an electronic format make that information available in electronic format if requested by the public;
- 2) agencies make the information available in the electronic format in which it holds the information, when applicable; and
- 3) the State agency provide the copy in the electronic format requested by the public if it is a format that was used by the agency in the past; and
- 4) that if the report has been deleted or is no longer available the agency will not be required to reconstruct it in electronic format.

Analysis:

Existing law, the California Public Records Act (Act), provides that any person may receive a copy of any public record from any state or local agency upon payment of fees covering the direct costs of duplication. Recent amendments to the Act require that public records in electronic format also be provided in a form determined by the agency.

This bill requires an agency to provide public information to any person requesting it in (1) the electronic format in which it is held or (2) any other format in which it was previously copied and is still available.

VOTE

ASSEMBLY 64 - 6

SENATE 31 - 7

RECOMMENDATION

SIGN ___ VETO ___

Defer to Dept. of Information Technology

Prepared by: Terry Toohey, (916) 483-3392, ext. 3017

<i>Mark Ackerly</i>	DATE <i>8/31/99</i>
---------------------	------------------------

<i>Steph Hilly</i>	DATE <i>9/3/99</i>
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GOVERNOR'S OFFICE USE

- Position Noted
- Position Approved
- Position Disapproved

BY: _____

DATE: _____

LEGISLATIVE INTENT SERVICE (800) 666-1917

Fiscal Impact:

The Department of Industrial Relations (DIR) may suffer a revenue loss since they currently make and sell copies of public records documents (Official Medical Fee Schedule, e.g.) However, there could possibly be some savings realized from a reduction in workload.

In addition, although the records may be available in electronic format, all of the information may not be public; therefore, separating exempt from non-exempt material can create a significant workload that this bill does not provide reimbursement for.

If this bill is enacted, DIR, as well as all other state agencies, could experience potentially significant increased costs.

Pro:

Proponents would argue that the rules pertaining to paper records should also apply to copies of electronic records. Taxpayers pay for the equipment that public agencies use to create and store public records, and therefore, they should be able to receive copies in whatever format is currently available to the agency. Proponents would further argue that public agencies shouldn't be permitted to profit from the sale of electronic copies of public records.

Those in support of this measure are:

California Newspaper Publishers Association
Sierra Club

Con:

Opponents would argue that this bill would make proprietary software subject to the Public Records Act. The County of Orange opposes this bill because it is felt that this requirement would enable private entrepreneurs to use their software in competition with them to sell maps of subdivisions, flood channels, and parcel maps, which it currently provides to the public in paper format.

The City of San Diego joins the Orange County Board of Supervisors in opposing this measure.

Background:

Some programs within DIR would be unable to provide their electronic data in the same format as they are held. This is particularly true for agencies with custom-designed computer programs rather than off-the-shelf computer programs. For example, the custom-developed Oracle system utilized by Self-Insurance Plans (SIP) in DIR is a database that has been designed specifically for SIP's operations. In order for the public to utilize the data in the format in which it is held at SIP, the public would not only need Oracle software, but additionally a copy of the software that was custom-designed to view the data in the same format as it appears at SIP. SIP could not provide a copy of the Oracle software because it is copyrighted and not transferable. Therefore, the requester would have to purchase a licensed copy of all software used by SIP to view the data. In order to copy the requested data in a different format, SIP would need a computer programmer to convert the data to some other useable format for the public. While this could be done, it would be time consuming and expensive for most State agencies. This situation, -- use of system-designed software -- is not unique to only DIR.

The second requirement of the bill is that a State agency provide public information to any person requesting it in any other format in which it was previously copied. This would not be a problem at present. Once the information has been extracted and formatted by a programmer, the information could be saved and recopied for future requests. Additionally, an agency is not required to recreate a format that was deleted or is no longer available.

However, DIR is not suggesting that it will be capable of copying data into any format requested by the public. Most divisions within DIR do not have the resources or staff to copy data which would require converting data into a readable form or the development of a custom program. You cannot simply "copy" the data from an Oracle document and make it readable as a Word or Filemaker document. Programmers are needed to do this. DIR will need programmers available to quickly respond to each division's requests for public information in electronic format. There could be, in some larger units of DIR, such as California Workers' Compensation, potentially hundreds or over thousands of requests annually for information that might be responded to if this bill is enacted. Responding to such requests would divert resources from primary agency mandates.

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SB 1063 (Bowen)
As Amended April 27, 1999
Page Three

SB 143 (1998) regarding the Public Records Act, was signed into law as Chapter 629, Stats. 1998. Other previous measures addressing the Public Records Act include: SB 323 (1995); AB 179 (1997); and SB 74 (1997), all of which were vetoed by the prior Administration.

SB 1063 passed both Houses of the Legislature as follows:

- 4/20/99 Senate Judiciary Committee, 6 - 0
- 5/17/99 Senate Appropriations Committee, 9 - 3
- 5/25/99 Senate Floor, 31 - 7
- 7/12/99 Assembly Governmental Organization Committee, 13 - 2
- 8/18/99 Assembly Appropriations Committee, 18 - 3
- 9/3/99 Assembly Floor, 64 - 6

Recommended Position:

Defer to the Department of Information Technology.

Steve Smith, Director -- (415) 703-5050; (916) 324-4163; (916) 205-4163 (cell #); (530) 758-7715 (home)
Mark Ashcraft, SIP -- (916) 483-3392; (916) 863-0740 (home #)

SUGGESTED VETO LETTER ON SB 1065 (BOWEN) PUBLIC RECORDS

I am returning SB 1065 without my signature.

This bill would amend the Public Records Act to require state and local agencies to make public records available in an electronic format when requested by a member of the public.

While the intentions of the bill (public disclosure) is admirable, some programs with State government would be unable to provide their electronic data in the same format as that in which they are held. This is particularly true for agencies with custom-designed computer programs rather than off-the-shelf computer programs.

In the larger State agencies and programs, there could potentially be thousands of requests annually for information that the agency would have to respond to if SB 1065 is enacted. Responding to such public information requests would divert limited resources from primary agency mandates to responding to public information requests.



California State Senate

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~Current Session Legislation~ Measure Analysis

Subcommittee

Bill Info

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Codes

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ANALYSIS

SENATE RULES COMMITTEE	SB 1065
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 445-6614 Fax: (916)	
327-4478	

THIRD READING

Bill No: SB 1065
 Author: Bowen (D)
 Amended: 4/27/99
 Vote: 21

SENATE JUDICIARY COMMITTEE : 6-0, 4/20/99
 AYES: Burton, Haynes, Peace, Sher, Wright, Schiff
 NOT VOTING: Escutia, Morrow, O'Connell

SENATE APPROPRIATIONS COMMITTEE : 9-3, 5/17/99
 AYES: Johnston, Alpert, Bowen, Burton, Escutia, Karnette,
 McPherson, Perata, Vasconcellos
 NOES: Johnson, Leslie, Mountjoy
 NOT VOTING: Kelley

SUBJECT : Public records: electronic format

SOURCE : Author

DIGEST : This bill would require a public agency that keeps a record in an electronic format to make that information available in an electronic format, when requested, as follows:

LEGISLATIVE INTENT SERVICE (800) 666-1917

1. The record would be provided in the same electronic format it is held.
2. The agency would provide a copy of the electronic record in the requested format if the format has been used to create copies for its own use.

CONTINUED

SB 1065

Page

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3. The agency would not be permitted to make information available only in electronic format.

No records kept by the Department of Motor Vehicles would be accessible, if a statute prohibits access.

ANALYSIS : The Public Records Act allows an agency to provide computer data in any form the agency determines. The act directs a public agency, upon request for inspection or a copy of the records, to respond to a request within 10 days after receipt of the request.

This bill would eliminate the reference to computer data in the current law and create a separate section dealing with data in electronic format. It would require the public agency to provide records kept in electronic format to be provided in electronic format when requested. If the requested electronic format is how the data is formatted or copied for use by the agency or other agencies, the agency would be required to provide copies in that format. Authority would be given to charge for direct costs of duplication of the electronic records.

The bill would also make clear that the agency would not be permitted to make records available only in electronic format and that no records kept by the Department of Motor Vehicles would be accessible to the public, where access would be restricted by statute.

The bill provides that nothing in this bill is to be construed to require the public agency to reconstruct a report in an electronic format if the agency no longer has the report itself available in an electronic format.

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 no current authority under which a person seeking electronically available records could obtain such records in that format. This means that if an agency makes 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 print-outs from the records. The expense of copying these records in paper format, especially when the records



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Page

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are voluminous, makes those public records practically inaccessible to the public, according to the author. Additionally, the author claims that public agencies are making profit centers out of making copies of documents that are already available on disk or other electronic format - so that the public, having already paid for the creation of those documents, are charged a second time for getting copies of the documents. The author cites the Department of Industrial Relations, which makes approximately \$200,000 per year selling workers' compensation records.

This bill would make it possible for those records in electronic format to be available in the same format - i.e., CD or disk or whatever electronic format would be available in the future.

Target records to be duplicated

The author targets voluminous documents as those public records to which the public should have access in the electronic format, citing the city budget, environmental impact reports, or minutes from a Board of Supervisor's meeting, as documents that should be available on disk or the internet. Especially because these documents were created at 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 on to a disk or accessed on the internet. Most public agencies say they do not charge for costs of staff time and equipment when they charge duplication costs.

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. 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.

SB 1065
Page

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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 records accessible to the public.

Related legislation

AB 1099 (Shelley) will do practically the same thing as SB 1065, but goes further in that it would prohibit any state or local public agency, by January 1, 2000, from leasing or purchasing any electronic data processing system that would impair or impede the public's access to the records, electronically or otherwise. In Senate Rules Committee for assignment.

Prior legislation

AB 179 (Bowen), 1997-98, was vetoed by the Governor, as follows:

"This bill would amend the California Public Records Act to require state agencies to provide "a copy of an electronic record in the form requested, unless, in light of surrounding circumstances, it is not reasonable to do so. It does not change the public's right of access to government documents, but only restricts the agency's discretion as to the form of the document made available.

"Government agencies receive hundreds of Public Records Act requests every month. They are most often not from ordinary citizens, but from political candidates or special interest groups searching for information. Government employees spend thousands of hours each year responding to the requests-segregating the requested documents from exempt documents, such as those which invade other citizens' personal privacy. Taxpayers pay for the time expended searching for and segregating these records. However, state agencies are presently permitted to determine the form in which computer data is provided.

"This bill creates a new inflexible mandate by requiring the agency to provide the electronic data in the form requested, unless it is "unreasonable" to do so, without ever defining the breadth of that exemption, thereby

SB 1065

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leaving it open to litigation. A request that an electronic record be provided in a particular form may require additional expense, burden, and time to segregate the public data from the exempt data, but the bill provides no guidance whether or to what extent that additional burden makes it 'unreasonable'.

"Agencies should make available to the public all documents to which public access is granted. But we need not add costs and rigidity to these obligations by

specifying the form in which it will be done."

It passed the Senate 26-7, as follows:

AYES: Alpert, Ayala, Brulte, Burton, Calderon, Costa, Greene, Haynes, Hughes, Hurtt, Johnson, Johnston, Karnette, Kelley, Knight, Lee, Lewis, Lockyer, Maddy, McPherson, O'Connell, Rosenthal, Schiff, Sher, Solis, Watson

NOES: Johannessen, Kopp, Leslie, Monteith, Mountjoy, Rainey, Wright

NOT VOTING: Craven, Dalls, Hayden, Peace, Polanco, Thompson, Vasconcellos

Assembly members who are new Senators votes:

AYES: Baca, Bowen, Escutia, Figueroa

NOES: Ortiz, Perata, Poochigian

NOT VOTING: Morrow

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: Yes

Fiscal Impact (in thousands)

Major Provisions	1999-2000	2000-01
	Fund	
Revenue loss		
	-----unknown-----	-----Various*

*Specials, General and Local

SUPPORT : (Verified 5/19/99)

SB 1065
Page

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Society of Professional Journalists
Sierra Club (California)

RJG:sl 5/19/99 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****



SB 1065 (BOWEN)
PUBLIC RECORDS: ELECTRONIC FORMAT

Version: 4/27/99 Last Amended

Vote: Majority

Support

Vice-Chair: Brett Granlund

Tax or Fee Increase: No

Makes more public records available electronically.

Policy Question

Should electronic access to public records be encouraged?

Summary

1. Makes public records maintained electronically available electronically.
2. Requires the agency to make the information available in the way in which it holds the information.
3. Compels the agency to make the information available in the format requested if the agency would make the information available in that format to another agency.
4. Prohibits agencies from making records available in an electronic format only.
5. States that the bill is not to be construed to permit access to Department of Motor Vehicle records which are not otherwise available.

Support

Society of Professional Journalists, Sierra Club (California)

Opposition

County of Orange

Arguments In Support of the Bill

This bill would make voluminous public records

available electronically. More public access will enable the public to know more about the government. After all, they are in charge of the state government, why wouldn't we want to know more?

Arguments In Opposition to the Bill

Making records available electronically would cost more than making copies of records.

Fiscal Effect

No direct state fiscal impact. SB 1065 specifies that any expenses incurred by the implementation of the bill can be offset by service charges and material fees. (Version: 4/27/99)

Comments

1. Under current law, the California Public Records Act, public records are disclosable unless some express exception to disclosure exists or the public interest in nondisclosure outweighs the interest in disclosure. Computer records are to be provided in a form to be determined by the agency. Persons who do not obtain access to records that they have sought may bring a case in the Superior Court seeking a declaration of their rights to disclosure of the records.
2. This bill would make public records maintained electronically available electronically; require the agency to make the information available in the way in which it holds the information; compel the agency to make the information available in the format requested if the agency would make the information available in that format to another agency; and prohibit agencies from making records available in an electronic format only.
3. This bill is much the same as AB 179 (Bowen) 1997 which passed the Assembly 71-6 with all Republicans in support but Ackerman, Baugh, Bordonaro, Leach, Runner and Thompson voting No and Morrow and Olberg not voting. Governor Wilson vetoed the bill stating that the provisions of that bill required electronic disclosure unless unreasonable to do so. He thought it would encourage litigation. This bill does not have the same exception. It requires electronic disclosure without that exception. Access to computerized records is encouraged by AB 1099 (Shelley 1999) which passed Governmental Organization Committee 15-0

Senate Republican Floor Votes (31-7) 5/25/99

Ayes: All Republicans, Except

Noes: Johnson, Kelley, Leslie, Monteith, Morrow, Mountjoy

Abs. / NV: Haynes

Assembly Republican Governmental Organization Votes (13-2) 7/12/99

Ayes: Granlund, Maldonado, Margett

Noes: Ackerman, Battin

Abs. / NV: Briggs

Assembly Republican Appropriations Votes (18-3) 8/18/99

Ayes: Brewer, Ashburn, Maldonado, Zentel

Noes: Ackerman, Battin, Runner

Abs. / NV: None

Assembly Republican Votes (0-0) 1/1/99

Ayes: None

Noes: None

Abs. / NV: None



and the floor 79-0.

4. The County of Orange opposes the bill on the ground that it would as part of record disclosure also be disclosing proprietary software. It has raised a similar objection to AB 1099 (Shelley) in the Senate Judiciary Committee. That bill has been amended to exclude the software from

the definition of public record and permit the sale of such software.

5. Simply put, this bill would open more state records to electronic disclosure which should be encouraged. We all should no more about how state government is being run.

Policy Consultant: Mike Petersen 8/20/99

Fiscal Consultant: BreAnda Northcutt/Moira Traver 8/10/99



California Newspaper Publishers Association

1225 8th Street, Suite 260, Sacramento, CA 95814-4809
(916) 443-5991 • Fax (916) 443-6447

September 3, 1999

Honorable Gray Davis
Governor State of California
State Capitol
Sacramento, California 95814

RE: Support SB 1065 (Bowen)

Dear Governor Davis:

I am writing on behalf of the California Newspaper Publishers Association to urge your signature approval of **SB 1065** by Sen. Debra Bowen, which would amend the California Public Records Act to require state and local agencies to make electronically-held public records available to the public in an electronic format.

Both government and private business have found it no longer makes sense -- economically or functionally -- to keep information printed on paper locked up in metal file cabinets. Instead, virtually every state and local agency governed by the California Public Records Act is now holding a significant portion of the public's records electronically. The Act now gives very little guidance on how electronic format public records should be made available to the public. Under current law, a single sentence reads:

"Computer data shall be provided in a form determined by the agency."

It is obvious to CNPA that this 30 year old provision has little relation to how the world works in the late 1990s. **SB 1065** would give both government agencies and the record-requesting public needed guidance by providing that electronic format records should be made available in the electronic format requested "if the requested format is one that has been used by the agency to create copies for its own use or for provisions to other agencies." **SB 1065** would not require agencies to make records available in any format that they do not already use for their own purposes.

CNPA respectfully urges your signature approval of **SB 1065**.

Sincerely,

Thomas W. Newton
CNPA General Counsel

cc: Honorable Debra Bowen
George Riggs, CNPA President, Publisher Contra Costa Newspapers
Bill Niese, General Counsel, Times Mirror Corp.
Jack Bates, CNPA Executive Director
Jim Ewert, CNPA Legal Counsel

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SIERRA CLUB

C A L I F O R N I A

September 15, 1999

Governor Gray Davis
State Capitol
Sacramento, CA 95814

Re: SB 1065 (Bowen)
SUPPORT

Dear Governor Davis:

Sierra Club California supports SB 1065 (Bowen), which would require public records to be made available in electronic format. Currently, members of the public can receive copies of public records upon request. This bill simply amends existing law to require state and local agencies to make public records available in an electronic format, when the records exist in such format.

Making public records available electronically will encourage the public to participate in their government. Electronic information flow will allow citizens to receive government documents with more speed and with less use of paper than before. Additionally, it is cheaper to provide long documents on disk than on paper.

As electronic information flow increases in importance, SB 1065 will help to provide the public a larger quantity and a better quality of public records information.

On behalf of the Sierra Club, I urge your signature on SB 1065 (Bowen).

Sincerely

William J. Craven
State Director

(800) 666-1917

LEGISLATIVE INTENT SERVICE



**California Assessors' Association
LEGISLATIVE COMMITTEE**

September 15, 1993

Governor Gray Davis
State Capitol Building
Sacramento, CA 95814

RE: Enrolled Bill Report - VETO Senate Bill 1065

Dear Governor Davis:

I am the Riverside County Assessor-Clerk-Recorder as well as the Vice-chair of the California Assessors' Association Legislative Committee. The California Assessors' Association opposes SB 1065 and respectfully requests that you veto this bill.

SB 1065 requires any agency to provide an identifiable public record in an electronic format when requested by any person. On its face this is a reasonable amendment to the Public Records laws of California. However, it allows for only direct costs of duplication rather than actual costs.

California is an open record state; assessors are justifiably proud of making public records readily accessible. However, the requirement that such records be provided in a specific format upon demand by the public without allowing the county to recoup the actual cost of developing and maintaining those electronic systems is unreasonable. Additionally, it is inherently unfair to spread the cost of providing that information over all county taxpayers, when those who request the information should pay the real cost of providing it.

If I or my staff can be of any assistance, please contact us at the address or telephone number checked above.

Very truly yours,



GARY L. ORSO
Assessor-County Clerk-Recorder

cc: Lawrence Stone, Santa Clara County Assessor



CARPENTER SNODGRASS
& ASSOCIATES

September 8, 1999

The Honorable Gray Davis
Governor
State of California
State Capitol
Sacramento, CA 95814

Dear Governor Davis:

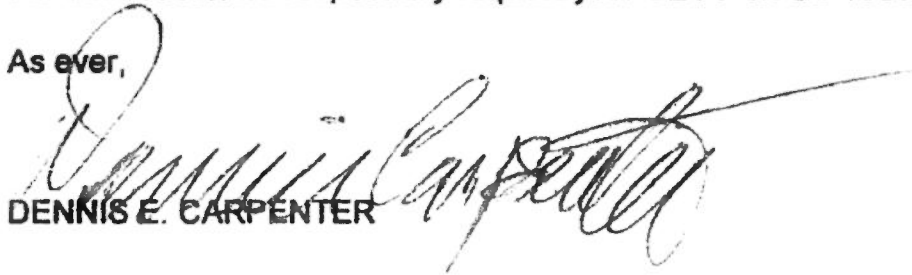
On behalf of the Orange County Board of Supervisors, we urge you to **VETO** SB 1065 (Bowen), relative to public records. SB 1065 would require a state or local agency to provide computerized data used by the agency in the conduct of its business.

As currently written SB 1065 jeopardizes Orange County's Geographical Information System (GIS) which was developed over the last ten years at a cost of \$3.4 million. Among the types of GIS information available to the public since 1994 are maps of subdivisions, flood channels, parcel lines etc.. These are provided in hard copy paper format at a nominal cost.

If the propriety software for these maps is made available to the public, an unintended consequence of SB 1065, there is nothing to prevent private entrepreneurs from packaging these materials and offering them for sale in competition with the County. To no prevail, we made several attempts to work with the author's office relative to an exemption for the GIS system.

For this reason we respectfully request your **VETO** on SB 1065.

As ever,


DENNIS E. CARPENTER

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BEE EDITORIALS

Public information: Davis needs another chance to serve public interest

(Published Oct. 24, 1999)

Gov. Gray Davis retreated from the Information Age the other day when he vetoed a bill that would have required government agencies to give citizens access to electronic records for the simple price of duplicating them. In essence, the bill would have extended the public records laws governing paper records into the modern age, but resistance from bureaucrats apparently carried the day in Davis' decision to reject the popular measure.

SB 1065 by Sen. Debra Bowen passed the Senate by a bipartisan 68-8 margin and won Assembly approval 31-7.

"Although there aren't any fingerprints, this bill was really killed by the government agencies who think they -- not the taxpayers -- own the public records and ought to be able to sell them at a profit," Bowen said after the veto. "Taxpayers paid to create these records, which is why we don't allow state and local agencies to sell paper copies of Public Records Act information at a profit. SB 1065 was about applying that same standard to electronic copies of the exact same records."

Though Davis called the measure "well-intentioned legislation," his veto letter raised at least three concerns not supported by the facts: possible breach of citizens' confidentiality; inadequacy of state computer systems to implement the bill; and the need to concentrate on

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Y2K computer concerns instead.

In fact, Bowen's legislation was carefully drawn to give agencies plenty of room in compliance. It didn't demand -- as well it might have -- that electronic records be delivered in a standardized form convenient for citizens to use. Instead, it asked only that they make them available in the form already used by the agency.

There were no new demands for disclosure that might compromise confidentiality, either -- just an extension of rules that have governed paper records disclosure for years. Finally, it is hard to credit concerns about Y2K compliance being complicated by a bill that didn't even take effect until after the dawn of the new year.

The Legislature needs to give Davis another chance to do the right thing about public access to public information, and the governor needs to reconsider his decision. There's a reason why this is often called an "information society," and that's because information is the lifeblood of modern life. Making access to public information efficient and speedy is the least the government should be doing for the citizens who, after all, own that data.

Problems? Suggestions? [Let us hear from you.](#)

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GOVERNOR GRAY DAVIS

October 10, 1999

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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DEPARTMENT GENERAL SERVICES	AUTHOR Bowen	BILL NUMBER SB 1065 (LAV 4/27/99)
SPONSOR Author	RELATED BILLS See Legislative History	
SUBJECT Public records; electronic format		

BILL SUMMARY:

Senate Bill (SB) 1065 would make various changes to the California Public Records Act (Act) by providing that agencies that have public records available in electronic format make that information available in an electronic format when requested.

LEGISLATIVE HISTORY:

Assembly Bill (AB) 1099 (Shelley, 1999) is similar to SB 1065 in that it requires state agencies to provide computerized data in a format chosen by the requester if the agency uses that format in the course of its normal business. It would also prohibit an agency from acquiring electronic data processing equipment unless it determines that the system will not impede public access to public records.

Senate Bill 48 (Sher, 1999) would provide an administrative appeals process for persons who are denied access to public records. The appeals process would be handled by the Attorney General's office.

Senate Bill 143 (Kopp, Chapter 620, Statutes of 1998) made various changes to the Act including the establishment of a comprehensive index of public records within the Act that are exempt from disclosure under current law and contained in various other codes.

Assembly Bill 179 (Bowen, 1997) would have required state agencies to disclose computerized data in a format chosen by the requestor unless determined unreasonable to do so. This bill was vetoed by Governor Wilson (see attached veto message).

Senate Bill 74 (Kopp, 1997) was similar to AB 179 and would have required state agencies to disclose computerized data in a format chosen by the requestor unless determined unreasonable to do so. This bill was vetoed by Governor Wilson (see attached veto message).

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VOTE: Assembly Floor: Aye <u>68</u> No <u>6</u> Policy Committee: Aye <u>13</u> No <u>2</u> Fiscal Committee: Aye <u>18</u> No <u>3</u>		VOTE: Senate Floor: Aye <u>31</u> No <u>7</u> Policy Committee: Aye <u>6</u> No <u>0</u> Fiscal Committee: Aye <u>9</u> No <u>3</u>	
RECOMMENDATION TO GOVERNOR: SIGN _____ VETO <u>X</u>	DEFER TO OTHER AGENCY		
DEPARTMENT DIRECTOR: <i>[Signature]</i>	DATE: <u>9-8-99</u>	ORIGINAL SIGNED BY: _____	DATE: _____
		SEP 10 1999	

Senate Bill 323 (Kopp, 1996) was similar to AB 179 and SB 74 and was vetoed by the Governor (see attached veto message).

Assembly Bill 2989 (Bowen, 1996) was the "Paper Reduction Act of 1996" and, among other things, required that reports required by law shall be submitted on paper and electronically sent to the State Librarian. This bill failed passage in the Assembly Governmental Organization Committee.

Assembly Bill 142 (Bowen, 1995) made changes to the Act relative to the availability of records contained in electronic format and established conditions under which "vital records" could be disclosed to the public. This bill was never heard and ultimately died in the Assembly Governmental Organization Committee.

PROGRAM HISTORY:

The Department of General Services (DGS) incorporates six operating divisions composed of 23 offices that provide a broad range of business services to government. The DGS' functions include: procurement and contracting for goods and services; real estate and design services for state buildings; telecommunications; fleet management; information services; printing; architectural services; energy efficiency; and building maintenance.

By meeting these varied responsibilities for centralized management review and support, the DGS seeks to increase effectiveness and economy in the administration of state government and to maintain responsive working relationships with client agencies.

The State Board of Control (Board) Victims of Crime (VOC) Program reimburses victims for specified net out-of-pocket losses incurred as a result of a crime. Reimbursable expenses include medical expenses, mental health counseling, funeral/burial costs, and wage or support losses not otherwise covered by insurance or other sources. The VOC Program's revenue source, the Restitution Fund (Fund), receives its revenue primarily from state penalties assessed on court-ordered fines.

The Board's Government Claims program processes, approves, and pays claims against the state in accordance with Government Code Section 980 et seq.

SPECIFIC FINDINGS:

1. Under existing law, the California Public Records Act provides that upon request and payment of duplication fees, state and local agencies must make non-exempt records available to the public. Among other things, the Act provides that "Computer data shall be provided in a form determined by the agency" (Government Code Section 6253). This language was originally put in statute in 1968 (Government Code Section 6256). In one of the early versions of SB 143 (Kopp, 1998) the language was deleted but, at the request of the DGS, the language was reinstated in the bill and subsequently remained in statute.

SB 1065 would repeal that language and create a new section of law relative to the accessibility of electronic records.

2. Specifically, SB 1065 would provide that agencies that have public records available in electronic format make that information available in electronic format when requested and, when applicable, comply with the following:
 - a. make the information available in any electronic format in which it holds the information;
 - b. provide a copy of an electronic record in the format requested if that format is one already used by the agency to create copies for itself or other agencies;
 - c. duplication costs would include the costs associated with duplicating electronic records;
 - d. an agency would not be required to reconstruct a report in an electronic format if it is no longer available in that format;
 - e. an agency would not be permitted to make information available only in an electronic format;
 - f. statutorily restricted Department of Motor Vehicle records would not be accessible.

CONCERNS:

The Act dictates that state and local agency records deemed eligible for public disclosure shall be provided to a requester generally within ten days of the request. In 1998, SB 143 updated the Act to provide that electronic records, when eligible for disclosure, shall be provided to a requester in a format **determined by the agency**.

Senate Bill 1065 would instead mandate that electronic records eligible for disclosure be provided in a format **determined by the requester**. This mandate has been proposed three times. It was vetoed twice and subsequently amended out of SB 143 before it reached Governor Wilson's desk. Each time, opposition from state agencies contributed to this provision's failure.

Requiring that electronic records be provided in a format determined by the requester would burden the DGS, and presumably other state and local agencies, with the responsibility of compiling and sorting the information to fit the requester's specifications. These responsibilities are especially onerous when records must be painstakingly filtered to strike out information exempt from disclosure requirements or not pertinent to a given individual request.

Senate Bill 1065 would limit the formats available to the requester to those regularly used by a state agency for its own business or for making copies for another agency. However, as with previous proposals, this bill contains no clear definition for what constitutes regular



use. With such a lack of clarity, a requester may claim access to information the Act never intended to make publicly available, such as the identities and treatment information of crime victim applicants to the VOC. This information could be in the form of unfiltered spreadsheets or databases that the requester argues constitute a format used by a state agency for its own business. Without safeguards against such claims, this bill could subject the VOC Program and the Government Claims Program to increased litigation to resolve ambiguity in the Act.

All state agencies should be allowed to maintain discretion in determining the format of electronic records disclosed under the Act. This existing discretion is already circumscribed by a clear mandate elsewhere in statute that state agencies shall not inhibit access to public information guaranteed by the Act.

REGULATIONS:

Existing law permits agencies to adopt requirements for themselves if those requirements provide for greater, faster, or more efficient access to records than is required by statute.

LEGISLATIVELY MANDATED REPORTS: N/A

COMMISSIONS AND BOARDS: N/A

FISCAL IMPACT:

Existing law provides that an agency may only recover the direct costs of duplicating a record. SB 1065 provides that these direct costs shall include "... costs associated with duplicating electronic records." This would seemingly not cover the cost of staff who must painstakingly review and pull the information being requested in order to comply with the requester's choice of formats.

PRO AND CON ARGUMENTS:

Arguments in Support of the Bill:

The business of government should be open and accessible to the public. Today, the vast majority of records created by state agencies are in an electronic format and easier to retrieve and reproduce. The public should have access to these records when available.

Arguments in Opposition to the Bill:

Under current law, state agencies may determine what format computer data is to be provided. While fulfilling requests for public information electronically is a worthy policy for state agencies to pursue, it is not good policy to eliminate an agency's discretion in determining the most appropriate format to provide that information.



PROPONENTS/OPPONENTS:

Sponsor: Author

Support: California Newspaper Publishers Association
Sierra Club

Opposition: City of San Diego
Orange County
California State Association of Counties

RECOMMENDATION: VETO

Rather than improve existing law, SB 1065 makes ambiguous existing provisions that allow state agencies discretion in determining the format for electronic records to be disclosed to the public under the California Public Records Act. The Department of General Services, therefore, recommends that this measure be VETOED.

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Legislative Analyst
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VETO MESSAGE
Senate Bill 1065, As Amended April 27, 1999

I am returning Senate Bill 1065 without my signature.

This bill would amend the California Public Records Act to require that state agencies that have public records available in electronic format, make that information available in an electronic format when requested.

Under existing law, state agencies may determine what format computer data is to be provided. While fulfilling requests for public information electronically is a worthy policy for state agencies to pursue, it is not good policy to eliminate an agency's discretion in determining the most appropriate format to provide that information.

All state agencies should be allowed to maintain discretion in determining the format of electronic records disclosed under the Act. This existing discretion is already circumscribed by a clear mandate elsewhere in statute that state agencies shall not inhibit access to public information guaranteed by the Act. To that end, I believe SB 1065 will not improve existing law, but will simply make existing provisions ambiguous.



BILL NUMBER: AB 179
VETOED DATE: 10/12/1997

To the Members of the California Assembly:

I am returning Assembly Bill No. 179 without my signature.

This bill would amend the California Public Records Act to require state agencies to provide "a copy of an electronic record in the form requested, unless, in light of surrounding circumstances, it is not reasonable to do so..." It does not change the public's right of access to government documents, but only restricts the agency's discretion as to the form of the document made available.

Government agencies receive hundreds of Public Records Act requests every month. They are most often not from ordinary citizens, but from political candidates or special interest groups searching for information. Government employees spend thousands of hours each year responding to the requests--segregating the requested documents from exempt documents, such as those which invade other citizens' personal privacy. Taxpayers pay for the time expended searching for and segregating these records. However, state agencies are presently permitted to determine the form in which computer data is provided.

This bill creates a new inflexible mandate by requiring the agency to provide the electronic data in the form requested, unless it is "unreasonable" to do so, without ever defining the breadth of that exemption, thereby leaving it open to litigation. A request that an electronic record be provided in a particular form may require additional expense, burden, and time to segregate the public data from the exempt data, but the bill provides no guidance whether or to what extent that additional burden makes it "unreasonable."

Agencies should make available to the public all documents to which public access is granted. But we need not add costs and rigidity to these obligations by specifying the form in which it will be done.

Cordially,

PETE WILSON

(800) 666-1917

LEGISLATIVE INTENT SERVICE



BILL NUMBER: SB 74
VETOED DATE: 10/12/1997

To the Members of the California Senate:

I am returning Senate Bill No. 74 without my signature.

This bill would amend the California Public Records Act to require state agencies to provide "a copy of an electronic record in the form requested, unless, in light of surrounding circumstances, it is not reasonable to do so...." It does not change the public's right of access to government documents, but only restricts the agency's discretion as to the form of the document made available.

Government agencies receive hundreds of Public Records Act requests every month. They are most often not from ordinary citizens, but from political candidates or special interest groups searching for information. Government employees spend thousands of hours each year responding to the requests-segregating the requested documents from exempt documents, such as those which invade other citizens' personal privacy. Taxpayers pay for the time expended searching for and segregating these records. However, state agencies are presently permitted to determine the form in which computer data is provided.

This bill creates a new inflexible mandate by requiring the agency to provide the electronic data in the form requested, unless it is "unreasonable" to do so, without ever defining the breadth of that exemption, thereby leaving it open to litigation. A request that an electronic record be provided in a particular form may require additional expense, burden, and time to segregate the public data from the exempt data, but the bill provides no guidance whether or to what extent that additional burden makes it "unreasonable."

Agencies should make available to the public all documents to which public access is granted. But we need not add costs and rigidity to these obligations by specifying the form in which it will be done.

Cordially,

PETE WILSON



BILL NUMBER: SB 323
VETOED DATE: 09/29/96

To the Members of the California Senate:

I am returning Senate Bill No. 323 without my signature.

This bill would provide that if an agency decides to withhold any record based on statute or public interest, the agency must identify in writing the statute or public interest served by nondisclosure of the record.

SB 323 adds to the obligations of governmental agencies which are already under the heavy burden of responding to Public Records Act requests. Under current law, an agency must determine, within 10 days of any request for a copy of agency records, whether to comply with the request and must state the reasons for declining to do so. This bill would require that where the agency decides to withhold the record under Section 6255, it specify the public interest in nondisclosure as well as state the public interest in disclosure.

Governmental agencies receive hundreds of Public Records Act requests every month. They are most often not from ordinary citizens, but from political candidates and special interest groups searching for information. Government employees spend thousands of hours each year responding to the requests - many broad and unfocused - at the cost of doing their other responsibilities.

This bill imposes an additional and unreasonable burden on record-keeping to not only state the reasons for a denial, but to specify the specific public interest in nondisclosure of the documents and the public interest in disclosure at the risk of waiving the privilege of confidentiality for the records requested. It is a significant and unnecessary, additional bureaucratic burden that provides no commensurate benefit to the public to justify the time and tax money that would have to be expended to comply with the requirement.

Cordially,

PETE WILSON



DEPARTMENT Consumer Affairs	AUTHOR Bowen	BILL NUMBER SB 1065
SPONSOR Author	RELATED BILLS AB 1099	
SUBJECT Public Records: Electronic Format		

BILL SUMMARY: This bill amends the Public Records Act to require state and local agencies to make public records available in an electronic format when requested by a member of the public.

LEGISLATIVE HISTORY:

AB 179 (Bowen) 1997/98, Vetoed
 SB 74 (Kopp) 1997/98, Vetoed
 AB 1099 (Shelley) currently in Senate Third Reading

PROGRAM HISTORY:

AB 179 (Bowen), vetoed in the 1997/98 session was very similar to this bill. The veto message stated that the bill created a new and inflexible mandate requiring agencies to provide the electronic data in any format requested, unless it was "unreasonable" to do so, without defining the scope of what constitutes "unreasonable", thereby leaving it open to litigation.

SB 74 (Kopp), vetoed in the 1997/98 session also would have required copies of public records to be provided in an electronic format when requested, unless in light of surrounding circumstances it was unreasonable to do so. The veto message was the same as for AB 179.

AB 1099 (Shelley), would also require public records to be provided in the format requested and would prohibit any state or local agency from leasing or purchasing any electronic data processing system that would impair the public's access to public records.

According to the author, the increased use of computers to store and process public records should also allow the public to obtain records in an electronic format, if requested. Making the records easily available to the public in an electronic format would encourage the public to participate in the workings of government to a greater degree. The author maintains that it would decrease agency costs to provide the information electronically rather than on paper.

SPECIFIC FINDINGS:

This bill deletes the flexibility of state agencies to provide copies of public records in any format determined by the agency. The bill would require that when a public record is stored in an electronic format, the state agency would be required to provide copies of that record in an

VOTE: Assembly Floor: Aye <u>68</u> No <u>6</u> Policy Committee: Aye <u>13</u> No <u>2</u> Fiscal Committee: Aye <u>18</u> No <u>3</u>		VOTE: Senate Floor: Aye <u>31</u> No <u>7</u> Policy Committee: Aye <u>6</u> No <u>0</u> Fiscal Committee: Aye <u>9</u> No <u>3</u>	
RECOMMENDATION TO GOVERNOR: SIGN _____ VETO _____		DEFER TO OTHER AGENCY <u>General Services</u>	
DEPARTMENT DIRECTOR: <u>Denise Brown</u> DATE: <u>9/8/99</u>		AGENCY SECRETARY: _____ DATE: _____ ORIGINAL SIGNED BY: <u>HAPPY CHASTAIN</u>	

SEP 10 1999

DEPUTY SECRETARY J.H. 1658 SCSEA - 13

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electronic format if requested. The agency would only be required to provide the record in the electronic format which holds the information. Nothing in the provisions would be construed to require the agency to reconstruct reports in an electronic format if the agency no longer has the report itself available in an electronic format.

Existing law allows an agency to impose a fee covering the direct costs of duplication, or a statutory fee, if applicable. This bill would clarify that the direct costs of duplication include the costs associated with duplicating electronic records. Nothing in the provisions would be construed to permit an agency to make information available only in an electronic format. Records held by the Department of Motor Vehicles, to which access is otherwise restricted, are exempted from these provisions.

The provisions of this bill take away a state agency's express authority to determine the form in which it provides copies of computerized data. The Central Records Unit within the Department of Consumer Affairs (Department) stores files on microfilm and currently, requesters of public records are, by necessity, provided paper copies. The Central Records Unit indicates that it has the capability to provide some of the microfilm records on a CD-ROM format and plans to expand that capability to all the public records within the next two years. However, the boards may use other types of electronic formats to store records and usually have to segregate disclosable information from the non-disclosable information. That process takes time and can be cumbersome. There is also a concern that a requester will use burdensome record requests to intimidate, retaliate, and harass an agency by jamming up agency resources when there is a disciplinary dispute with the requester.

The provisions in this bill and also in AB 1099 (Shelley) suggest that a requester's interest in obtaining copies of public records in a format requested is to be weighted more than the agency's interests in managing its workload.

REGULATIONS: N/A

LEGISLATIVELY MANDATED REPORTS: N/A

COMMISSIONS AND BOARDS: N/A

The provisions of this bill would impact all boards and bureaus within the Department.

FISCAL IMPACT: Fiscal is attached.

PRO AND CON ARGUMENTS:

Arguments in Support of the Bill:

Proponents argue that government is making use of computer technology at an increasing rate to conduct the people's business and government should be able to respond to a public request in an electronic medium. Making public records available electronically encourages the public to participate in their government and could establish a cost-effective method of disseminating information.



Arguments in Opposition to the Bill:

Opponents argue that this bill takes away an agency's discretion regarding the form used to provide copies of public records. Requests for public records do not always come from ordinary citizens, but from special interest groups, political candidates, newsgathering groups, and from entities that have a dispute with a particular agency and use the records requests to harass the agency. Government employees spend several hundred hours each year responding to public record requests and segregating disclosable information from the non-disclosable. Taxpayers ultimately shoulder the burden for the state time expended to perform the searches. Opponents argue that they recognize that eventually, the majority of records will be computerized and agencies will be able to accommodate requests for public records in a wide variety of electronic formats without much trouble. However, until all state agencies are fiscally able to attain electronic capabilities they should have the discretion to provide public records in a format they determine is appropriate.

PROPOSERS/OPPONENTS:

Sponsor Author

Support: CA Newspaper Publishers Association (9/8/99)

Opposition: Orange County Board of Supervisors

SIGNIFICANT VOTE COUNT:

This bill received six "NO" votes on the Assembly Floor, five of them from Republicans. The assumption from the Republican Caucus is that the negative votes resulted from the Orange County opposition and the belief that this mandate would be very costly for counties.

RECOMMENDATION:

The Department of Consumer Affairs **DEFERS A RECOMMENDATION** on SB 1065 to the Department of General Services (DGS) which is preparing an enrolled bill report. The DGS has expressed many of our same concerns.

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Department Analyst
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VETO MESSAGE
Senate Bill 1065, As Amended April 27, 1999

I am returning Senate Bill 1065 without my signature.

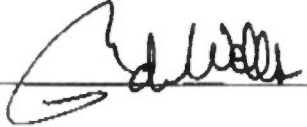
This bill would require state agencies to provide copies of public records that are stored electronically, in an electronic format, if requested.

I am supportive of efforts to provide greater accessibility for the public to obtain information regarding the workings of the government. Access to information provides consumers a basis for making informed decisions and to participate in government decisions.

However, I am vetoing this bill because it removes state agency flexibility to determine the manner in which they respond to requests for public records. The discretion does not change the public's right of access to government documents, but removing the discretion only restricts an agency's ability to provide the record in a form that accommodates the workload and resources available. Not all agencies are equal in their ability to segregate the disclosable information from the non-disclosable due to older computer equipment and programs. These agencies must spend much more time and resources to comply with numerous record requests. Agencies must retain the flexibility to provide the records in a form that best suits their circumstances.



**DEPARTMENT OF CONSUMER AFFAIRS
Fiscal Analysis of Legislation**

DUE DATE: ASAP **DATE ASSIGNED:** _____
Prepared By: Stacey A. Luna **Bill Number:** SB 1065
Phone number: (916) 445-3577 **Author:** Bowen
Approved by:  **Date Approved:** 9-7-99

FISCAL ANALYSIS AS ENROLLED: 9/3/99 **Short Title:** Public Records: electronic format.

OFFICE OF INFORMATION SERVICES: Fiscal impact? YES **NO** *If Yes, include OIS workload and assumptions.*
OIS Reviewer: Conrad Lara **DATE:** 3/11/99

ANALYSIS AND FISCAL ASSUMPTIONS:

Please see attached.

SUMMARY OF FISCAL IMPACT:	
<input type="checkbox"/>	Insignificant fiscal impact (under \$10,000).
<input type="checkbox"/>	Minor fiscal impact. One-time cost of: \$ _____ . Can be absorbed within existing resources. Ongoing costs of: _____
<input checked="" type="checkbox"/>	(Other:) MINIMAL/ABSORBALE FISCAL IMPACT.

	1999/00	2000/01	ONGOING
Expenditures	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Revenue	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>

PROGRAM CONTACT: Various Board Staff

PROGRAM CONCURS: YES NO (If no, note differences as appropriate.)

Existing Law

The California Public Records Act requires that any person may receive a copy of any identifiable public record from any state or local agency upon payment of fees covering the direct costs of duplication or any applicable statutory fee. Existing law also states that computer data to be provided in a form determined by the agency.

Summary of SB 1065

AB 1065, as enrolled, would require any state agency that stores public records in an electronic format to make those public records available in an electronic format when requested complying with the following:

- The information would be made available in any electronic format in which it holds the information.
- An agency would be required to provide a copy of an electronic record in the format requested if the format has been used by the agency to create copies for its own or other agency's use.
- An agency is prohibited from making information available only in an electronic format.

Assumptions

For the purpose of this analysis, the following assumptions are made:

- SB 1065 would become effective on January 1, 2000.
- The Department of Consumer Affairs' (DCA) Central Records Unit currently provides copies of public records in the form of CD-ROM, diskette, and hard copies.
- The Boards currently provide copies of public records in the form of diskette or hardcopies.
- Fees are charged that directly offset the cost of providing copies in whichever form is requested.

Summary of Fiscal Impact

The DCA's Central Records Unit currently has the capability to provide copies of public records in CD-ROM and diskette format for the majority of the records stored. There is a small amount of records that are currently only available in hard copy format. However, the Central Records Unit is currently working towards having all records accessible electronically.

Boards that store public records in an electronic format are able to provide requested records in the same electronic format in which they are stored and therefore comply with SB 1065.

As stated in existing law, a state agency is authorized to charge the requestor the direct costs for the duplication, time expended searching for and segregating records.

As enrolled, SB 1065 would have minimal and absorbable fiscal impact.



BILL NUMBER: AB 179
VETOED DATE: 10/12/1997

To the Members of the California Assembly:

I am returning Assembly Bill No. 179 without my signature.

This bill would amend the California Public Records Act to require state agencies to provide "a copy of an electronic record in the form requested, unless, in light of surrounding circumstances, it is not reasonable to do so...." It does not change the public's right of access to government documents, but only restricts the agency's discretion as to the form of the document made available.

Government agencies receive hundreds of Public Records Act requests every month. They are most often not from ordinary citizens, but from political candidates or special interest groups searching for information. Government employees spend thousands of hours each year responding to the requests--segregating the requested documents from exempt documents, such as those which invade other citizens' personal privacy. Taxpayers pay for the time expended searching for and segregating these records. However, state agencies are presently permitted to determine the form in which computer data is provided.

This bill creates a new inflexible mandate by requiring the agency to provide the electronic data in the form requested, unless it is "unreasonable" to do so, without ever defining the breadth of that exemption, thereby leaving it open to litigation. A request that an electronic record be provided in a particular form may require additional expense, burden, and time to segregate the public data from the exempt data, but the bill provides no guidance whether or to what extent that additional burden makes it "unreasonable."

Agencies should make available to the public all documents to which public access is granted. But we need not add costs and rigidity to these obligations by specifying the form in which it will be done.

Cordially,

PETE WILSON



BILL NUMBER: SB 74
VETOED DATE: 10/12/1997

To the Members of the California Senate:

I am returning Senate Bill No. 74 without my signature.

This bill would amend the California Public Records Act to require state agencies to provide "a copy of an electronic record in the form requested, unless, in light of surrounding circumstances, it is not reasonable to do so...." It does not change the public's right of access to government documents, but only restricts the agency's discretion as to the form of the document made available.

Government agencies receive hundreds of Public Records Act requests every month. They are most often not from ordinary citizens, but from political candidates or special interest groups searching for information. Government employees spend thousands of hours each year responding to the requests—segregating the requested documents from exempt documents, such as those which invade other citizens' personal privacy. Taxpayers pay for the time expended searching for and segregating these records. However, state agencies are presently permitted to determine the form in which computer data is provided.

This bill creates a new inflexible mandate by requiring the agency to provide the electronic data in the form requested, unless it is "unreasonable" to do so, without ever defining the breadth of that exemption, thereby leaving it open to litigation. A request that an electronic record be provided in a particular form may require additional expense, burden, and time to segregate the public data from the exempt data, but the bill provides no guidance whether or to what extent that additional burden makes it "unreasonable."

Agencies should make available to the public all documents to which public access is granted. But we need not add costs and rigidity to these obligations by specifying the form in which it will be done.

Cordially,

PETE WILSON



ENROLLED BILL REPORT

Analyst Roger Lackey
Work Phone 845-3627

AGENCY State and Consumer Services	BILL NUMBER SB 1065
DEPARTMENT, BOARD, OR COMMISSION Franchise Tax Board	AUTHOR Bowen

(SEE ATTACHED)

LEGISLATIVE INTENT SERVICE (800) 666-1917



NOTE
 ASSEMBLY Policy 13-2 Fiscal 18-3 SENATE Policy 6-0 Fiscal 9-3 Floor 31-7

RECOMMENDATION
 SIGN VETO NO RECOMMENDATION DEFER TO: *DGS*

Johnnie Lou Rosas, FTB Contact Person
 916) 845-4333 (Office)
 916) 985-2825 (Home)

Happy Chastain, Deputy Secretary, Legislation
 (916) 653-3111 (Office) (916) 810-2788 (Home)
 (916) 443-1366 (Home) (916) 806-8134 (Cellular)

EXECUTIVE OFFICER
[Signature]

AGENCY SECRETARY
 DATE 9/7/99
 LH: 1666SCSA - 21

ORIGINAL SIGNED BY
 HAPPY CHASTAIN
 SEP 10 1999

ENROLLED BILL REPORT

Analyst: Roger Lackey
Work Phone: 845-3627

Department, Board Or Commission	AUTHOR	Bill Number
Franchise Tax Board	Bowen	SB 1065

SUBJECT

Public Records/State Agencies Make Available in Electronic Format

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 not permit an agency to make information available only in an electronic format.

EFFECTIVE DATE

This bill would be effective on January 1, 2000.

LEGISLATIVE HISTORY

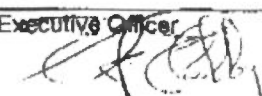
AB 1099 (1999/2000), Shelley, would add specific requirements relating to the form in which computerized data may be provided to the public; AB 179 (97/98 -- vetoed), Bowen, would have required any state or local agency that has public information in an electronic format to make the information available electronically; AB 142 (95/96 --vetoed), Bowen, would have required any agency that has public information in an electronic format to make the information available in an electronic format.

IMPACT ASSESSMENT

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 is 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. This bill would not permit an agency to make information available only in an electronic format.

VOTE	
ASSEMBLY Policy 13-2 Fiscal 18-3	SENATE Policy 6-0 Fiscal 9-3 Floor 31-7
RECOMMENDATION	
SIGN _____	VETO _____ NO RECOMMENDATION _____
Johnnie Lou Rosas, FTB Contact Person (916) 845-4333 (Office) (916) 985-2825 (Home)	Executive Officer  Date _____
LH: 1667CSA - 22	

LEGISLATIVE INTENT SERVICE (800) 666-1917

This bill would provide that a public agency would not be required to reconstruct a report in an electronic format if the agency no longer had the report itself 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 law authorizing an agency to determine the format in which computer data is provided.

Implementation Considerations

This bill would not significantly impact the department's programs and operations.

Fiscal Impact on State Budget

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 Estimate

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

RECOMMENDATION

No recommendation.



DEPARTMENT OF CONSUMER AFFAIRS
Fiscal Analysis of Legislation

DISTRIBUTED

9-14-99

DUE DATE: ASAP DATE ASSIGNED: _____
 Prepared By: Stacey A. Luna *SA* Bill Number: SB 1065
 Phone number: (916) 445-3577 Author: Bowen
 Approved by: *[Signature]* Date Approved: 9-7-99

FISCAL ANALYSIS AS ENROLLED: 9/3/99 Short Title: Public Records: electronic format.

OFFICE OF INFORMATION SERVICES: Fiscal impact? YES NO *If Yes, include OIS workload and assumptions.*

OIS Reviewer: Conrad Lara DATE: 3/11/99

ANALYSIS AND FISCAL ASSUMPTIONS:

Please see attached.

SUMMARY OF FISCAL IMPACT:	
<input type="checkbox"/>	Insignificant fiscal impact (under \$10,000).
<input type="checkbox"/>	Minor fiscal impact. One-time cost of: \$ _____ . Can be absorbed within existing resources. Ongoing costs of: _____
<input checked="" type="checkbox"/>	(Other:) MINIMAL/ABSORBALE FISCAL IMPACT.

	1999/00	2000/01	ONGOING
Expenditures	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
Revenue	\$ <u>0</u>	\$ <u>0</u>	\$ <u>0</u>

PROGRAM CONTACT: Various Board Staff

PROGRAM CONCURS: YES NO (If no, note differences as appropriate.)

LEGISLATIVE INTENT SERVICE (800) 666-1917

Existing Law

The California Public Records Act requires that any person may receive a copy of any identifiable public record from any state or local agency upon payment of fees covering the direct costs of duplication or any applicable statutory fee. Existing law also states that computer data to be provided in a form determined by the agency

Summary of SB 1065

SB 1065, as enrolled, would require any state agency that stores public records in an electronic format to make those public records available in an electronic format when requested complying with the following:

- The information would be made available in any electronic format in which it holds the information.
- An agency would be required to provide a copy of an electronic record in the format requested if the format has been used by the agency to create copies for its own or other agency's use.
- An agency is prohibited from making information available only in an electronic format.

Assumptions

For the purpose of this analysis, the following assumptions are made:

- SB 1065 would become effective on January 1, 2000.
- The Department of Consumer Affairs' (DCA) Central Records Unit stores public records for the Bureaus with the DCA and currently provides copies of public records in the form of CD-ROM, diskette, and hard copies.
- The Boards currently provide copies of public records in the form of diskette or hardcopies.
- Fees are charged that directly offset the cost of providing copies in whichever form is requested.

Summary of Fiscal Impact

The DCA's Central Records Unit (CRU) store public records for the Bureaus only. The CRU currently has the capability to provide copies of public records in CD-ROM and diskette format for the majority of the records stored. There is a small amount of records that are currently only available in hard copy format. However, the CRU is currently working towards having all Bureau records accessible electronically.

Boards that store public records in an electronic format are able to provide requested records in the same electronic format in which they are stored and therefore comply with SB 1065.

As stated in existing law, a state agency is authorized to charge the requestor the direct costs for the duplication, time expended searching for and segregating records.

As enrolled, SB 1065 would have minimal and absorbable fiscal impact.



SB 1065 (Bowen); Public records: electronic format (Amended: 04/27/99)

Action: 07/12/99 ASM APPROPRIATIONS From committee: Do pass but first be re-referred to Com. on APPR. Ayes 13. Noes 2. Re-referred to Com. on APPR.

Location: ASM APPROPRIATIONS

Calendar: 08/18/99 ASSEMBLY COMMITTEE INTERIM APPROPRIATIONS

<u>Office</u>	<u>Sub-Offices</u>	<u>Position</u>	<u>Agency</u>	<u>Assigned To</u>	<u>Letters</u>
DCA	DCA -comp	FTB-PENDING		LACKEY	4/27/99,
DGS	DGS -comp	DCA-N		LONGHOLM	DCA-2/26
FTB	FTB -comp	DGS-O		KIMBALL	
		A-O			
		<u>Governor's</u>			

History:

07/12/99 From committee: Do pass, but first be re-referred to Com. on APPR. (Ayes 13. Noes 2.) Re-referred to Com. on APPR.

06/17/99 To Com. on G.O.

05/26/99 In Assembly. Read first time. Held at Desk.

05/25/99 Read third time. Passed. (Ayes 31. Noes 7. Page 1354.) To Assembly.

05/19/99 Read second time. To third reading.

05/18/99 From committee: Do pass. (Ayes 9. Noes 3. Page 1215.)

05/06/99 Set for hearing May 17.

04/27/99 Read second time. Amended. Re-referred to Com. on APPR.

04/26/99 From committee: Do pass as amended, but first amend, and re-refcr to Com. on APPR. (Ayes 6. Noes 0. Page 830.)

04/07/99 Set for hearing April 20.

03/18/99 To Com. on JUD.

03/01/99 Read first time.

02/27/99 From print. May be acted upon on or after March 29.

02/26/99 Introduced. To Com. on RLS. for assignment. To print.

Reg. 2 year bill
JGP

STATE AND CONSUMER SERVICES AGENCY

BILL ANALYSIS

DEPARTMENT General Services	AUTHOR Bowen	BILL NUMBER SB 1065
SPONSOR Author	RELATED BILLS See legislative history	AMENDED DATE April 27, 1999
SUBJECT Public records; electronic format		

BILL SUMMARY:

Senate Bill (SB) 1065 would make various changes to the California Public Records Act (Act) by providing that agencies that have public records available in electronic format make that information available in an electronic format when requested.

LEGISLATIVE HISTORY:

Assembly Bill (AB) 1099 (Shelley, 1999) is similar to SB 1065 in that it requires state agencies to provide computerized data in a format chosen by the requester if the agency uses that format in the course of its normal business. It would also prohibit an agency from acquiring electronic data processing equipment unless it determines that the system will not impede public access to public records.

Senate Bill 48 (Sher, 1999) would provide an administrative appeals process for persons who are denied access to public records. The appeals process would be handled by the Attorney General's office.

Senate Bill 143 (Kopp, Chapter 620, Statutes of 1998) made various changes to the Act including the establishment of a comprehensive index of public records within the Act that are exempt from disclosure under current law and contained in various other codes.

Assembly Bill 179 (Bowen, 1997) would have required state agencies to disclose computerized data in a format chosen by the requester unless determined unreasonable to do so. This bill was vetoed by Governor Wilson (see attached veto message).

Senate Bill 74 (Kopp, 1997) was similar to AB 179 and would have required state agencies to disclose computerized data in a format chosen by the requester unless determined unreasonable to do so. This bill was vetoed by Governor Wilson (see attached veto message).

LEGISLATIVE INTENT SERVICE (800) 666-1917



DEPARTMENTS THAT MAY BE AFFECTED

STATE MANDATE

GOVERNOR'S APPOINTMENT

DEPARTMENT DIRECTOR POSITION	AGENCY SECRETARY POSITION	GOVERNOR'S OFFICE USE
<input type="checkbox"/> S <input checked="" type="checkbox"/> O <input type="checkbox"/> SIA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NIA <input type="checkbox"/> DEFER To _____	<input type="checkbox"/> S <input checked="" type="checkbox"/> O <input type="checkbox"/> SIA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NIA <input type="checkbox"/> DEFER To _____	Position Approved: _____ Position Disapproved: _____ Position Noted: _____ By: _____ Date: _____
DEPARTMENT DIRECTOR <i>[Signature]</i>	AGENCY SECRETARY <i>[Signature]</i>	ORIGINAL SIGNED BY HAPPY CHASTAIN

Date: 7-14-99

JUL 16 1999

DEPUTY SECRETARY

LH: 1672CSA - 27

Senate Bill 323 (Kopp, 1996) was similar to AB 179 and SB 74 and was vetoed by the Governor (see attached veto message).

Assembly Bill 2989 (Bowen, 1996) was the "Paper Reduction Act of 1996" and, among other things, required that reports required by law shall be submitted on paper and electronically sent to the State Librarian. This bill failed passage in the Assembly Governmental Organization Committee.

Assembly Bill 142 (Bowen, 1995) made changes to the Act relative to the availability of records contained in electronic format and established conditions under which "vital records" could be disclosed to the public. This bill was never heard and ultimately died in the Assembly Governmental Organization Committee.

PROGRAM HISTORY:

The Department of General Services (DGS) incorporates six operating divisions composed of 23 offices that provide a broad range of business services to government. The DGS' functions include: procurement and contracting for goods and services; real estate and design services for state buildings; telecommunications; fleet management; information services; printing; architectural services; energy efficiency; and building maintenance.

By meeting these varied responsibilities for centralized management review and support, the DGS seeks to increase effectiveness and economy in the administration of state government and to maintain responsive working relationships with client agencies.

The State Board of Control (Board) Victims of Crime (VOC) Program reimburses victims for specified net out-of-pocket losses incurred as a result of a crime. Reimbursable expenses include medical expenses, mental health counseling, funeral/burial costs, and wage or support losses not otherwise covered by insurance or other sources. The VOC Program's revenue source, the Restitution Fund (Fund), receives its revenue primarily from state penalties assessed on court-ordered fines.

The Board's Government Claims program processes, approves and pays claims against the state in accordance with Government Code Section 980 et seq.

SPECIFIC FINDINGS:

1. Under existing law, the California Public Records Act provides that upon request and payment of duplication fees, state and local agencies must make non-exempt records available to the public. Among other things, the Act provides that **"Computer data shall be provided in a form determined by the agency"** (Government Code Section 6253). This language was originally put in statute in 1968 (Government Code Section 6256). In one of the early versions of SB 143 (Kopp, 1998) the language was deleted but, at the request of the DGS, the



language was reinstated in the bill and subsequently remained in statute. **SB 1065 would repeal that language and create a new section of law relative to the accessibility of electronic records.**

2. Specifically, SB 1065 would provide that agencies which have public records available in electronic format make that information available in electronic format when requested and, when applicable, comply with the following:
 - a. make the information available in any electronic format in which it holds the information;
 - b. provide a copy of an electronic record in the format requested if that format is one already used by the agency to create copies for itself or other agencies;
 - c. duplication costs would include the costs associated with duplicating electronic records;
 - d. an agency would not be required to reconstruct a report in an electronic format if it is no longer available in that format;
 - e. an agency would not be permitted to make information available only in an electronic format;
 - f. statutorily restricted Department of Motor Vehicle records would not be accessible.

CONCERNS:

The Act dictates that state and local agency records deemed eligible for public disclosure shall be provided to a requester generally within ten days of the request. In 1998, SB 143 updated the Act to provide that electronic records, when eligible for disclosure, shall be provided to a requester in a format **determined by the agency.**

Senate Bill 1065 would instead mandate that electronic records eligible for disclosure be provided in a format **determined by the requester.** This mandate has been proposed three times. It was vetoed twice and subsequently amended out of SB 143 before it reached Governor Wilson's desk. Each time, opposition from state agencies contributed to this provision's failure.

Requiring that electronic records be provided in a format determined by the requester would burden the DGS, and presumably other state and local agencies, with the responsibility of compiling and sorting the information to fit the requester's specifications. These responsibilities are especially onerous when records must be painstakingly filtered to strike out information exempt from disclosure requirements or not pertinent to a given individual request.

Senate Bill 1065 would limit the formats available to the requester to those regularly used by a state agency for its own business or for making copies for another agency. However, as with previous proposals, this bill contains no clear definition for what constitutes regular use. With such a lack of clarity, a requester may claim access to information the Act never intended to



make publicly available, such as the identities and treatment information of crime victim applicants to the VOC, for example. Such information could be in the form of unfiltered spreadsheets or databases that the requester argues constitute a format used by a state agency for its own business. Without safeguards against such claims, this bill could subject the VOC Program and the Government Claims Program to increased litigation to resolve ambiguity in the Act.

All state agencies should be allowed to maintain discretion in determining the format of electronic records disclosed under the Act. This existing discretion is already circumscribed by a clear mandate elsewhere in statute that state agencies shall not inhibit access to public information guaranteed by the Act.

REGULATIONS:

Existing law permits agencies to adopt requirements for themselves if those requirements provide for greater, faster, or more efficient access to records than is required by statute.

LEGISLATIVELY MANDATED REPORTS: N/A

COMMISSIONS AND BOARDS: N/A

FISCAL IMPACT:

Existing law provides that an agency may only recover the direct costs of duplicating a record. SB 1065 provides that these direct costs shall include "... costs associated with duplicating electronic records." This would seemingly not cover the cost of staff who must painstakingly review and pull the information being requested in order to comply with the requester's choice of formats.

PRO AND CON ARGUMENTS:

Arguments in Support of the Bill:

The business of government should be open and accessible to the public. Today, the vast majority of records created by state agencies are in an electronic format and easier to retrieve and reproduce. The public should have access to these records when available.

Arguments in Opposition to the Bill:

Under current law, state agencies may determine what format computer data is to be provided. While fulfilling requests for public information electronically is a worthy policy for state agencies to pursue, it is not good policy to eliminate an agency's discretion in determining the most appropriate format to provide that information.

PROPOSERS/OPPONENTS:

Sponsor: Author

Support: California Newspaper Publishers Association
Sierra Club

Opposition: City of San Diego
Orange County

RECOMMENDATION: OPPOSE

The Department of General Services recommends an **OPPOSE** position on SB 1065. Rather than improve existing law, this bill makes ambiguous existing provisions that allow state agencies discretion in determining the format for electronic records to be disclosed to the public under the California Public Records Act.

KAREN NEUWALD
Assistant Director—Legislation
445-3946

GARY LONGHOLM
Legislative Analyst
327-2288



BILL NUMBER: AB 179
VETOED DATE: 10/12/1997

To the Members of the California Assembly:

I am returning Assembly Bill No. 179 without my signature.

This bill would amend the California Public Records Act to require state agencies to provide "a copy of an electronic record in the form requested, unless, in light of surrounding circumstances, it is not reasonable to do so..." It does not change the public's right of access to government documents, but only restricts the agency's discretion as to the form of the document made available.

Government agencies receive hundreds of Public Records Act requests every month. They are most often not from ordinary citizens, but from political candidates or special interest groups searching for information. Government employees spend thousands of hours each year responding to the requests-segregating the requested documents from exempt documents, such as those which invade other citizens' personal privacy. Taxpayers pay for the time expended searching for and segregating these records. However, state agencies are presently permitted to determine the form in which computer data is provided.

This bill creates a new inflexible mandate by requiring the agency to provide the electronic data in the form requested, unless it is "unreasonable" to do so, without ever defining the breadth of that exemption, thereby leaving it open to litigation. A request that an electronic record be provided in a particular form may require additional expense, burden, and time to segregate the public data from the exempt data, but the bill provides no guidance whether or to what extent that additional burden makes it "unreasonable."

Agencies should make available to the public all documents to which public access is granted. But we need not add costs and rigidity to these obligations by specifying the form in which it will be done.

Cordially,

PETE WILSON



BILL NUMBER: SB 74
VETOED DATE: 10/12/1997

To the Members of the California Senate:

I am returning Senate Bill No. 74 without my signature.

This bill would amend the California Public Records Act to require state agencies to provide "a copy of an electronic record in the form requested, unless, in light of surrounding circumstances, it is not reasonable to do so...." It does not change the public's right of access to government documents, but only restricts the agency's discretion as to the form of the document made available.

Government agencies receive hundreds of Public Records Act requests every month. They are most often not from ordinary citizens, but from political candidates or special interest groups searching for information. Government employees spend thousands of hours each year responding to the requests--segregating the requested documents from exempt documents, such as those which invade other citizens' personal privacy. Taxpayers pay for the time expended searching for and segregating these records. However, state agencies are presently permitted to determine the form in which computer data is provided.

This bill creates a new inflexible mandate by requiring the agency to provide the electronic data in the form requested, unless it is "unreasonable" to do so, without ever defining the breadth of that exemption, thereby leaving it open to litigation. A request that an electronic record be provided in a particular form may require additional expense, burden, and time to segregate the public data from the exempt data, but the bill provides no guidance whether or to what extent that additional burden makes it "unreasonable."

Agencies should make available to the public all documents to which public access is granted. But we need not add costs and rigidity to these obligations by specifying the form in which it will be done.

Cordially,

PETE WILSON

LEGISLATIVE INTENT SERVICE (800) 666-1917



BILL NUMBER: SB 323
 VETOED DATE: 09/29/96

To the Members of the California Senate:

I am returning Senate Bill No. 323 without my signature.

This bill would provide that if an agency decides to withhold any record based on statute or public interest, the agency must identify in writing the statute or public interest served by nondisclosure of the record.

SB 323 adds to the obligations of governmental agencies which are already under the heavy burden of responding to Public Records Act requests. Under current law, an agency must determine, within 10 days of any request for a copy of agency records, whether to comply with the request and must state the reasons for declining to do so. This bill would require that where the agency decides to withhold the record under Section 6255, it specify the public interest in nondisclosure as well as state the public interest in disclosure.

Governmental agencies receive hundreds of Public Records Act requests every month. They are most often not from ordinary citizens, but from political candidates and special interest groups searching for information. Government employees spend thousands of hours each year responding to the requests - many broad and unfocused - at the cost of doing their other responsibilities.

This bill imposes an additional and unreasonable burden on record-keeping to not only state the reasons for a denial, but to specify the specific public interest in nondisclosure of the documents and the public interest in disclosure at the risk of waiving the privilege of confidentiality for the records requested. It is a significant and unnecessary, additional bureaucratic burden that provides no commensurate benefit to the public to justify the time and tax money that would have to be expended to comply with the requirement.

Cordially,

PETE WILSON

LEGISLATIVE INTENT SERVICE (800) 666-1917



STATE AND CONSUMER SERVICES AGENCY

BILL ANALYSIS

Department CONSUMER AFFAIRS	Author Bowen	Bill Number SB 1065
Sponsor Author	Related Bills AB 1099	Amended Date Intro 2/26/99
Subject Public Records: Electronic Format		

Summary: This bill would delete the authority of a state agency to provide copies of requested public records in a format that is determined by the state agency. The bill would require that a public record that is stored in an electronic format be made available to the public in an electronic format if requested.

Support: Sierra Club (4/22/99)
Society of Professional Journalists

Opposition: California State Association of Counties

Bill Description:

Existing law: The California Public Records Act provides that any person may receive a copy of any public record from a state or local agency upon payment of fees covering the direct cost of duplication or an applicable statutory fee. The agency has the discretion to determine the format in which the computer data requested is delivered.

This bill would delete an agency's discretion to provide computer data in a format of its choice and instead require that when a public record is stored in an electronic format the agency would make copies of the record available in an electronic format if requested.

Background:

According to the author, as government uses computers more often to conduct the people's business, government has to be able to respond to public inquiries in electronic form. The author argues that making public records available electronically encourages the public to participate in their government. In addition, the author contends that it is cheaper to provide long documents on a disk than on paper. This provision was included in AB 179 (Bowen) and SB 74 (Kopp) last session. Both bills were vetoed by the Governor. (See veto messages attached)

LEGISLATIVE INTENT SERVICE (800) 666-1917

FEE / / FISCAL /x/ REPORT / /

DEPARTMENTS THAT MAY BE AFFECTED

ALL

STATE MANDATE / / GOVERNOR'S APPOINTMENT / /

DEPARTMENT DIRECTOR POSITION		AGENCY SECRETARY POSITION		GOVERNOR'S OFFICE USE
<input type="checkbox"/> S	<input type="checkbox"/> O	<input type="checkbox"/> S	<input type="checkbox"/> O	POSITION APPROVD. <input type="checkbox"/>
<input type="checkbox"/> SIA	<input type="checkbox"/> OUA	<input type="checkbox"/> SIA	<input type="checkbox"/> OUA	POSITION DISAPP. <input type="checkbox"/>
<input checked="" type="checkbox"/> N	<input type="checkbox"/> NP	<input type="checkbox"/> N	<input type="checkbox"/> NP	POSITION NOTED <input type="checkbox"/>
<input type="checkbox"/> NIA	<input type="checkbox"/> NAR	<input type="checkbox"/> NIA	<input type="checkbox"/> NAR	
<input type="checkbox"/> DEFER		<input checked="" type="checkbox"/> DEFER	<i>DGS</i>	ORIGINAL SIGNED BY HAPPY CHASTAIN

DEPARTMENT DIRECTOR DATE: *K Hamilton 5-18-99*

AGENCY SECRETARY DATE: **JUL 20 1999**

DEPUTY SECRETARY LEGISLATION

Specific Findings:

This bill would require any state agency that stores public records in an electronic format to make those public records available in an electronic format when requested complying with the following:

1. The information would be made available in any electronic format in which it holds the information.
2. An agency would be required to provide a copy of an electronic record in the format requested if the format has been used by the agency to create copies for its own or other agency's use.
3. An agency is prohibited from making information available only in an electronic format.
4. The Department of Motor Vehicles would not be required to permit public access to records that are otherwise restricted by statute.

The bill would specify that an agency would be authorized to charge the requestor the direct costs of duplication, including the costs associated with duplicating electronic records.

It is unclear as to whether the costs associated with duplicating the records would include the costs for the time expended searching for and segregating these records.

The Department's Central Records Unit currently stores the files on microfilm. Currently, requestors of public records are given hard copies. The Central Records Unit indicates that it has the capability to provide some of the microfilm records on CD-ROM and plans to expand that capability to all the records within the next eighteen months. The Boards indicate that they generally can provide requested records in the same electronic format in which they are stored.

Fiscal Impact:

A fiscal report is forthcoming.

Arguments:

Pro: Proponents argue that government is making use of computer technology at an increasing rate to conduct the people's business, and government should be able to respond to public inquiries in electronic form. Making public records available electronically encourages the public to participate in their government and could establish a more cost-effective method of disseminating information. It would be cheaper for state agencies to provide long documents on a disk than on paper.

Con: Opponents argue that this bill is unclear as to whether the time and expense incurred by state agencies to search and segregate public records that are stored in an electronic format would be included in the direct costs of duplication fees authorized by the bill. Requests for public records do not always come from ordinary citizens, but from political candidates, or special interest groups. Government employees spend several hundred hours each year responding to public record requests and segregating disclosable



information from the nondisclosable information. Taxpayers ultimately shoulder the burden for the time expended performing these searches.

Recommendation:

The Department of Consumer Affairs takes a **NEUTRAL** position on SB 1065.

Prepared by: Rena M. Kimball, Analyst

Telephone: 322-1203

Lynn Morris, Assistant Deputy Director

Telephone: 327-5196



SB 1065 **Bowen Public records: electronic format(Introduced: 02/26/99)**
Action: 04/07/99 SEN JUDICIARY Sct for hearing April 20.

Location: SEN JUDICIARY

Calendar:
 04/20/99 SENATE JUDICIARY

<u>Office</u>	<u>Sub-Offices</u>	<u>Position</u>	<u>Agency</u>	<u>Assigned To</u>	<u>Letters</u>
DCA	DCA PEND	FTB-PENDING		LACKEY	2/26/99
DGS	DGS PEND				
FTB	FTB -comp				

History:
04/07/99 Set for hearing April 20.
03/18/99 To Com. on JUD.
03/01/99 Read first time.
02/27/99 From print. May be acted upon on or after March 29.
02/26/99 Introduced. To Com. on RLS. for assignment. To print.

Analyst Name: Roger Lackey
 Phone No: 845-3627

STATE AND CONSUMER SERVICES AGENCY

BILL ANALYSIS

Department Franchise Tax Board	Author Bowen	Bill Number SB 1065
Sponsor	Related Bills AB 179 (97/98) AB 1099 (97/98)	Amendment Date 4/27/1999
Subject Public Records/State Agencies Make Available In Electronic Format If Available & When Requested		

(See Attached)

LEGISLATIVE INTENT SERVICE (800) 666-1917

DEPARTMENTS THAT MAY BE AFFECTED:

STATE MANDATE

GOVERNOR'S APPOINTMENT

Board Position: <input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR <input checked="" type="checkbox"/> PENDING	Agency Secretary Position: <input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR DEFER TO <u>DGS</u>	GOVERNOR'S OFFICE USE Position Approved <input type="checkbox"/> Position Disapproved <input type="checkbox"/> Position Noted <input type="checkbox"/> ORIGINAL SIGNED BY HAPPY CHASTAIN	
Franchise Tax Board Staff <i>Roger Lackey</i>	Agency Secretary <i>[Signature]</i>	Date: JUL 20 1999 By: DEPUTY SECRETARY LEGISLATION	Date

NO ANALYSIS REQUIRED

Author: Bowen Analyst: Roger Lackey Bill Number: SB 1065
Related Bills: See Prior Analysis Telephone: 845-3627 Amended Date: 04-27-99
Attorney: Pat Kusiak Sponsor:

SUBJECT: Public Records/State Agencies 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.
MINOR AMENDMENT - No change in previously submitted analysis required.
X 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 an electronic format in which the state agency holds the information.

The April 27, 1999, amendment specified that a public agency would not be required to reconstruct a report in an electronic format if the agency no longer had the report itself available in an electronic format.

Except for the discussion above, the department's analysis of SB 1065 as introduced February 26, 1999, still applies.

Board Position:

Franchise Tax Board Staff

Date

S NA NP
SA O NAR
N OUA PENDING

Handwritten signature and date

QUINWORD SB 1

LEGISLATIVE INTENT SERVICE (800) 556-1917



STATE AND CONSUMER SERVICES AGENCY

BILL ANALYSIS

Department	Franchise Tax Board	Author	Bowen	Bill Number	SB 1065
Sponsor		Related Bills	See Legislative History	Introduced Date	02/26/1999
Subject	Public Records/Available In Any Electronic Format Used				

(See Attached)

LEGISLATIVE INTENT SERVICE (800) 666-1917

DEPARTMENTS THAT MAY BE AFFECTED:

STATE MANDATE GOVERNOR'S APPOINTMENT

Board Position: <input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR <input checked="" type="checkbox"/> PENDING	Agency Secretary Position: <input type="checkbox"/> S <input type="checkbox"/> O <input type="checkbox"/> SA <input type="checkbox"/> OUA <input type="checkbox"/> N <input type="checkbox"/> NP <input type="checkbox"/> NA <input type="checkbox"/> NAR DEFER TO <u>DO</u>	GOVERNOR'S OFFICE USE Position Approved <input type="checkbox"/> Position Disapproved <input type="checkbox"/> Position Noted <input type="checkbox"/> ORIGINAL SIGNED BY HAPPY GHASTAR
Department Director <i>Donald H. Lackey</i> 4/11/99	Agency Secretary Date <u>JUL 20 1999</u> By: <u>DEPUTY SECRETARY LEGISLATION</u>	Date

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Bowen Analyst: Roger Lackey Bill Number: SB 1065
Related Bills: See Legislative History Telephone: 845-3627 Introduced Date: 02-26-99
Attorney: Doug Bramhall Sponsor:

SUBJECT: Public Records/Available In Any Electronic Format Used

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 not permit an agency to make information available only in an electronic format.

EFFECTIVE DATE

This bill would be effective on January 1, 2000.

LEGISLATIVE HISTORY

AB 1099 (1999/2000), AB 179 (97/98), AB 142 (95/96)

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. This bill would not permit an agency to make information available only 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 law authorizing an agency to determine the format in which computer data are provided.

Implementation Considerations

This bill would not significantly impact the department's programs and operations.

Board Position: S, SA, N, NA, O, OUA, NP, NAR, PENDING. Department Director: Gerald H. Goldberg. Date: 4/16/99.

LEGISLATIVE INTENT SERVICE (800) 555-1917

Technical Considerations

The language specifying that direct costs of duplication shall include the costs associated with duplicating electronic records is included with the paragraph requiring agencies to provide copies in any format requested under certain conditions. The cost language should be in a separate subdivision to clarify that it also applies when the agency makes the information available in the electronic format in which it holds the information.

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 Estimate

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

BOARD POSITION

Pending.



SB 1065 (Bowen): Public records: electronic format (Amended: 04/27/99)

Action: 07/12/99 ASM From committee: Do pass but first be re-referred to Com. on APPR. Ayes 13 Noes 2 Re-referred to Com. on APPR.

Location: ASM

Calendar:

<u>Office</u>	<u>Sub-Offices</u>	<u>Position</u>	<u>Agency</u>	<u>Assigned To</u>	<u>Letters</u>
DCA	DCA -comp	FTB-PENDING		LACKEY	4/27/99,
DGS	DGS -comp	DCA-N		LONGHOLM	DCA-2/26
FTB	FTB -comp	DGS-O		KIMBALL	
		<u>Governor's</u>			

History:

07/12/99 From committee: Do pass, but first be re-referred to Com. on APPR. (Ayes 13. Noes 2.) Re-referred to Com. on APPR.
 06/17/99
 05/26/99 To Com. on G.O.
 05/25/99 In Assembly. Read first time. Held at Desk.
 05/19/99 Read third time. Passed. (Ayes 31. Noes 7. Page 1354.) To Assembly.
 05/18/99 Read second time. To third reading.
 05/06/99 From committee: Do pass. (Ayes 9. Noes 3. Page 1215.)
 04/27/99 Set for hearing May 17.
 04/26/99 Read second time. Amended. Re-referred to Com. on APPR.
 04/07/99 From committee: Do pass as amended, but first amend, and re-refer to Com. on APPR. (Ayes 6. Noes 0. Page 830.)
 03/18/99 Set for hearing April 20.
 02/27/99 To Com. on JUD.
 02/26/99 Read first time.
 From print. May be acted upon on or after March 29
 Introduced. To Com. on RLS. for assignment. To print.

LEGISLATIVE INTENT SERVICE (800) 666-1917



SB 1065 **Bowen Public records: electronic format(Amended: 04/27/99)**
Action: 04/27/99 SEN APPROPRIATIONS Read second time. Amended. Re-referred to Com. on APPR.

Location: SEN APPROPRIATIONS

Calendar:

<u>Office</u>	<u>Sub-Offices</u>	<u>Position</u>	<u>Agency</u>	<u>Assigned To</u>	<u>Letters</u>
DCA	DCA PEND	FTB-PENDING		LACKEY	4/27/99
DGS	DGS -comp	DGS-NAR		WILLIAMS	
FTB	FTB PEND				

History:

04/27/99 Read second time. Amended. Re-referred to Com. on APPR.
04/26/99 From committee: Do pass as amended, but first amend, and re-refer to Com on APPR. (Ayes 6. Noes 0.
04/07/99 Page 830.)
03/18/99 Set for hearing April 20.
03/01/99 To Com. on JUD.
02/27/99 Read first time.
02/26/99 From print. May be acted upon on or after March 29.
Introduced To Com. on RLS. for assignment. To print.

LEGISLATIVE INTENT SERVICE 800-666-1811



STATE AND CONSUMER SERVICES AGENCY

NO ANALYSIS REQUIRED

DEPARTMENT General Services	AUTHOR Bowen	BILL NUMBER SB 1065
SPONSOR Author	RELATED BILLS SB 48 - 1999	AMENDED DATE April 27, 1999
SUBJECT Public records; electronic format		

Under existing law, the California Public Records Act provides that upon request and payment of duplication fees state and local agencies must make non-exempt records available to the public.

This bill would provide that agencies, which have public records available in electronic format, make that information available in an electronic format when requested. Among other things: 1) duplication costs would include the costs associated with duplicating electronic records; 2) an agency would not be permitted to make information available only in an electronic format; and 3) statutorily restricted Department of Motor Vehicle records would not be accessible.

SB 1065 does not singularly affect the Department of General Services and, moreover, we have no concerns regarding its implementation; therefore, no further analysis is required.

Karen Neuwald
Assistant Director-Legislation
445-3946

Sherry Williams
Legislative Analyst
327-2268

LEGISLATIVE INTENT SERVICE (800) 668-1917

DEPARTMENTS THAT MAY BE AFFECTED

STATE MANDATE

GOVERNOR'S APPOINTMENT

DEPARTMENT DIRECTOR POSITION		AGENCY SECRETARY POSITION		GOVERNOR'S OFFICE USE
<input type="checkbox"/> S	<input type="checkbox"/> O	<input type="checkbox"/> S	<input type="checkbox"/> O	Position Apprvd. <input type="checkbox"/>
<input type="checkbox"/> SIA	<input type="checkbox"/> OUA	<input type="checkbox"/> SIA	<input type="checkbox"/> OUA	Position Disapp. <input type="checkbox"/>
<input type="checkbox"/> N	<input type="checkbox"/> NP	<input type="checkbox"/> N	<input type="checkbox"/> NP	Position Noted <input type="checkbox"/>
<input type="checkbox"/> NIA	<input checked="" type="checkbox"/> NAR	<input type="checkbox"/> NIA	<input type="checkbox"/> NAR	By: _____ Date: _____
<input type="checkbox"/> DEFER _____		<input type="checkbox"/> DEFER _____		
DEPARTMENT DIRECTOR <i>Karen Neuwald</i>	DATE <i>5/4/99</i>	AGENCY SECRETARY	DATE	

* 3 analyses attached (FTB & DGS)

SB 1065 Bowen Public records: electronic format(Introduced: 02/26/99)
Action: 04/20/99 SEN JUDICIARY Do pass as amended and re-rfer to the Committee on Appropriations. Ayes: 06
Nocs: 00 PASS

Location: SEN JUDICIARY

Gov. Office

Calendar:

Office	Sub-Offices	Position	Agency	Assigned To	Letters
DCA	DCA PEND	FTB-PENDING		LACKEY	2/26/99
DGS	DGS -comp	DGS-NAR		WILLIAMS	
FTB	FTB -comp				

History:
 04/07/99 Sct for hearing April 20.
 03/18/99 To Com. on JUD.
 03/01/99 Read first time.
 02/27/99 From print. May be acted upon on or after March 29.
 02/26/99 Introduced. To Com. on RLS. for assignment. To print.

5/27

Related 1999 legislation: AB 1099 (Shelley)
 1998 vetoed bill: AB 179 (Bowen)

Is this a DOIT issue - should we defer to them? The Governor's veto of AB 179 cited undue burdens that would be created for public agencies to create electronic data bases to respond to public requests.

Defer to DOIT

This is not a NAR issue, please have DGS do a full analysis.

LEGISLATIVE INTENT SERVICE (800) 566-1911

STATE AND CONSUMER SERVICES AGENCY

NO ANALYSIS REQUIRED

DEPARTMENT General Services	AUTHOR Bowen	BILL NUMBER SB 1065
SPONSOR Author	RELATED BILLS SB 48 - 1999	AMENDED DATE Original (2/26/99)
SUBJECT Public records; electronic format		

Under existing law, the California Public Records Act provides that upon request and payment of duplication fees state and local agencies must make non-exempt records available to the public.

This bill would provide that agencies, which have public records available in electronic format, make that information available in an electronic format when requested. Among other things: 1) duplication costs would include the costs associated with duplicating electronic records; 2) an agency would not be permitted to make information available only in an electronic format; and 3) statutorily restricted Department of Motor Vehicle records would not be accessible.

SB 1065 does not singularly affect the Department of General Services and, moreover, we have no concerns regarding its implementation; therefore, no further analysis is required.

Karen Neuwald
Assistant Director-Legislation
445-3946

Sherry Williams
Legislative Analyst
327-2268

LEGISLATIVE INTENT SERVICE 800-666-1917

DEPARTMENTS THAT MAY BE AFFECTED

STATE MANDATE

GOVERNOR'S APPOINTMENT

DEPARTMENT DIRECTOR POSITION		AGENCY SECRETARY POSITION		GOVERNOR'S OFFICE USE
<input type="checkbox"/> S	<input type="checkbox"/> O	<input type="checkbox"/> S	<input type="checkbox"/> O	Position Apprvd. <input type="checkbox"/>
<input type="checkbox"/> SIA	<input type="checkbox"/> OUA	<input type="checkbox"/> SIA	<input type="checkbox"/> OUA	Position Disapp. <input type="checkbox"/>
<input type="checkbox"/> N	<input type="checkbox"/> NP	<input type="checkbox"/> N	<input type="checkbox"/> NP	Position Noted <input type="checkbox"/>
<input type="checkbox"/> NIA	<input checked="" type="checkbox"/> NAR	<input type="checkbox"/> NIA	<input type="checkbox"/> NAR	By: _____ Date: _____
<input type="checkbox"/> DEFER	_____	<input type="checkbox"/> DEFER	_____	
DEPARTMENT DIRECTOR <i>Karen Neuwald</i>	DATE <i>4-28-99</i>	AGENCY SECRETARY	DATE	

SENATE JUDICIARY COMMITTEE
Adam B. Schiff, Chairman
1999-2000 Regular Session

SB 1065	S
Senator Bowen	B
As Introduced	
Hearing Date: April 20, 1999	1
Government Code	0
GMO:jt	6
	5

SUBJECT

Public Records: Electronic Format

DESCRIPTION

This bill would require a public agency that keeps a record in an electronic format to make that information available in an electronic format, when requested, as follows:

- a) the record would be provided in the same electronic format it is held;
- b) the agency would provide a copy of the electronic record in the requested format if the format has been used to create copies for its own use;
- c) the agency would not be permitted to make information available only in electronic format

No records kept by the Department of Motor Vehicles would be accessible, if a statute prohibits access.

BACKGROUND

This bill reintroduces the substance of AB 179 (Bowen) of the 1997-98 session, that was vetoed by Governor Pete Wilson. The veto message indicated that AB 179 would have "added costs and rigidity" to the public agencies' obligations [to respond to requests for information under the Public Records Act], and AB 179 would have engendered litigation because the bill did not define what would be an "unreasonable" request of the agency in terms

(more)

LEGISLATIVE INTENT SERVICE (800) 688-1911



of additional burden.

CHANGES TO EXISTING LAW

The Public Records Act allows an agency to provide computer data in any form the agency determines. The act directs a public agency, upon request for inspection or a copy of the records, to respond to a request within 10 days after receipt of the request. [Government Code section 6253.]

This bill would eliminate the reference to computer data in the current law and create a separate section dealing with data in electronic format. It would require the public agency to provide records kept in electronic format to be provided in electronic format when requested. If the requested electronic format is how the data is formatted or copied for use by the agency or other agencies, the agency would be required to provide copies in that format. Authority would be given to charge for direct costs of duplication of the electronic records.

The bill would also make clear that the agency would not be permitted to make records available only in electronic format and that no records kept by the Department of Motor Vehicles would be accessible to the public, where access would be restricted by statute.

COMMENT

1. Need for the bill

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 no current authority under which a person seeking electronically available records could obtain such records in that format. This means that if an agency makes 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 print-outs 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.

Additionally, the author claims that public agencies are making profit centers out of making copies of documents that are already available on disk or other electronic format - so that the public, having already paid for the creation of those documents, are charged a second time for getting copies of the documents. The author cites the Department of Industrial Relations, which makes approximately \$200,000 per year selling workers' compensation records.

This bill would make it possible for those records in electronic format to be available in the same format - i.e., CD or disk or whatever electronic format would be available in the future.

2. Governor's veto message: undue burden on the public agency?

The governor's veto message for AB 179 cited undue burdens that would be created for public agencies attempting to respond to requests for data in electronic format.

SB 1065 may not create the nightmare the governor's veto feared, since the agencies creating data in electronic format would be required to make that data available in the same format, only if it is so requested and only if the requested format is the same format used by the agency to duplicate the record for itself and for other agencies.

That means if the agency copies the data in CD form, it would have to provide the data in the same form, if so requested. But if it prints out the data from the CD disk as the copy that would be distributed to other agencies, the person requesting the data in CD form could not get it, except as print-outs or copies of print-outs.

3. Target records to be duplicated

The author targets voluminous documents as those public records to which the public should have access in the

SB 1065 (Bowen)

Page 4

electronic format, citing the city budget, environmental impact reports, or minutes from a Board of Supervisor's meeting, as documents that should be available on disk or the internet. Especially because these documents were created at 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 on to a disk or accessed on the internet. Most public agencies say they do not charge for costs of staff time and equipment when they charge duplication costs.

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. 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 records accessible to the public.

4. Agency cannot make information available only in electronic format

To ensure that this bill is not interpreted to limit access to public records, a provision in the bill would state that the requirement to provide data in an electronic format if requested, and if available in that format, would not permit a public agency to make information available only in electronic format.

5. DMV records protected

This bill would specifically exempt from its coverage DMV records to which access would otherwise be restricted.

SB 1065 (Bowen)
Page 5

6. Related legislation

AB 1099 (Shelley) will do practically the same thing as SB 1065, but goes further in that it would prohibit any state or local public agency, by January 1, 2000, from leasing or purchasing any electronic data processing system that would impair or impede the public's access to the records, electronically or otherwise.

Support: Society of Professional Journalists; Sierra Club



(California)

Opposition: None Known

HISTORY

Source: Author

Related Pending Legislation: AB 1099 (Shelley) 1999-00

Prior Legislation: AB 179 (Bowen) 1997-98, vetoed



ASSEMBLY BILL

No. 1099

Introduced by Assembly Member Shelley

February 25, 1999

An act to amend Section 6253 of, and to add Section 6253.1 to, the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1099, as introduced, Shelley. Public records: computerized data.

The California Public Records Act requires every state or local agency to make public records open to inspection at all times during regular office hours and every person has a right to inspect any public record, except as specified. The act also requires each state or local agency to make promptly an exact copy of a public record available to any person upon payment of specified fees and requires that computer data be provided in a form determined by the agency.

This bill instead would require a state or local agency to provide computerized data in any form that is requested from among any of the forms used by the agency for the conduct of its business or for the making of copies for its own use or the use of any other agency. The bill, effective January 1, 2000, would provide that no state or local agency shall purchase, lease, create, or otherwise acquire any electronic data processing system for the storage, manipulation, or retrieval of public records unless it first determines that the system will not impair or impede the agency's ability to permit the public



inspection and examination of public records or provide electronic copies of the records.

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

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~~ *A copy of computerized data shall be*
20 *provided in any form that is requested from among any*
21 *of the forms used by the agency for the conduct of its*
22 *business or for the making of copies for its own use or the*
23 *use of any other agency. An agency shall not be required*
24 *to make copies of records available in any form other than*
25 *those used by the agency.*

26 (c) Each agency, upon a request for a copy of records
27 shall, within 10 days from receipt of the request,
28 determine whether the request, in whole or in part, seeks
29 copies of disclosable public records in the possession of
30 the agency and shall promptly notify the person making
31 the request of the determination and the reasons
32 therefor. In unusual circumstances, the time limit
33 prescribed in this section may be extended by written



1 notice by the head of the agency or his or her designee to
2 the person making the request setting forth the reasons
3 for the extension and the date on which a determination
4 is expected to be dispatched. No notice shall specify a date
5 that would result in an extension for more than 14 days.
6 As used in this section, "unusual circumstances" means,
7 but only to the extent reasonably necessary to the proper
8 processing of the particular request:

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

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

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

20 (d) Nothing in this chapter shall be construed to
21 permit an agency to obstruct the inspection or copying of
22 public records. Any notification of denial of any request
23 for records shall set forth the names and titles or positions
24 of each person 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 6253.1 is added to the Government
31 Code, to read:

32 6253.1. After January 1, 2000, no state or local agency
33 shall purchase, lease, create, or otherwise acquire any
34 electronic data processing system for the storage,
35 manipulation, or retrieval of public records unless it first
36 determines that the system will not impair or impede the
37 agency's ability to permit the public inspection and
38 examination of public records or provide electronic
39 copies of the records. Nothing in this section shall be
40 construed to require the retention by the agency of any



AB 1099

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- 1 obsolete electronic data processing system, computer
- 2 hardware, or software.

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AMENDED IN ASSEMBLY MAY 12, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1099

Introduced by Assembly Member Shelley

February 25, 1999

An act to amend Section 6253 of, and to add Section 6253.1 to, the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1099, as amended, Shelley. Public records: computerized data.

The California Public Records Act requires every state or local agency to make public records open to inspection at all times during regular office hours and every person has a right to inspect any public record, except as specified. The act also requires each state or local agency to make promptly an exact copy of a public record available to any person upon payment of specified fees and requires that computer data be provided in a form determined by the agency.

This bill instead would require a state or local agency to provide computerized data in any form that is requested from among any of the forms used by the agency for the conduct of its business or for the making of copies for its own use or the use of any other agency. The bill, effective January 1, 2000, would provide that no state or local agency shall purchase, lease, create, or otherwise acquire any electronic data processing system for the storage, manipulation, or retrieval of public records unless ~~it first determines that~~ the system will



not impair ~~or impede~~ the agency's ability to permit the public inspection and examination of public records or provide electronic copies of the records.

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

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. A
18 copy of computerized data shall be provided in any form
19 that is requested from among any of the forms used by the
20 agency for the conduct of its business or for the making
21 of copies for its own use or the use of any other agency.
22 An agency shall not be required ~~to make copies of records~~
23 ~~available in any form other than those used by the agency.~~
24 *to make available copies of records in any form other than*
25 *those already used by the agency for the requested*
26 *records. Regardless of the form requested, a copy of any*
27 *reasonable segregable portion of a record shall be*
28 *available to any person requesting the copy after deletion*
29 *of the portions that are exempted by law.*

30 (c) Each agency, upon a request for a copy of records
31 shall, within 10 days from receipt of the request,
32 determine whether the request, in whole or in part, seeks



1 copies of disclosable public records in the possession of
2 the agency and shall promptly notify the person making
3 the request of the determination and the reasons
4 therefor. In unusual circumstances, the time limit
5 prescribed in this section may be extended by written
6 notice by the head of the agency or his or her designee to
7 the person making the request setting forth the reasons
8 for the extension and the date on which a determination
9 is expected to be dispatched. No notice shall specify a date
10 that would result in an extension for more than 14 days.
11 As used in this section, "unusual circumstances" means,
12 but only to the extent reasonably necessary to the proper
13 processing of the particular request:

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

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

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

25 (d) Nothing in this chapter shall be construed to
26 permit an agency to obstruct the inspection or copying of
27 public records. Any notification of denial of any request
28 for records shall set forth the names and titles or positions
29 of each person responsible for the denial.

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

35 SEC. 2. Section 6253.1 is added to the Government
36 Code, to read:

37 6253.1. After January 1, 2000, no state or local agency
38 shall purchase, lease, create, or otherwise acquire any
39 electronic data processing system for the storage,
40 ~~manipulation, or retrieval of public records unless it first~~



1 ~~determines that the system will not impair or impede the~~
2 ~~manipulation, or retrieval of public records unless the~~
3 ~~system will not impair the agency's ability to permit the~~
4 public inspection and examination of public records or
5 provide electronic copies of the records. Nothing in this
6 section shall be construed to (a) require the retention by
7 the agency of any obsolete electronic data processing
8 system, computer hardware, or software, or (b) form, the
9 basis of a protest to the award of a public contract.

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AMENDED IN SENATE JULY 12, 1999
AMENDED IN ASSEMBLY MAY 12, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1099

Introduced by Assembly Member Shelley

February 25, 1999

An act to amend ~~Section 6253~~ *Sections 6253 and 6254.9* of, and to add Section 6253.1 to, the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1099, as amended, Shelley. Public records: computerized data.

~~The~~

(1) *The* California Public Records Act requires every state or local agency to make public records open to inspection at all times during regular office hours and every person has a right to inspect any public record, except as specified. The act also requires each state or local agency to make promptly an exact copy of a public record available to any person upon payment of specified fees and requires that computer data be provided in a form determined by the agency.

This bill instead would require a state or local agency to provide computerized data in any form *or format* that is requested from among any of the forms *or formats* used by the agency for the conduct of its business or for the making of copies for its own use or the use of any other agency. ~~The~~ *The*



bill would require that the notification of the denial of any record be in writing and state the explanation for the denial. Because these requirements would apply to local agencies as well as state agencies, this bill would impose a state-mandated local program.

The bill, effective January 1, 2000, would provide that no state or local agency shall purchase, lease, create, or otherwise acquire any electronic data-processing system for the storage, manipulation, or retrieval of public records unless the system will not, in light of the agency's data-processing requirements, significantly impair the agency's ability to permit the public inspection and examination of public records or provide electronic copies of the records.

(2) The act provides that computer software developed by a state or local agency is not itself a public record under the act and authorizes an agency to sell, lease, or license the software for commercial or noncommercial use. For purposes of this provision, the term "computer software" includes computer mapping systems, computer programs, and computer graphics systems.

This bill would provide that for purposes of this provision, "computer software" also includes proprietary information to the extent this information cannot be extracted from the computer program developed by or on behalf of the state or local agency.

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. *It is the intent of the Legislature that the*
 2 *California Public Records Act (Chapter 3.5*
 3 *(commencing with Section 6250) of Division 7 of Title 1*
 4 *of the Government Code) be an effective tool for the*
 5 *public to access and state and local agencies to share*
 6 *disclosable information, and to that end, both the*
 7 *requester of information and the state or local agency*
 8 *shall assist each other in describing in as precise terms as*
 9 *possible the information, format, and media being sought*
 10 *or that is available.*



1 SEC. 2. 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. A
18 copy of computerized data shall be provided in any form
19 *or format* that is requested from among any of the forms
20 *or formats* used by the agency for the conduct of its
21 business or for the making of copies for its own use or the
22 use of any other agency. An agency shall not be required
23 to make available copies of records in any form *or format*
24 other than those already used by the agency for the
25 requested records. Regardless of the form *or format*
26 requested, a copy of any reasonable segregable portion of
27 a record shall be available to any person requesting the
28 copy after deletion of the portions that are exempted by
29 law.

30 (c) Each agency, upon a request for a copy of records
31 shall, within 10 days from receipt of the request,
32 determine whether the request, in whole or in part, seeks
33 copies of disclosable public records in the possession of
34 the agency and shall promptly notify the person making
35 the request of the determination and the reasons
36 therefor. In unusual circumstances, the time limit
37 prescribed in this section may be extended by written
38 notice by the head of the agency or his or her designee to
39 the person making the request setting forth the reasons
40 for the extension and the date on which a determination



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

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

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

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

17 (d) Nothing in this chapter shall be construed to
18 permit an agency to obstruct the inspection or copying of
19 public records. Any notification of denial of any request
20 for records shall set forth the names and titles or positions
21 of each person responsible for the denial. *The notification*
22 *required under this subdivision shall be in writing and*
23 *shall state the explanation for the denial.*

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

29 ~~SEC. 2.~~

30 (f) *Nothing in this section shall be construed to require*
31 *the public agency to reconstruct a report or record in an*
32 *electronic format if the agency no longer has the report*
33 *or record available in an electronic format.*

34 SEC. 3. Section 6253.1 is added to the Government
35 Code, to read:

36 6253.1. After January 1, 2000, no state or local agency
37 shall purchase, lease, create, or otherwise acquire any
38 electronic data-processing system for the storage,
39 manipulation, or retrieval of public records unless the
40 system will not, *in light of the agency's data-processing*



1 *requirements, significantly* impair the agency's ability to
2 permit the public inspection and examination of public
3 records or provide electronic copies of the records.
4 Nothing in this section shall be construed to (a) require
5 the retention by the agency of any obsolete electronic
6 data-processing system, computer hardware, or software,
7 ~~or (b) form,~~ (b) *form* the basis of a protest to the award
8 of a public contract, or (c) *affect or require amendment*
9 *of a contract or lease that is in force on December 31, 1999.*

10 *SEC. 4. Section 6254.9 of the Government Code is*
11 *amended to read:*

12 6254.9. (a) Computer software developed by a state
13 or local agency is not itself a public record under this
14 chapter. The agency may sell, lease, or license the
15 software for commercial or noncommercial use.

16 (b) As used in this section, "computer software"
17 includes computer mapping systems, computer
18 programs, ~~and~~ computer graphics systems, *and*
19 *proprietary information to the extent this information*
20 *cannot be extracted from the computer program*
21 *developed by or on behalf of the state or local agency.*

22 (c) This section shall not be construed to create an
23 implied warranty on the part of the State of California or
24 any local agency for errors, omissions, or other defects in
25 any computer software as provided pursuant to this
26 section.

27 (d) Nothing in this section is intended to affect the
28 public record status of information merely because it is
29 stored in a computer. Public records stored in a computer
30 shall be disclosed as required by this chapter.

31 (e) Nothing in this section is intended to limit any
32 copyright protections.



AB 1099

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- 1 _____
- 2 CORRECTIONS
- 3
- 4 **Digest — Vote Key — Page 2.**
- 5 **Text — Pages 4 and 5.**
- 6 _____
- 7

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AMENDED IN SENATE SEPTEMBER 9, 1999

AMENDED IN SENATE JULY 12, 1999

AMENDED IN ASSEMBLY MAY 12, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1099

Introduced by Assembly Member Shelley

February 25, 1999

An act to ~~amend Sections 6253 and 6254.9 of, and to add Section 6253.1 to, the Government Code, relating to public records relating to elections.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1099, as amended, Shelley. ~~Public records; computerized data Elections: ballots.~~

Existing law provides for the numbering of state measures that are to be submitted to the voters, and the order in which these measures shall appear on the ballot.

This bill would provide that notwithstanding any other provision of law, the Secretary of State shall designate SCA 11 to appear as Proposition 1A on the ballot that is submitted to the voters at the March 7, 2000, statewide primary election.

This bill would provide that it is to take effect immediately as an urgency statute.

~~(1) The California Public Records Act requires every state or local agency to make public records open to inspection at all times during regular office hours and every person has a right to inspect any public record, except as specified. The act~~



~~also requires each state or local agency to make promptly an exact copy of a public record available to any person upon payment of specified fees and requires that computer data be provided in a form determined by the agency.~~

~~This bill instead would require a state or local agency to provide computerized data in any form or format that is requested from among any of the forms or formats used by the agency for the conduct of its business or for the making of copies for its own use or the use of any other agency. The bill would require that the notification of the denial of any record be in writing and state the explanation for the denial. Because these requirements would apply to local agencies as well as state agencies, this bill would impose a state-mandated local program.~~

~~The bill, effective January 1, 2000, would provide that no state or local agency shall purchase, lease, create, or otherwise acquire any electronic data processing system for the storage, manipulation, or retrieval of public records unless the system will not, in light of the agency's data processing requirements, significantly impair the agency's ability to permit the public inspection and examination of public records or provide electronic copies of the records.~~

~~(2) The act provides that computer software developed by a state or local agency is not itself a public record under the act and authorizes an agency to sell, lease, or license the software for commercial or noncommercial use. For purposes of this provision, the term "computer software" includes computer mapping systems, computer programs, and computer graphics systems.~~

~~This bill would provide that for purposes of this provision, "computer software" also includes proprietary information to the extent this information cannot be extracted from the computer program developed by or on behalf of the state or local agency.~~

~~Vote: majority 2/3. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes no.~~

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

1 SECTION 1. It is the intent of the Legislature that the
2



1 SECTION 1. Notwithstanding any other provision of
 2 law, the Secretary of State shall designate Senate
 3 Constitutional Amendment 11 of the 1999-2000 Regular
 4 Session to appear as Proposition 1A on the ballot that is
 5 submitted to the voters at the March 7, 2000, statewide
 6 primary election.

7 SEC. 2. This act is an urgency statute necessary for
 8 the immediate preservation of the public peace, health,
 9 or safety within the meaning of Article IV of the
 10 Constitution and shall go into immediate effect. The facts
 11 constituting the necessity are:

12 In order to ensure that the duties of the Secretary of
 13 State to designate Senate Constitutional Amendment 11
 14 of the 1999-2000 Regular Session on the March 7, 2000
 15 statewide primary election ballot as Proposition 1A are
 16 established at the earliest possible time, it is necessary
 17 that this act take effect immediately.

18 ~~California Public Records Act (Chapter 3.5~~
 19 ~~(commencing with Section 6250) of Division 7 of Title 1~~
 20 ~~of the Government Code) be an effective tool for the~~
 21 ~~public to access and state and local agencies to share~~
 22 ~~diselossible information, and to that end, both the~~
 23 ~~requester of information and the state or local agency~~
 24 ~~shall assist each other in describing in as precise terms as~~
 25 ~~possible the information, format, and media being sought~~
 26 ~~or that is available.~~

27 ~~SEC. 2. Section 6253 of the Government Code is~~
 28 ~~amended to read:~~

29 ~~6253. (a) Public records are open to inspection at all~~
 30 ~~times during the office hours of the state or local agency~~
 31 ~~and every person has a right to inspect any public record,~~
 32 ~~except as hereafter provided. Any reasonably segregable~~
 33 ~~portion of a record shall be available for inspection by any~~
 34 ~~person requesting the record after deletion of the~~
 35 ~~portions that are exempted by law.~~

36 ~~(b) Except with respect to public records exempt~~
 37 ~~from disclosure by express provisions of law, each state or~~
 38 ~~local agency, upon a request for a copy of records that~~
 39 ~~reasonably describes an identifiable record or records,~~
 40 ~~shall make the records promptly available to any person;~~



1 ~~upon payment of fees covering direct costs of duplication,~~
2 ~~or a statutory fee, if applicable. Upon request, an exact~~
3 ~~copy shall be provided unless impracticable to do so. A~~
4 ~~copy of computerized data shall be provided in any form~~
5 ~~or format that is requested from among any of the forms~~
6 ~~or formats used by the agency for the conduct of its~~
7 ~~business or for the making of copies for its own use or the~~
8 ~~use of any other agency. An agency shall not be required~~
9 ~~to make available copies of records in any form or format~~
10 ~~other than those already used by the agency for the~~
11 ~~requested records. Regardless of the form or format~~
12 ~~requested, a copy of any reasonable segregable portion of~~
13 ~~a record shall be available to any person requesting the~~
14 ~~copy after deletion of the portions that are exempted by~~
15 ~~law.~~

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

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

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

38 ~~(3) The need for consultation, which shall be~~
39 ~~conducted with all practicable speed, with another~~
40 ~~agency having substantial interest in the determination~~



1 of the request or among two or more components of the
2 agency having substantial subject matter interest therein.

3 ~~(d) Nothing in this chapter shall be construed to~~
4 ~~permit an agency to obstruct the inspection or copying of~~
5 ~~public records. Any notification of denial of any request~~
6 ~~for records shall set forth the names and titles or positions~~
7 ~~of each person responsible for the denial. The notification~~
8 ~~required under this subdivision shall be in writing and~~
9 ~~shall state the explanation for the denial.~~

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

15 ~~(f) Nothing in this section shall be construed to require~~
16 ~~the public agency to reconstruct a report or record in an~~
17 ~~electronic format if the agency no longer has the report~~
18 ~~or record available in an electronic format.~~

19 ~~SEC. 3. Section 6253.1 is added to the Government~~
20 ~~Code, to read:~~

21 ~~6253.1. After January 1, 2000, no state or local agency~~
22 ~~shall purchase, lease, create, or otherwise acquire any~~
23 ~~electronic data processing system for the storage,~~
24 ~~manipulation, or retrieval of public records unless the~~
25 ~~system will not, in light of the agency's data processing~~
26 ~~requirements, significantly impair the agency's ability to~~
27 ~~permit the public inspection and examination of public~~
28 ~~records or provide electronic copies of the records.~~
29 ~~Nothing in this section shall be construed to (a) require~~
30 ~~the retention by the agency of any obsolete electronic~~
31 ~~data processing system, computer hardware, or software,~~
32 ~~(b) form the basis of a protest to the award of a public~~
33 ~~contract, or (c) affect or require amendment of a~~
34 ~~contract or lease that is in force on December 31, 1999.~~

35 ~~SEC. 4. Section 6254.9 of the Government Code is~~
36 ~~amended to read:~~

37 ~~6254.9. (a) Computer software developed by a state~~
38 ~~or local agency is not itself a public record under this~~
39 ~~chapter. The agency may sell, lease, or license the~~
40 ~~software for commercial or nonecommercial use.~~



- 1 ~~(b) As used in this section, "computer software"~~
- 2 ~~includes computer mapping systems, computer~~
- 3 ~~programs, computer graphics systems, and proprietary~~
- 4 ~~information to the extent this information cannot be~~
- 5 ~~extracted from the computer program developed by or~~
- 6 ~~on behalf of the state or local agency.~~
- 7 ~~(e) This section shall not be construed to create an~~
- 8 ~~implied warranty on the part of the State of California or~~
- 9 ~~any local agency for errors, omissions, or other defects in~~
- 10 ~~any computer software as provided pursuant to this~~
- 11 ~~section.~~
- 12 ~~(d) Nothing in this section is intended to affect the~~
- 13 ~~public record status of information merely because it is~~
- 14 ~~stored in a computer. Public records stored in a computer~~
- 15 ~~shall be disclosed as required by this chapter.~~
- 16 ~~(e) Nothing in this section is intended to limit any~~
- 17 ~~copyright protections.~~

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Assembly Bill No. 1099

Passed the Assembly September 9, 1999

Chief Clerk of the Assembly

Passed the Senate September 9, 1999

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 1999, at _____ o'clock _____M.

Private Secretary of the Governor



CHAPTER _____

An act relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

AB 1099, Shelley. Elections: ballots.

Existing law provides for the numbering of state measures that are to be submitted to the voters, and the order in which these measures shall appear on the ballot.

This bill would provide that notwithstanding any other provision of law, the Secretary of State shall designate SCA 11 to appear as Proposition 1A on the ballot that is submitted to the voters at the March 7, 2000, statewide primary election.

This bill would provide that it is to take effect immediately as an urgency statute.

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

SECTION 1. Notwithstanding any other provision of law, the Secretary of State shall designate Senate Constitutional Amendment 11 of the 1999–2000 Regular Session to appear as Proposition 1A on the ballot that is submitted to the voters at the March 7, 2000, statewide primary election.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the duties of the Secretary of State to designate Senate Constitutional Amendment 11 of the 1999–2000 Regular Session on the March 7, 2000 statewide primary election ballot as Proposition 1A are established at the earliest possible time, it is necessary that this act take effect immediately.

Approved _____, 1999

Governor



Assembly Bill No. 1099

CHAPTER 843

An act relating to elections.

[Approved by Governor October 8, 1999. Filed
with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1099, Shelley. Elections: ballots.

Existing law provides for the numbering of state measures that are to be submitted to the voters, and the order in which these measures shall appear on the ballot.

This bill would provide that notwithstanding any other provision of law, the Secretary of State shall designate SCA 11 to appear as Proposition 1A on the ballot that is submitted to the voters at the March 7, 2000, statewide primary election.

This bill would provide that it is to take effect immediately as an urgency statute.

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

SECTION 1. Notwithstanding any other provision of law, the Secretary of State shall designate Senate Constitutional Amendment 11 of the 1999-2000 Regular Session to appear as Proposition 1A on the ballot that is submitted to the voters at the March 7, 2000, statewide primary election.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the duties of the Secretary of State to designate Senate Constitutional Amendment 11 of the 1999-2000 Regular Session on the March 7, 2000 statewide primary election ballot as Proposition 1A are established at the earliest possible time, it is necessary that this act take effect immediately.

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VOLUME 1
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 800-999-1997



A.B. No. 1099—Shelley.

An act relating to elections.

1999

- Feb. 25—Read first time. To print.
 Feb. 26—From printer. May be heard in committee March 28.
 Mar. 15—Referred to Com. on G.O.
 April 27—In committee: Set. first hearing. Hearing canceled at the request of author.
 May 11—From committee: Amend. and do pass as amended. (Ayes 15. Noes 0.) (May 10).
 May 12—Read second time and amended. Ordered returned to second reading.
 May 13—Read second time. To third reading.
 May 17—Read third time, passed, and to Senate. (Ayes 79. Noes 0. Page 1667.)
 May 17—In Senate. Read first time. To Com. on RLS. for assignment.
 June 2—Referred to Com. on JUD.
 June 29—In committee: Hearing postponed by committee.
 July 8—From committee: Amend. and do pass as amended. (Ayes 7. Noes 1.)
 July 12—Read second time, amended, and to third reading.
 Aug. 19—(Corrected August 18).
 Sept. 1—Read third time, passage refused. (Ayes 20. Noes 10. Page 2807.) Motion to reconsider made by Senator Schiff. Reconsideration granted. (Page 2808.)
 Sept. 7—To inactive file on motion of Senator Schiff.
 Sept. 9—From inactive file. To third reading. Read third time. Amended. Senate Rule 29.3 suspended. Read third time, passed, and to Assembly. (Ayes 29. Noes 0. Page 3177.)
 Sept. 9—In Assembly. Concurrence in Senate amendments pending.
 Sept. 10—Senate amendments concurred in. To enrollment. (Ayes 55. Noes 21. Page 4478.)
 Sept. 24—Enrolled and to the Governor at 12:45 p.m.
 Oct. 8—Approved by the Governor.
 Oct. 10—Chaptered by Secretary of State - Chapter 843, Statutes of 1999.

A.B. No. 1100—House.

An act to amend Section 12022.7 of the Penal Code, relating to sentencing.

1999

- Feb. 25—Read first time. To print.
 Feb. 26—From printer. May be heard in committee March 28.
 Mar. 15—Referred to Com. on PUB. S.
 April 14—In committee: Set. first hearing. Hearing canceled at the request of author.

2000

- Jan. 31—From committee: Filed with the Chief Clerk pursuant to Joint Rule 56. Died pursuant to Art. IV, Sec. 10(c) of the Constitution.

A.B. No. 1101—Committee on Budget (Ducheny (Chair), Cardenas, Cedillo, Correa, Firebaugh, Florez, Keeley, Nakano, Papan, Reyes, Scott, Strom-Martin, Torlakson, Wildman, and Wright).

An act relating to budget administration, and declaring the urgency thereof, to take effect immediately.

1999

- Feb. 25—Read first time. To print.
 Feb. 26—From printer. May be heard in committee March 28.
 Mar. 15—Referred to Com. on BUDGET.

2000

- Jan. 31—From committee: Filed with the Chief Clerk pursuant to Joint Rule 56. Died pursuant to Art. IV, Sec. 10(c) of the Constitution.

