

AMENDED IN SENATE FEBRUARY 7, 2003

Senate Constitutional Amendment

No. 1

Introduced by ~~Senator Burton~~ *Senators Burton and McPherson*

December 2, 2002

Senate Constitutional Amendment No. 1—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 3 of Article I thereof, relating to access to government information.

LEGISLATIVE COUNSEL'S DIGEST

SCA 1, as amended, Burton. Access to government information.

The California Constitution provides that the people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good. Various provisions of existing law, including, among others, the California Public Records Act, the Legislative Open Records Act, the Bagley-Keene Open Meeting Act, and the Ralph M. Brown Act, provide, with some exceptions, for public access to government records and meetings of government bodies.

This measure would provide that *the people have the right of access to information concerning the conduct of the people's business* ~~is a fundamental and necessary right of every person in this state. It would provide that, except as otherwise provided in the California Constitution, the people have a right to attend, observe, and be heard in the meetings of elected and appointed public bodies, and to inspect and obtain copies of records made or received in connection with the official business of any public body, agency, officer, or employee, or anyone acting on behalf of a public body, agency, officer, or employee. It would provide that the meetings of public bodies and writings of public~~

officials and agencies shall be open to public scrutiny and that the right of access shall be effectuated whenever it does not harm any investigation by a law enforcement agency or an overriding public or private interest.

This measure also would provide that any statute, court rule, or other authority, including those in effect on the effective date of this measure, shall be broadly construed if it effectuates the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this measure that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

~~This measure also would provide that nothing in its provisions supersedes or modifies the right to privacy guaranteed by the California Constitution, or limits the ability of the Legislature to provide by statute, or the Judicial Council to provide by rule not inconsistent with statute, for the protection of personal privacy affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy.~~

~~The measure would also authorize the Legislature to provide by statute and the Judicial Council to provide by rule for other limitations on the right of access to information concerning the conduct of the people's business solely to protect public safety or private property, to ensure the fair and effective administration of law, or to preserve public funds and resources. It would provide that an application of any of these limitations by any public body, agency, officer, or employee, or anyone acting on behalf of a public body, agency, officer, or employee to deny a right under these provisions shall be based on particularized findings that a specified harm to the public interest cannot be averted by a reasonable alternative, unless the information sought is a confidential communication between an attorney and his or her client conveyed to provide or obtain legal advice or representation.~~

~~This measure would establish special procedures for access to peace officer personnel records. It would also provide that its provisions shall not affect public access to judicial proceedings or the records of judicial proceedings.~~

~~The measure would provide that existing statutes and rules of court limiting access to information concerning the conduct of the people's business shall remain in effect, until, and except to the extent that, they~~



are amended, repealed, or judicially determined to be inconsistent with this measure.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

1 *Resolved by the Senate, the Assembly concurring, That the*
2 *Legislature of the State of California at its 2003–04 Regular*
3 *Session commencing on the second day of December 2002,*
4 *two-thirds of the membership of each house concurring, hereby*
5 *proposes to the people of the State of California that the*
6 *Constitution of the State be amended by amending Section 3 of*
7 *Article I thereof, to read:*

8 SEC. 3. (a) The people have the right to instruct their
9 representatives, petition government for redress of grievances,
10 and assemble freely to consult for the common good.

11 ~~(b) (1) Access to information concerning the conduct of the~~
12 *(b) (1) The people have the right of access to information*
13 *concerning the conduct of the people’s business, and, therefore, the*
14 *meetings of public bodies and the writings of public officials and*
15 *agencies shall be open to public scrutiny. This right of access shall*
16 *be effectuated whenever it does not harm any investigation by a*
17 *law enforcement agency or an overriding public or private*
18 *interest.*

19 *(2) A statute, court rule, or other authority, including those in*
20 *effect on the effective date of this subdivision, shall be broadly*
21 *construed if it furthers the people’s right of access, and narrowly*
22 *construed if it limits the right of access. A statute, court rule, or*
23 *other authority adopted after the effective date of this subdivision*
24 *that limits the right of access shall be adopted with findings*
25 *demonstrating the interest protected by the limitation and the need*
26 *for protecting that interest.*

27 *(3) Nothing in this subdivision supersedes or modifies the right*
28 *of privacy guaranteed by Section 1 or affects the construction of*
29 *any statute, court rule, or other authority to the extent that it*
30 *protects that right to privacy.*

31 ~~people’s business is a fundamental and necessary right of every~~
32 ~~person in this State. Public agencies and officers exist to aid in the~~
33 ~~conduct of the people’s business, and their actions and~~
34 ~~deliberations shall be open to public scrutiny. Therefore, except as~~
35 ~~provided pursuant to this Constitution, the people have a right to~~



1 attend, observe, and be heard in the meetings of elected and
2 appointed public bodies, and to inspect and obtain copies of
3 records made or received in connection with the official business
4 of any public body, agency, officer, or employee, or anyone acting
5 on behalf of a public body, agency, officer, or employee. For
6 purposes of this subdivision, information concerning the conduct
7 of the people's business includes, but is not limited to, information
8 regarding the official performance or professional qualifications
9 of elected officials or of appointed officials who have, or appear
10 to the public to have, substantial responsibility for, or control over,
11 the conduct of governmental affairs, and information regarding
12 the professional qualifications of candidates or applicants for these
13 elective or appointive positions. When a request seeks information
14 concerning the official performance or professional qualifications
15 of a person appointed as a peace officer, any adjudication of the
16 request shall comply with any procedure governing discovery or
17 disclosure enacted by the Legislature by statute.

18 (2) Nothing in this subdivision supersedes the right to privacy
19 guaranteed by Section 1 or limits the ability of the Legislature to
20 provide by statute, or of the Judicial Council to provide by rule not
21 inconsistent with statute, for the protection of personal privacy.

22 (3) The Legislature may provide by statute, and the Judicial
23 Council may provide by rule not inconsistent with statute, for other
24 limitations on the right of access to information concerning the
25 conduct of the people's business solely to protect public safety or
26 private property, to ensure the fair and effective administration of
27 law, or to preserve public funds and resources.

28 (4) Any application of a limitation authorized under paragraph
29 (3) by any public body, agency, officer, or employee, or anyone
30 acting on behalf of a public body, agency, officer, or employee, to
31 deny a right specified in paragraph (1) shall be based on
32 particularized findings that a specified harm to the public interest
33 cannot be averted by a reasonable alternative, unless the
34 information sought is a confidential communication between an
35 attorney and his or her client conveyed to provide or obtain legal
36 advice or representation. A denial of a right specified in paragraph
37 (1) based on particularized findings may not be broader in scope
38 or duration than necessary to avert the specified harm.

39 (5) This subdivision shall not affect public access to judicial
40 proceedings or the records of judicial proceedings.



1 ~~(6) All statutes and rules of court limiting access to information~~
2 ~~concerning the conduct of the people's business that are in effect~~
3 ~~on the operative date of this subdivision shall remain in force until,~~
4 ~~and except to the extent that, they are amended, repealed, or~~
5 ~~judicially determined to be inconsistent with this subdivision.~~

