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AMENDED IN ASSEMBLY MAY 26, 2006

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CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2927

Introduced by Assembly Member Leno

February 24, 2006

An act to amend Sections 6258 and 6259 of, and to add Sections 6253.3, 6257, and 6259.1 to, the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 2927, as amended, Leno. Public records.

The California Public Records Act requires state and local agencies to make their records available for public inspection and, upon request of any person, to provide a copy of any public record unless the record is exempt from disclosure.

This bill would, as of January 1, 2008, require any state agency that publishes an Internet Web site to include on the homepage of that site specified information that is not exempt from disclosure under the act about how to contact the agency, how to request records under the act, and a form for submitting online requests for records. It would authorize any person to bring an action to enforce the duty of a state

agency to post this information and would provide for penalties including monetary awards to be paid by the agency, with specified provisions to become operative on January 1, 2008.

The bill would also authorize a person to request the Attorney General to review a state or local agency's denial of a written request to inspect or receive a copy of a public record and would require the Attorney General to issue a written decision within 20 working days of the date the written request and written response or lack of response of an agency is received by the Attorney General. The bill would require the Attorney General to maintain copies of the opinions issued pursuant to these provisions, to publish the opinions annually in a special volume, and to make them available on the Internet.

This bill would require the Department of Justice to convene an advisory task force with a specified membership, to consider specified issues with respect to a statutory standard governing the posting of certain activities under the act, and to report its findings and recommendations to the Governor and the Legislature no later than ~~July 1~~ September 30, 2007.

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

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

1 SECTION 1. Section 6253.3 is added to the Government
2 Code, to read:
3 6253.3. Every state agency that publishes an Internet Web
4 site shall include on the homepage of that site, prominently
5 displayed without scrolling, the words "Public-Information
6 Records Center," which shall be followed by, or shall link to, on
7 another page, both of the following:
8 (a) Under the words "Whom to Contact," the title, mailing
9 address, telephone number, and e-mail address of the public
10 information officer or other person or persons to whom requests
11 for inspection or copying of records pursuant to the California
12 Public Records Act, or informal requests for simple factual
13 information, should be directed.
14 (b) Under the words "How to Request Records," the written
15 guidelines authorized or required under subdivision (a) of
16 Section 6253.4, and an HTML form for submitting online

1 requests under the California Public Records Act, consisting of
2 all of the following labeled fields:

- 3 (1) Today's date.
- 4 (2) My name (optional).
- 5 (3) My e-mail address (optional).
- 6 (4) My postal address (optional).
- 7 (5) My telephone number (optional).
- 8 (6) I am interested in the following records or information:
- 9 (7) Where can I inspect these records?
- 10 (8) Send me copies of the records.
- 11 (9) Send me a fee estimate before copying.

12 The HTML form shall be designed to send a copy of the
13 request immediately and automatically to the e-mail address
14 listed on the HTML form, if an e-mail address is provided by the
15 person submitting the form.

16 (c) This section shall become operative on January 1, 2008.

17 SEC. 2. Section 6257 is added to the Government Code, to
18 read:

19 6257. (a) A person may request the Attorney General to
20 review a state or local agency's denial of a written request to
21 inspect or receive a copy of a public record by delivering a copy
22 of the request and the written response by the agency denying, in
23 whole or in part, the request to the office of the Attorney General
24 within 20 days of receipt of the agency's written denial. In the
25 case of the failure of an agency to provide any response under
26 Section 6253 to a public records request within the time limits
27 specified by this chapter, the person may seek review by the
28 Attorney General by providing a copy of the request and the
29 circumstances under which it was sent to the agency no less than
30 20 days and no more than 40 days after the request was delivered
31 or mailed to the agency. The Attorney General may grant relief
32 from the 40-day time limit upon a showing by the person seeking
33 relief that he or she refrained from requesting review within the
34 40-day time limit because the person reasonably relied upon
35 representations of the agency that a response would be
36 forthcoming.

37 The person seeking review shall demonstrate by means of
38 written proof of service or other credible and reliable means that
39 a copy of his or her request for review has been delivered to the
40 denying agency. Within 20 working days of receipt of the request

1 for review that complies with the requirements of this
2 subdivision, the Attorney General shall issue a written opinion
3 stating whether the agency's response or lack of response
4 complied with provisions of this chapter.

5 (b) For good cause, the Attorney General may extend by 30
6 working days the time to issue an opinion under this section by
7 sending written notice to the complaining party and a copy to the
8 denying agency stating the reasons for the extension and the day
9 on which a decision is expected to be issued. As used in this
10 section, "good cause" means any of the following:

11 (1) The need to obtain additional information from the agency
12 or the requester.

13 (2) The need to conduct research on issues of first impression.

14 (3) An unmanageable workload.

15 (4) Unanticipated absence of staff assigned to a particular
16 request, or similar unavoidable circumstance.

17 (c) The Attorney General may solicit additional information or
18 explanation from the denying agency, including copies of the
19 records claimed to be exempt, or a detailed explanation of the
20 content of the information in those records. The denying agency
21 may, within 10 working days from the date of receipt of the
22 request pursuant to subdivision (a), submit any additional
23 information or explanation it deems relevant. However, the
24 records or other information for which an exemption is claimed
25 shall not be provided except in response to a request by the
26 Attorney General and shall not be disclosed by the Attorney
27 General. The Attorney General shall return or destroy
28 nondisclosable records received under this subdivision upon
29 completion of the review and shall not use the records for any
30 other purpose. The agency need not provide records or
31 information but failure to do so without adequate justification
32 under the circumstances of the case may be considered in
33 assessing the sufficiency of the agency's written denial under
34 review.

35 (d) If the Attorney General or the Department of Justice is the
36 agency that is the subject of the public records request, the
37 request for review under this section shall be treated as a request
38 for reconsideration and, where possible, shall be reviewed by
39 members of the Attorney General's office not involved in the
40 original decision.

1 (e) Upon completion of the opinion pursuant to this section,
2 the Attorney General shall immediately mail a copy of it to the
3 person requesting review and to the state or local agency that
4 denied access to the record in question.

5 (f) The Attorney General shall maintain copies of opinions
6 issued pursuant to this section at each of his or her legal offices
7 for purposes of public inspection. The Attorney General shall
8 cause to be published annually a special volume of opinions
9 issued under this section and shall make the opinions available
10 on the Internet. The Attorney General may charge a fee for the
11 sale of the volumes not to exceed the reasonable cost of
12 publication and distribution.

13 (g) Notwithstanding any other provision of law, except where
14 the records of the Attorney General or the Department of Justice
15 are at issue, neither the Attorney General, nor the Department of
16 Justice, nor any of its staff shall be subject to suit or to discovery
17 in any suit for any action taken as a result of review under this
18 section.

19 (h) An opinion issued under this section does not affect the
20 right of a person to enforce his or her right to inspect or to
21 receive a copy of any public record through an action pursuant to
22 Sections 6258 and 6259. A person shall not be required to
23 exhaust the administrative remedies available in this section prior
24 to filing a legal action. If a person elects to bring an action under
25 Sections 6258 and 6259, the Attorney General shall not proceed
26 under this section. If a person elects to seek review under this
27 section, no legal action may be brought against the agency whose
28 decision is the subject of the opinion until 10 days after the
29 issuance and mailing of the opinion. A person may withdraw, by
30 written notice, his or her request for review under this section if
31 the withdrawal notice is received by the Attorney General prior
32 to the issuance of an opinion.

33 (i) (1) Representation of a state agency by the Attorney
34 General involving advice as to a request for inspection or copies
35 of public records may provide a basis for that agency to claim an
36 attorney-client relationship that would preclude the Attorney
37 General from providing an opinion under this section regarding
38 that request.

39 (2) A state agency against which an action is brought pursuant
40 to Sections 6258 and 6259, after a receipt of an adverse opinion

1 under this section, is authorized to retain counsel; other than the
2 ~~Attorney General, who shall be compensated at the same rate that~~
3 ~~the Attorney General would charge for legal services for the~~
4 ~~defense of that action. Attorney General.~~

5 (3) Except as provided in this section, the Attorney General's
6 review under this section does not preclude the Attorney
7 General's representation of the affected state agency on any
8 matter.

9 (j) The time limits for the Attorney General to respond
10 pursuant to subdivisions (a) and (b) are directory not mandatory.

11 (k) This section shall not apply to a request for public records
12 made to a state agency by a party to a pending proceeding
13 involving the state agency or an employee of the state agency, or
14 a pending investigation by the state agency, if the Attorney
15 General has provided or is providing legal advice or
16 representation to the state agency with regard to the proceeding
17 or investigation.

18 SEC. 3. Section 6258 of the Government Code is amended to
19 read:

20 6258. Any person may institute proceedings for injunctive or
21 declarative relief or writ of mandate in any court of competent
22 jurisdiction to enforce his or her right to inspect or to receive a
23 copy of any public record or class of public records under this
24 chapter, or to enforce the duty of a state agency to post
25 information in its office and on its Internet Web site, if any, in
26 compliance with Section 6253.3. The times for responsive
27 pleadings and for hearings in these proceedings shall be set by
28 the judge of the court with the object of securing a decision as to
29 these matters at the earliest possible time.

30 SEC. 4. Section 6259 of the Government Code is amended to
31 read:

32 6259. (a) Whenever it is made to appear by verified petition
33 to the superior court of the county where the records or some part
34 thereof are situated that certain public records are being
35 improperly withheld from a member of the public, the court shall
36 order the officer or person charged with withholding the records
37 to disclose the public record or show cause why he or she should
38 not do so. The court shall decide the case after examining the
39 record in camera, if permitted by subdivision (b) of Section 915

1 of the Evidence Code, papers filed by the parties and any oral
2 argument and additional evidence as the court may allow.

3 (b) If the court finds that the public official's decision to
4 refuse disclosure is not justified under Section 6254 or 6255, he
5 or she shall order the public official to make the record public. If
6 the judge determines that the public official was justified in
7 refusing to make the record public, he or she shall return the item
8 to the public official without disclosing its content with an order
9 supporting the decision refusing disclosure.

10 (c) In an action filed on or after January 1, 1991, an order of
11 the court, either directing disclosure by a public official or
12 supporting the decision of the public official refusing disclosure,
13 is not a final judgment or order within the meaning of Section
14 904.1 of the Code of Civil Procedure from which an appeal may
15 be taken, but shall be immediately reviewable by petition to the
16 appellate court for the issuance of an extraordinary writ. Upon
17 entry of any order pursuant to this section, a party shall, in order
18 to obtain review of the order, file a petition within 20 days after
19 service upon him or her of a written notice of entry of the order,
20 or within such further time not exceeding an additional 20 days
21 as the trial court may for good cause allow. If the notice is served
22 by mail, the period within which to file the petition shall be
23 increased by five days. A stay of an order or judgment shall not
24 be granted unless the petitioning party demonstrates it will
25 otherwise sustain irreparable damage and probable success on the
26 merits. Any person who fails to obey the order of the court shall
27 be cited to show cause why he or she is not in contempt of court.

28 (d) The court shall award court costs and reasonable attorney
29 fees to the plaintiff should the plaintiff prevail in litigation filed
30 pursuant to this section. The costs and fees shall be paid by the
31 public agency of which the public official is a member or
32 employee and shall not become a personal liability of the public
33 official. If the court finds that the plaintiff's case is clearly
34 frivolous, it shall award court costs and reasonable attorney fees
35 to the public agency.

36 (e) (1) If a state or local agency (A) declines to comply with a
37 request to inspect or copy a record that is publicly accessible
38 pursuant to this chapter; (B) delays in responding to the request,
39 or in producing the requested records, for reasons that are
40 unstated to the requester, or that are unsupported by compelling

1 circumstances, or that otherwise demonstrate a lack of the
2 diligence required to make records available promptly, without
3 delay or obstruction, pursuant to the standards and deadlines of
4 Section 6253; (C) imposes conditions precedent to access to
5 records that are not authorized by this chapter, including, but not
6 limited to, the payment of copy fees in excess of an applicable
7 statutory fee or the direct cost of duplication pursuant to Section
8 6253 or 6253.9; or (D) otherwise frustrates timely and complete
9 access; and the court determines that the agency acted in bad
10 faith or with reckless disregard of the agency's obligations under
11 this chapter, the court, in its discretion, may make an award not
12 to exceed one hundred dollars (\$100) per day for each day, as
13 determined by the court, that the agency's action resulted in the
14 denial of the plaintiff's right to copy or inspect the record or
15 records in question.

16 (2) In determining the amount of an award under this
17 subdivision, the court shall consider all the facts and
18 circumstances surrounding the agency's decision, including, but
19 not limited to, all of the following:

20 (A) Whether the agency unreasonably failed to respond within
21 the time periods set forth in Section 6253 or otherwise engaged
22 in conduct that caused undue delay.

23 (B) Whether the agency's justification for denying the request
24 was reasonably based upon its perceived obligation to protect the
25 rights of persons or entities identified in the requested records.

26 (C) Whether the agency has developed publicly accessible
27 internal operating procedures or guidelines under Section 6253.4.

28 (D) Whether the plaintiff acted in good faith in pursuing the
29 request.

30 (E) Whether the agency's denial or other conduct inconsistent
31 with this chapter was based on a reasonable interpretation of the
32 law.

33 (f) An award pursuant to this section shall not exceed a total of
34 ten thousand dollars (\$10,000) for the record or records in
35 question.

36 SEC. 5. Section 6259.1 is added to the Government Code, to
37 read:

38 6259.1. (a) Whenever it is made to appear by verified
39 petition to the superior court of the county wherein the plaintiff
40 resides that a state agency has failed to comply with the

1 requirements of Section 6253.3, the court shall order the officer
2 or person charged with posting the information as required by
3 that section, or if no such person has been appointed, the senior
4 officer in the agency, to effectuate compliance forthwith or show
5 cause why he or she should not do so. The court shall decide the
6 case after examining papers filed by the parties and any oral
7 argument and additional evidence as the court may allow.

8 (b) If the court finds that the agency has failed to comply with
9 Section 6253.3, he or she shall order the officer or person ordered
10 to show cause to effectuate compliance forthwith.

11 (c) Upon entry of any order pursuant to this section, a party
12 shall, in order to obtain review of the order, file a petition within
13 20 days after service upon him or her of a written notice of entry
14 of the order, or within such further time not exceeding an
15 additional 20 days as the trial court may for good cause allow. If
16 the notice is served by mail, the period within which to file the
17 petition shall be increased by five days. A stay of an order or
18 judgment shall not be granted unless the petitioning party
19 demonstrates that it will otherwise sustain irreparable damage
20 and probable success on the merits. Any person who fails to obey
21 the order of the court shall be cited to show cause why he or she
22 is not in contempt of court.

23 (d) If the plaintiff prevails in an action filed pursuant to this
24 section, the court shall award court and discovery costs and
25 reasonable attorney's fees to the plaintiff. The costs and fees
26 shall be paid by the state agency of which the public official is a
27 member or employee and shall not become a personal liability of
28 the public official. If the court finds that the plaintiff's case is
29 clearly frivolous, it shall award court costs and reasonable
30 attorney's fees to the agency.

31 (e) This section shall become operative on January 1, 2008.

32 SEC. 6. (a) The Department of Justice shall convene an
33 advisory task force to consider and make recommendations for a
34 statutory standard governing the posting of requests and denials,
35 and public documents that are subject to disclosure, under the
36 California Public Records Act (Chapter 3.5 (commencing with
37 Section 6250) of Division 7 of Title 1 of the Government Code),
38 on the Internet Web sites of state agencies.

39 (b) Members of the task force shall include all of the
40 following:

1 (1) State agency or board representatives.

2 (2) Representatives of the Department of Information
3 Technology.

4 (3) Representatives of organizations with expertise in
5 technical policy and practices of Internet disclosure.

6 (4) Representatives of organizations with expertise in privacy
7 policy relevant to Internet disclosure.

8 (5) Representatives of organizations with expertise in fostering
9 public integrity and accountability.

10 (6) Representatives of organizations with expertise in
11 informed electoral participation.

12 (7) Representatives of organizations with expertise in
13 investigative journalism.

14 (8) Representatives of legislative staff, at the option of the
15 applicable legislative oversight entities, and to the extent not in
16 conflict with their legislative duties.

17 (c) The task force shall consider at least all of the following
18 issues:

19 (1) Whether it is of greater value to the public for state
20 agencies to automatically post, with appropriate security and
21 privacy controls, certain public records that are subject to
22 disclosure under the act on agency Internet Web sites rather than
23 making those records available to requesters on a request-only
24 basis. Specific consideration shall be given to records that relate
25 to the compensation and economic interests of key public
26 officials and consultants, and the performance of public agencies,
27 including, but not limited to, the settlement of litigation. Specific
28 consideration should also be given to what specific advantages or
29 disadvantages may be associated with an affirmative Internet
30 posting requirement.

31 (2) Whether eventual cost savings or increases in efficiency, or
32 both, are likely to offset the implementation and management
33 costs of requiring state agencies to automatically post disclosable
34 public records on their Internet Web sites, and whether certain
35 types of public records are better suited to automatic disclosure
36 based on these cost and efficiency considerations.

37 (3) Whether appropriate security measures are available, and
38 cost-effective, to ensure that the personal or proprietary
39 information contained in a public record that is posted on the

Internet is protected from the possibility of identity theft or other forms of misuse.

(4) Whether appropriate security measures are available, and cost-effective, to ensure that disclosable public records posted on the Internet are protected from alteration by third parties or other forms of misuse.

(5) Other issues that might arise from a statutory requirement that certain public records be automatically posted on agency Internet Web sites.

(d) The task force shall report its findings and recommendations to the Governor and the Legislature no later than ~~July 1~~ *September 30*, 2007, at which time it shall cease to exist.

CORRECTIONS:

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