

ASSEMBLY BILL

No. 2595

Introduced by Assembly Member Laird

February 22, 2008

An act to add Chapter 3.01 (commencing with Section 6204) to Division 7 of Title 1 of the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 2595, as introduced, Laird. Public records: unlawful possession.

Existing law provides that every officer having the custody of any public record, as specified, filed or deposited in any public office, or placed in his or her hands for any purpose, is punishable by imprisonment in the state prison for 2, 3, or 4 years if the officer willfully steals, removes, destroys, mutilates, faces, alters or falsifies the record, or causes another person to do so. Existing law also provides that every person not an officer who is guilty of any of these acts is punishable by imprisonment in the state prison or in a county jail for a period not exceeding one year, or by a fine not exceeding \$1,000, or both.

This bill would provide that, whenever the Secretary of State, in consultation with the State Archivist, has reasonable grounds to believe that public records belonging to the state or a local agency, including the Legislature and the judiciary, are in the possession of a person or entity not authorized by law to possess those records, the Secretary of State may issue a written notice demanding that person or entity, within 20 calendar days, either return the records or respond in writing and declare why the records do not belong to the state or a local agency. It would provide that if the person or entity fails to deliver the described records, fails to respond to the notice and demand within the required

time, or does not adequately demonstrate that the records do not belong to the state or a local agency, the Secretary of State may ask the Attorney General to petition the Superior Court in the county in which the records are located for an order requiring the return of those records. It would require the court, after a hearing, and upon a finding that the specified records are in the possession of a person or entity not authorized by law to possess the records, to order the records to be delivered to the State Archivist or other government official designated by the court. It would provide that, if the Attorney General recovers a record under these provisions, the court may award attorney’s fees and court costs. It also would provide that any state or local agency record that is in the custody of an organization or institution that adheres to professional standards recognized by the Society of American Archivists for the management and preservation of historical records shall not be subject to these provisions.

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. Chapter 3.01 (commencing with Section 6204)
2 is added to Division 7 of Title 1 of the Government Code, to read:

3
4 CHAPTER 3.01. PROTECTION AND RECOVERY OF PUBLIC
5 RECORDS
6

7 6204. (a) Whenever the Secretary of State, in consultation
8 with the State Archivist, has reasonable grounds to believe that
9 records belonging to the state or a local agency are in the
10 possession of a person or entity not authorized by law to possess
11 those records, he or she may issue a written notice demanding that
12 person or entity to do either of the following within 20 calendar
13 days of receiving the notice:

- 14 (1) Return the records to the appropriate state or local agency.
- 15 (2) Respond in writing and declare why the records do not
16 belong to the state or a local agency.

17 (b) The notice and demand shall identify the records claimed
18 to belong to the state or local agency with reasonable specificity,
19 and shall specify that the Secretary of State may undertake legal
20 action to recover the records if the person or entity fails to respond

1 in writing within the required time or does not adequately
2 demonstrate that the records do not belong to the state or a local
3 agency.

4 6204.1. (a) If a person or entity that receives a written notice
5 and demand from the Secretary of State pursuant to this chapter
6 fails to deliver the described records, fails to respond to the notice
7 and demand within the required time, or does not adequately
8 demonstrate that the records do not belong to the state or a local
9 agency, the Secretary of State may ask the Attorney General to
10 petition the superior court in the county in which the records are
11 located for an order requiring the return of those records.

12 (b) After a hearing, and upon a finding that the specified records
13 are in the possession of a person or entity not authorized by law
14 to possess the records, the court shall order the records to be
15 delivered to the State Archivist or other government official
16 designated by the court.

17 (c) The court may issue any order necessary to protect the
18 records from destruction, alteration, transfer, conveyance, or
19 alienation by the person or entity in possession of the records, and
20 may order that the records be surrendered into the custody of the
21 State Archivist pending the court's decision on the petition.

22 (d) If the Attorney General recovers a record under this section,
23 the court may award attorney's fees and court costs.

24 6204.2. Notwithstanding any other provision of this chapter,
25 any state or local agency record that is in the custody of an
26 organization or institution that adheres to professional standards
27 recognized by the Society of American Archivists for the
28 management and preservation of historical records shall not be
29 subject to the provisions of this chapter.

30 6204.3. As used in this act, a record means any record as
31 defined in subdivision (e) of Section 6252, except that it also means
32 any record of the legislative and judicial branches of state
33 government, as provided for in Article IV and Article VI of the
34 California Constitution.