

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1024**

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**Introduced by Assembly Member Harkey**

February 27, 2009

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~~An act to amend Section 6254.8 of the Government Code, relating to public records.~~ *An act to amend Sections 9074 and 9075 of, and to add Section 9929 to, the Government Code, and to amend Section 10295 of the Public Contract Code, relating to the Legislature.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1024, as amended, Harkey. ~~Public records.~~ *Legislature.*

*(1) The Legislative Open Records Act requires that a legislative record, as defined, be open to public inspection unless the record is exempt from disclosure under the act. The act provides that specified legislative committees are the custodians of all legislative records and requires that requests to inspect legislative records be submitted to the appropriate committee. Under the act, the custodian committee is required, upon receiving a request, to either produce the requested legislative record or justify in writing the withholding of the record by demonstrating that the record is exempt from disclosure under the act. The act exempts from disclosure, among other records, preliminary drafts, notes, and legislative memoranda, and correspondence of and to individual Members of the Legislature and their staff.*

*This bill would require the custodian committee that has received a request for a legislative record to search both the committee files and the individual Member files related to the request and to attest to having done so when responding to the request. This bill would further provide that demonstrating that a legislative record is exempt from disclosure*

*means articulating the exemption claimed and describing the general nature of the record withheld from inspection pursuant to that exemption. In addition, this bill would provide that the exemption for legislative memoranda applies only to preliminary legislative memoranda, and the exemption for correspondence applies only to correspondence between individual Members of the Legislature and their staff.*

*(2) Existing law requires that all meetings, as defined, of a house of the Legislature or a committee thereof be open and public and that all persons be permitted to attend.*

*This bill would provide that each Member of the Legislature who attends a meeting of the Assembly, the Senate, or any committee or subcommittee thereof in violation of the requirement that the meeting be open and public, with knowledge of the fact that the requirement was violated, is guilty of a misdemeanor.*

*(3) Existing law provides that all contracts entered into by any state agency for specified purposes are void unless and until approved by the Department of General Services. Specified contracts are exempt from this requirement, including any contract let by the Legislature.*

*This bill would instead provide that a contract let by the Legislature is exempt from the requirement that it be approved by the Department of General Services only in the case of an emergency where the contract is necessary for the immediate preservation of the public health, welfare, or safety, or protection of state property, or if the total amount payable under the contract is less than \$50,000.*

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

~~This bill would make a technical, nonsubstantive change to this provision:~~

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

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

1 SECTION 1. Section 9074 of the Government Code is amended  
2 to read:

1 9074. All requests to inspect any legislative record shall be  
2 made to the appropriate Rules Committee of each house of the  
3 Legislature or the Joint Rules Committee, except that all requests  
4 to inspect any legislative record in the possession of the Auditor  
5 General shall be made to the Joint Legislative Audit Committee.  
6 ~~Such~~ *These* committees shall be considered to have custody of all  
7 legislative records and shall be responsible for making all  
8 legislative records available for inspection. ~~Such~~ *These committees*  
9 *shall search both the committee files and the individual Member*  
10 *files related to the request made and shall attest to having done*  
11 *so when responding to the request. These* committees shall  
12 promptly inform any person whether any legislative record shall  
13 be made available for inspection. Such legislative records shall be  
14 made available for inspection promptly and without unnecessary  
15 delay. Whenever such committee withholds any legislative record  
16 from inspection, within four working days of the request to inspect  
17 such record, the committee shall justify in writing the withholding  
18 of such record by demonstrating that the record in question is  
19 exempt under the express provisions of this article or that on the  
20 facts of the particular case the public interest served by not making  
21 the record public clearly outweighs the public interest served by  
22 disclosure of the record, provided that when the Legislature is not  
23 in session, such committee shall furnish such written justification  
24 within 10 working days of the request to inspect such record. The  
25 Rules Committee of each house, the Joint Rules Committee, and  
26 the Joint Legislative Audit Committee shall adopt written  
27 guidelines stating the procedures to be followed when making  
28 legislative records available for inspection. *For purposes of this*  
29 *section, “demonstrating” means articulating the exemption claimed*  
30 *and describing the general nature of the legislative record withheld*  
31 *from inspection pursuant to that exemption.*

32 The amendment of this section made at the 1981–82 Regular  
33 Session of the Legislature does not constitute a change in, but is  
34 declaratory of, the existing law.

35 *SEC. 2. Section 9075 of the Government Code is amended to*  
36 *read:*

37 9075. Nothing in this article shall be construed to invalidate  
38 or affect the operation of Sections 10207, 10208, 10525, and 10526  
39 of this code, or Temporary Joint Rule 37 of the Senate and

- 1 Assembly in effect on the effective date of this article, or to require  
 2 the disclosure of records that are any of the following:
- 3 (a) Preliminary drafts, notes, or *preliminary* legislative  
 4 memoranda, except as provided in Section 9080.
  - 5 (b) Records pertaining to pending litigation to which the  
 6 Legislature is a party, or to claims made pursuant to Division 3.6  
 7 (commencing with Section 810) of Title 1, until the litigation or  
 8 claim has been finally adjudicated or otherwise settled.
  - 9 (c) Personnel, medical, or similar files, the disclosure of which  
 10 would constitute an unwarranted invasion of personal privacy,  
 11 provided that the Senate Committee on Rules, the Assembly  
 12 Committee on Rules, or the Joint Rules Committee shall determine  
 13 whether disclosure of these records constitutes an unwarranted  
 14 invasion of personal privacy.
  - 15 (d) Records pertaining to the names and phone numbers of  
 16 senders and recipients of telephone and telegraph communications,  
 17 provided that records of the total charges for any such  
 18 communication shall be open for inspection.
  - 19 (e) Records pertaining to the name and location of recipients of  
 20 automotive fuel or lubricants expenditures, provided that records  
 21 of the total charges for those expenditures shall be open for  
 22 inspection.
  - 23 (f) In the custody of or maintained by the Legislative Counsel,  
 24 except those records in the public data base maintained by the  
 25 Legislative Counsel that are described in Section 10248. Legislative  
 26 records shall not be transferred to the custody of the Legislative  
 27 Counsel to evade the disclosure provisions of this chapter.
  - 28 (g) In the custody of or maintained by the majority and minority  
 29 caucuses and majority and minority consultants of each house of  
 30 the Legislature, provided that legislative records shall not be  
 31 transferred to the custody of the majority and minority caucuses  
 32 and majority and minority consultants of each house of the  
 33 Legislature to evade the disclosure provisions of this chapter.
  - 34 (h) Correspondence ~~of and to~~ *between* individual Members of  
 35 the Legislature and their staff, except as provided in Section 9080.
  - 36 (i) Records the disclosure of which is exempted or prohibited  
 37 pursuant to provisions of federal or state law, including, but not  
 38 limited to, provisions of the Evidence Code relating to privilege.
  - 39 (j) Communications from private citizens to the Legislature,  
 40 except as provided in Section 9080.

1 (k) Records of complaints to or investigations conducted by, or  
2 records of security procedures of, the Legislature.

3 *SEC. 3. Section 9929 is added to the Government Code, to*  
4 *read:*

5 *9929. Each Member of the Legislature who attends a meeting*  
6 *of the Assembly, the Senate, or any committee or subcommittee*  
7 *thereof, where action is taken in violation of Section 9027, with*  
8 *knowledge of the fact that the meeting is in violation thereof, is*  
9 *guilty of a misdemeanor.*

10 *SEC. 4. Section 10295 of the Public Contract Code is amended*  
11 *to read:*

12 10295. (a) All contracts entered into by any state agency for  
13 (1) the acquisition of goods or elementary school textbooks, (2)  
14 services, whether or not the services involve the furnishing or use  
15 of goods or are performed by an independent contractor, (3) the  
16 construction, alteration, improvement, repair, or maintenance of  
17 property, real or personal, or (4) the performance of work or  
18 services by the state agency for or in cooperation with any person,  
19 or public body, are void unless and until approved by the  
20 department. Every contract shall be transmitted with all papers,  
21 estimates, and recommendations concerning it to the department  
22 and, if approved by the department, shall be effective from the  
23 date of the approval.

24 (b) This section applies to any state agency that by general or  
25 specific statute is expressly or impliedly authorized to enter into  
26 transactions referred to in this section.

27 (c) This section does not apply to the following:

28 (1) Any transaction entered into by the Trustees of the California  
29 State University, by the Board of Governors of the California  
30 Community Colleges, or by a department under the State Contract  
31 Act or the California State University Contract Law.

32 (2) Any contract of a type specifically mentioned and authorized  
33 to be entered into by the Department of Transportation under  
34 Section 14035 or 14035.5 of the Government Code, Sections 99316  
35 to 99319, inclusive, of the Public Utilities Code, or the Streets and  
36 Highways Code.

37 (3) Any contract entered into by the Department of  
38 Transportation that is not funded by money derived by state tax  
39 sources but, rather, is funded by money derived from federal or  
40 local tax sources.

1 (4) Any contract entered into by the Department of Personnel  
2 Administration for state employee benefits, occupational health  
3 and safety, training services, or combination thereof.

4 (5) Any contract let by the Legislature: *under either of the*  
5 *following circumstances:*

6 (A) *In the case of an emergency where the contract is necessary*  
7 *for the immediate preservation of the public health, welfare, or*  
8 *safety, or protection of state property.*

9 (B) *The total amount payable under the contract is less than*  
10 *fifty thousand dollars (\$50,000). A single transaction shall not be*  
11 *divided into multiple contracts for the purpose of evading the*  
12 *requirement of approval by the department.*

13 (6) Any contract entered into under the authority of Chapter 4  
14 (commencing with Section 11770) of Part 3 of Division 2 of the  
15 Insurance Code.

16 ~~SECTION 1. Section 6254.8 of the Government Code is~~  
17 ~~amended to read:~~

18 ~~6254.8. Every employment contract between a state or local~~  
19 ~~agency and any public official or public employee is a public record~~  
20 ~~that is not subject to the provisions of Sections 6254 and 6255.~~