

AMENDED IN ASSEMBLY JUNE 21, 2012

AMENDED IN SENATE MAY 29, 2012

AMENDED IN SENATE APRIL 9, 2012

AMENDED IN SENATE MARCH 29, 2012

AMENDED IN SENATE MARCH 12, 2012

SENATE BILL

No. 1002

Introduced by Senator Yee

February 6, 2012

An act to amend Section 6253.9 of, and to add Section 6253.91 to, the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

SB 1002, as amended, Yee. Public records: electronic format.

(1) The California Public Records Act requires state and local agencies to make their records available for public inspection and, upon request of a person, to provide a copy of a public record unless the record is exempt from disclosure. The act requires an agency that has information that constitutes an identifiable public record not otherwise exempt from disclosure that is in an electronic format to make that information available in an electronic format when requested by a person. The act requires the agency to make the information available in an electronic format in which it holds the information.

This bill would authorize an agency, upon request, to provide a copy of an electronic record in a format in which the text in the electronic record is searchable by commonly used software. The bill would require the requester to bear the cost of converting the electronic record into a searchable format.

(2) Existing law requires certain state and local agencies to make specified data or documents available to the public by various methods, including on the Internet.

This bill would require that in certain circumstances the data or document be made available to the public in an open format, as defined. The requirement would not apply if the state or local agency does not maintain the data or document in an open format.

By imposing new duties on local agencies, this bill would impose a state-mandated local program.

(3) 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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. Section 6253.9 of the Government Code is
2 amended to read:

3 6253.9. (a) Unless otherwise prohibited by law, an agency
4 that has information that constitutes an identifiable public record
5 not exempt from disclosure pursuant to this chapter that is in an
6 electronic format shall make that information available in an
7 electronic format when requested by a person and, when applicable,
8 shall comply with the following:

9 (1) The agency shall make the information available in an
10 electronic format in which it holds the information.

11 (2) Each agency shall provide a copy of an electronic record in
12 the format requested if the requested format is one that has been
13 used by the agency to create copies for its own use or for provision
14 to other agencies. The cost of duplication shall be limited to the
15 direct cost of producing a copy of a record in an electronic format.

16 (b) Notwithstanding paragraph (2) of subdivision (a), the
17 requester shall bear the cost of producing a copy of the record,
18 including the cost to construct a record, and the cost of

1 programming and computer services necessary to produce a copy
2 of the record when either of the following applies:

3 (1) In order to comply with subdivision (a), the public agency
4 would be required to produce a copy of an electronic record and
5 the record is one that is produced only at otherwise regularly
6 scheduled intervals.

7 (2) The request would require data compilation, extraction, or
8 programming to produce the record.

9 (c) This section shall not be construed to require the public
10 agency to reconstruct a record in an electronic format if the agency
11 no longer has the record available in an electronic format.

12 (d) If the request is for information in other than electronic
13 format, and the information also is in electronic format, the agency
14 may inform the requester that the information is available in
15 electronic format.

16 (e) Upon request, an agency may provide a copy of an electronic
17 record ~~in a format in which the text in the electronic record is~~
18 ~~searchable by commonly used software~~ *in an open format as*
19 *defined in Section 6253.91 of the Government Code* if the agency
20 does not already have the electronic record ~~in a searchable~~ *an open*
21 *format*. The requester shall bear the cost of converting the
22 electronic record into ~~a searchable~~ *an open* format, including the
23 cost of programming and computer services necessary to produce
24 the electronic record.

25 (f) This section shall not be construed to permit an agency to
26 make information available only in an electronic format.

27 (g) This section shall not be construed to require the public
28 agency to release an electronic record in the electronic form in
29 which it is held by the agency if its release would jeopardize or
30 compromise the security or integrity of the original record or of
31 any proprietary software in which it is maintained.

32 (h) This section shall not be construed to permit public access
33 to records held by an agency to which access is otherwise restricted
34 by statute.

35 SEC. 2. Section 6253.91 is added to the Government Code, to
36 read:

37 6253.91. (a) Whenever a state or local agency is required by
38 law to make electronic data or an electronic document available
39 to the public, and the agency ~~maintains the data or document in~~
40 ~~an open format, the data or document shall be provided in an open~~

1 ~~format~~ *has software, hardware, or services that allows it to retain*
2 *the data or document in an open format, it shall provide the data*
3 *or document in an open format.*

4 (b) (1) Whenever a state or local agency is required by law to
5 make data or a document available on the Internet, and the agency
6 ~~maintains the data or document in an open format, the data or~~
7 ~~document shall be posted in an open format~~ *has software,*
8 *hardware, or services that allows it to retain the data or document*
9 *in an open format, it shall post the data or document in an open*
10 *format.*

11 (2) This subdivision shall not apply to data or documents posted
12 on the Internet before January 1, 2013.

13 (3) This subdivision shall not be construed to require an agency
14 to repost existing data or documents currently posted and available
15 on the Internet.

16 (c) For purposes of this section, “open format” means all of the
17 following:

18 (1) The data or document can be located ~~and~~, downloaded, *and*
19 ~~read by open-source software~~ *a requester or a member of the*
20 *public using publicly accessible software* or public Internet
21 applications that are available ~~for free~~ *without any purchase price*
22 *or paid subscription fees, or both.*

23 (2) The data or the text in the document is machine readable
24 and can be searched, indexed, organized, categorized, and is
25 otherwise automatically processable.

26 (3) The data or document provides data granularity, definitions,
27 and structured formats in the original quality available to the state
28 or local agency.

29 ~~(d) For purposes of this section, “open-source software” means~~
30 ~~computer software that is provided under a free software license~~
31 ~~that permits users to study, change, improve, and distribute the~~
32 ~~software.~~

33 (e)

34 (d) This section shall not be construed to require a state or local
35 agency to do either of the following:

36 (1) Convert data or a document into an open format.

37 (2) Update its software or hardware.

38 (f)

39 (e) This section shall not be construed to require a public agency
40 to release data or a document in an open format if its release would

1 jeopardize or compromise the security or integrity of the original
2 record or of any proprietary software in which it is maintained.

3 ~~(g)~~

4 (f) This section shall not be construed to permit public access
5 to records held by an agency to which access is otherwise restricted
6 by law.

7 SEC. 3. If the Commission on State Mandates determines that
8 this act contains costs mandated by the state, reimbursement to
9 local agencies and school districts for those costs shall be made
10 pursuant to Part 7 (commencing with Section 17500) of Division
11 4 of Title 2 of the Government Code.

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