

AMENDED IN SENATE APRIL 3, 2014

SENATE BILL

No. 1337

Introduced by Senator DeSaulnier

February 21, 2014

An act to ~~add Sections 6253.11 and 6253.12 to amend Sections 6253 and 6253.9 of, and to add Section 7550.7 to, the Government Code, relating to public records.~~ *state government.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1337, as amended, DeSaulnier. ~~Public records: electronic copies and media requests.~~ *records and reports.*

~~The~~

(1) *The California Public Records Act requires every state or local agency to make public records open to inspection at all times during regular office hours and provides that every person has a right to inspect any public record, except as specified. Existing law requires a state or local agency to follow certain procedures with respect to electronic copies of public records and does not require a state or local agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format. Existing law requires a state or local agency to determine whether a request seeks copies of disclosable public records in the possession of the agency within 10 days from the receipt of the request, except as specified.*

~~This bill would require a state or local agency to provide an electronic copy of a public record created on or after January 1, 2016, when the public record is made available in response to a request. This bill would require a state or local agency to respond to a request for public records from a member of the press, as defined, within 14 days. By imposing additional duties upon local agencies in making public records available~~

~~for inspection, this bill would impose a state-mandated local program. This bill would also require, beginning January 1, 2016, a state agency to provide a public record as soon as possible and no later than 30 days of the date that the agency has determined that a request is for a disclosable public record in the possession of the agency.~~

~~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.~~

~~(2) Existing law generally sets out the requirements for the submission of written reports by public agencies to the Legislature, the Governor, the Controller, and state legislative and other executive entities.~~

~~This bill would require a written report, as defined, submitted by any state agency or department to the Legislature, a Member of the Legislature, or any state legislative or executive body to include a signed statement by the head of the agency or department declaring that the factual contents of the written report are true, accurate, and complete to the best of his or her knowledge.~~

~~This bill would also make any person who declares as true any material matter pursuant to these provisions that he or she knows to be false liable for a civil penalty not to exceed \$20,000.~~

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

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

- 1 SECTION 1. Section 6253 of the Government Code is amended
- 2 to read:
- 3 6253. (a) Public records are open to inspection at all times
- 4 during the office hours of the state or local agency and every person
- 5 has a right to inspect any public record, except as hereafter
- 6 provided. Any reasonably segregable portion of a record shall be
- 7 available for inspection by any person requesting the record after
- 8 deletion of the portions that are exempted by law.
- 9 (b) Except with respect to public records exempt from disclosure
- 10 by express provisions of law *and as provided in subdivision (e),*

1 each state or local agency, upon a request for a copy of records
2 that reasonably describes an identifiable record or records, shall
3 make the records promptly available to any person upon payment
4 of fees covering direct costs of duplication, or a statutory fee if
5 applicable. Upon request, an exact copy shall be provided unless
6 impracticable to do so.

7 (c) Each agency, upon a request for a copy of records, shall,
8 within 10 days from receipt of the request, determine whether the
9 request, in whole or in part, seeks copies of disclosable public
10 records in the possession of the agency and shall promptly notify
11 the person making the request of the determination and the reasons
12 therefor. In unusual circumstances, the time limit prescribed in
13 this section may be extended by written notice by the head of the
14 agency or his or her designee to the person making the request,
15 setting forth the reasons for the extension and the date on which
16 a determination is expected to be dispatched. No notice shall
17 specify a date that would result in an extension for more than 14
18 days. When the agency dispatches the determination, and if the
19 agency determines that the request seeks disclosable public records,
20 the agency shall state the estimated date and time when the records
21 will be made available. As used in this section, “unusual
22 circumstances” means the following, but only to the extent
23 reasonably necessary to the proper processing of the particular
24 request:

25 (1) The need to search for and collect the requested records
26 from field facilities or other establishments that are separate from
27 the office processing the request.

28 (2) The need to search for, collect, and appropriately examine
29 a voluminous amount of separate and distinct records that are
30 demanded in a single request.

31 (3) The need for consultation, which shall be conducted with
32 all practicable speed, with another agency having substantial
33 interest in the determination of the request or among two or more
34 components of the agency having substantial subject matter interest
35 therein.

36 (4) The need to compile data, to write programming language
37 or a computer program, or to construct a computer report to extract
38 data.

39 (d) ~~Nothing in this~~ This chapter shall *not* be construed to permit
40 an agency to delay or obstruct the inspection or copying of public

1 records. The notification of denial of any request for records
2 required by Section 6255 shall set forth the names and titles or
3 positions of each person responsible for the denial.

4 (e) *Beginning January 1, 2016, once a state agency has*
5 *determined that a request is for a disclosable public record in the*
6 *possession of the state agency pursuant to subdivision (c), the state*
7 *agency shall provide the requested public record as soon as*
8 *possible and no later than 30 days of determining that a record is*
9 *disclosable.*

10 (e)

11 (f) Except as otherwise prohibited by law, a state or local agency
12 may adopt requirements for itself that allow for faster, more
13 efficient, or greater access to records than prescribed by the
14 minimum standards set forth in this chapter.

15 *SEC. 2. Section 6253.9 of the Government Code is amended*
16 *to read:*

17 6253.9. (a) Unless otherwise prohibited by law, any agency
18 that has information that constitutes an identifiable public record
19 not exempt from disclosure pursuant to this chapter that is in an
20 electronic format shall make that information available in an
21 electronic format when requested by any person and, when
22 applicable, shall comply with the following:

23 (1) The agency shall make the information available in any
24 electronic format in which it holds the information.

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

30 (b) Notwithstanding paragraph (2) of subdivision (a), the
31 requester shall bear the cost of producing a copy of the record,
32 including the cost to construct a record, and the cost of
33 programming and computer services necessary to produce a copy
34 of the record when either of the following applies:

35 (1) In order to comply with the provisions of subdivision (a),
36 the public agency would be required to produce a copy of an
37 electronic record and the record is one that is produced only at
38 otherwise regularly scheduled intervals.

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

1 (c) ~~Nothing in~~ *Except as may be required by subdivision (h),*
2 this section shall *not* be construed to require the public agency to
3 reconstruct a record in an electronic format if the agency no longer
4 has the record available in an electronic format.

5 (d) If the request is for information in other than electronic
6 format, and the information also is in electronic format, the agency
7 may inform the requester that the information is available in
8 electronic format.

9 (e) Nothing in this section shall be construed to permit an agency
10 to make information available only in an electronic format.

11 (f) Nothing in this section shall be construed to require the public
12 agency to release an electronic record in the electronic form in
13 which it is held by the agency if its release would jeopardize or
14 compromise the security or integrity of the original record or of
15 any proprietary software in which it is maintained.

16 (g) Nothing in this section shall be construed to permit public
17 access to records held by any agency to which access is otherwise
18 restricted by statute.

19 (h) *A state agency shall provide an electronic copy of a public*
20 *record when the public record is made available in response to a*
21 *request. This subdivision shall only apply to a public record*
22 *created on or after January 1, 2016.*

23 SEC. 3. *Section 7550.7 is added to the Government Code, to*
24 *read:*

25 7550.7. (a) (1) *Notwithstanding any other law, a written report*
26 *submitted to the Legislature, a Member of the Legislature, or any*
27 *state legislative or executive body by any state agency or*
28 *department shall include a signed statement by the head of that*
29 *agency or department declaring that the factual contents of the*
30 *report are true, accurate, and complete to the best of his or her*
31 *knowledge.*

32 (2) *With respect to the Franchise Tax Board, the signed*
33 *statement described in paragraph (1) shall be made by the*
34 *executive officer of that board, and with respect to the State Board*
35 *of Equalization, the statement shall be made by the executive*
36 *director of that board.*

37 (b) *Paragraph (1) of subdivision (a) shall apply to the head of*
38 *every state agency or department, including, but not limited to,*
39 *elected officials of state government, and any state official whose*
40 *duties are prescribed by the California Constitution.*

1 (c) For purposes of this section, a “written report” is either of
2 the following:

3 (1) A document required by statute to be prepared and submitted
4 to the Legislature, or any state legislative or executive body.

5 (2) A document, summary, or statement requested by a Member
6 of the Legislature.

7 (d) The declaration in the signed statement as to the truth,
8 accuracy, and completeness of the factual contents of the written
9 report shall not apply to any forecasts, predictions,
10 recommendations, or opinions contained in the written report.

11 (e) Any person who declares as true any material matter
12 pursuant to this section that he or she knows to be false shall be
13 liable for a civil penalty not to exceed twenty thousand dollars
14 (\$20,000). The civil penalties provided for in this section shall be
15 exclusively assessed and recovered in a civil action brought in the
16 name of the people of the State of California in any court of
17 competent jurisdiction by the Attorney General.

18 ~~SECTION 1. Section 6253.11 is added to the Government~~
19 ~~Code, to read:~~

20 ~~6253.11. A public agency shall provide an electronic copy of~~
21 ~~a public record when the public record is made available in~~
22 ~~response to a request.~~

23 ~~SEC. 2. Section 6253.12 is added to the Government Code, to~~
24 ~~read:~~

25 ~~6253.12. (a) A public agency shall respond to a request for~~
26 ~~public records from a member of the press within 14 days.~~

27 ~~(b) For the purposes of this section, “member of the press”~~
28 ~~means a person engaged in the regular gathering, preparing,~~
29 ~~collecting, photographing, recording, writing, editing, reporting,~~
30 ~~or publishing of information that concerns local, national, or~~
31 ~~international events or other matters of public interest for~~
32 ~~dissemination to the public.~~

33 ~~SEC. 3. If the Commission on State Mandates determines that~~
34 ~~this act contains costs mandated by the state, reimbursement to~~
35 ~~local agencies and school districts for those costs shall be made~~
36 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
37 ~~4 of Title 2 of the Government Code.~~

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