

AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2853

Introduced by Assembly Member Gatto

February 19, 2016

An act to amend Section 6253 of the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 2853, as amended, Gatto. Public records.

The California Public Records Act requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless the records are exempt from disclosure. The act prohibits limitations on access to a public record based upon the purpose for which the record is being requested if the record is otherwise subject to disclosure, authorizes public agencies to adopt requirements for themselves that allow for faster, more efficient, or greater access to records, and requires local agencies that voluntarily post public records on an open data Internet Resource, as defined, to post those public records in an open format that meets specified criteria.

This bill would authorize a public agency that posts a public record on its Internet Web site to refer a person that requests to inspect or obtain a copy of the public record to the public agency's Internet Web site where the public record is posted.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating

the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

To the extent that this bill would authorize additional local agency expenditures in complying with the California Public Records Act, this bill would impose a state-mandated local program.

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 no reimbursement is required by this act for a specified reason.

~~The California Public Records Act defines the term “public record,” for purposes of that act, to mean any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.~~

~~This bill would express the intent of the Legislature to subsequently amend this bill to include provisions that would clarify that the term “public record,” for purposes of that act, includes those writings kept on the private cellular phone or other electronic device of an elected official, official, or employee of a public agency if those records relate to the public’s business.~~

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

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, each state or local agency, upon a
- 11 request for a copy of records that reasonably describes an
- 12 identifiable record or records, shall make the records promptly

1 available to any person upon payment of fees covering direct costs
2 of duplication, or a statutory fee if applicable. Upon request, an
3 exact copy shall be provided unless impracticable to do so.

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

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

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

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

33 (4) The need to compile data, to write programming language
34 or a computer program, or to construct a computer report to extract
35 data.

36 (d) Nothing in this chapter shall be construed to permit an
37 agency to delay or obstruct the inspection or copying of public
38 records. The notification of denial of any request for records
39 required by Section 6255 shall set forth the names and titles or
40 positions of each person responsible for the denial.

1 (e) Except as otherwise prohibited by law, a state or local agency
2 may adopt requirements for itself that allow for faster, more
3 efficient, or greater access to records than prescribed by the
4 minimum standards set forth in this chapter.

5 (f) *Notwithstanding subdivisions (a) through (e), inclusive, if a*
6 *person requests a public record under this act that the public*
7 *agency has posted on the public agency’s Internet Web site, the*
8 *public agency may comply with the requirements of this act by*
9 *referring that person to public agency’s Internet Web site where*
10 *the information is posted.*

11 *SEC. 2. The Legislature finds and declares that Section 1 of*
12 *this act, which amends Section 6253 of the Government Code,*
13 *imposes a limitation on the public’s right of access to the meetings*
14 *of public bodies or the writings of public officials and agencies*
15 *within the meaning of Section 3 of Article I of the California*
16 *Constitution. Pursuant to that constitutional provision, the*
17 *Legislature makes the following findings to demonstrate the interest*
18 *protected by this limitation and the need for protecting that*
19 *interest:*

20 *The state has a very strong interest in ensuring both the*
21 *transparency of, and efficient use of limited resources by, public*
22 *agencies. In order to protect this interest, it is necessary to allow*
23 *public agencies that have already increased the public’s access*
24 *to public records by posting public records on the public agencies’*
25 *Internet Web sites to refer requests for posted public records to*
26 *these Internet Web sites.*

27 *SEC. 3. No reimbursement is required by this act pursuant to*
28 *Section 6 of Article XIII B of the California Constitution because*
29 *the only costs that may be incurred by a local agency or school*
30 *district under this act would result from a legislative mandate that*
31 *is within the scope of paragraph (7) of subdivision (b) of Section*
32 *3 of Article I of the California Constitution.*

33 ~~SECTION 1. It is the intent of the Legislature to subsequently~~
34 ~~amend this bill to include provisions that would clarify that the~~
35 ~~term “public record,” for purposes of the California Public Records~~
36 ~~Act, includes those writings kept on the private cellular phone or~~
37 ~~other electronic device of an elected official, official, or employee~~
38 ~~or a public agency if those records relate to the public’s business.~~

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