

AMENDED IN ASSEMBLY APRIL 13, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1245

Introduced by Assembly Member Monning

February 27, 2009

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 1245, as amended, Monning. Recovery of public records.

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, defaces, 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 by both.

This bill would authorize the Secretary of State, whenever the secretary, in consultation with the State Archivist, has reasonable grounds to believe that a public record belonging to a state or a local agency is in the possession of a person, organization, or institution not authorized by law to possess the record, to issue a written notice demanding that person, organization, or institution within 20 calendar

days, either to return the record or respond in writing and declare why the record does not belong to the state or a local agency.

The bill would also authorize the secretary, if the person, organization, or institution does not deliver the described record, does not respond to the notice and demand within the required time, or does not adequately demonstrate that the record does not belong to the state or a local agency, to ask the Attorney General to petition the superior court in the county in which the record is located for an order requiring the return of the record. The court would be required, after a hearing, and upon a finding that the specified record is in the possession of a person, organization, or institution not authorized by law to possess the record, to order the record to be delivered to the State Archivist or other government official designated by the court.

The bill would provide that the prevailing party may be awarded reasonable attorney's fees and costs in an action brought under these provisions. A local agency would be authorized to request the Secretary of State to act on its behalf under these circumstances and the bill would set forth the criteria pursuant to which the local agency could undertake these procedures on its own behalf. The bill would exempt from these provisions an organization or institution that follows professional practices recommended by the Society of American Archivists for the management, care, and preservation of historical records and that makes records in its possession available for inspection in accordance with disclosure requirements applicable to public agencies.

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. PUBLIC RECORDS PROTECTION AND RECOVERY
- 5
- 6 6204. (a) For purposes of this chapter, the following definitions
- 7 shall apply:
- 8 (1) "Archivist" means the Keeper of the Archives, as specified
- 9 in Section 12227.
- 10 (2) "Record" has the same meaning as "public records" is
- 11 defined in subdivision (e) of Section 6252, and includes, but is not

1 limited to, any writing containing information relating to the
2 conduct of the public's business prepared, owned, used, or retained
3 by a state or local agency regardless of physical form or
4 characteristics.

5 (3) "Secretary" means the Secretary of State.

6 (b) Whenever the secretary, in consultation with the archivist,
7 has reasonable grounds to believe that a record belonging to the
8 state or a local agency is in the possession of a person, organization,
9 or institution not authorized by law to possess those records, the
10 secretary may issue a written notice demanding that person,
11 organization, or institution to do either of the following within 20
12 calendar days of receiving the notice:

13 (1) Return the record to the appropriate state or local agency.

14 (2) Respond in writing and declare why the record does not
15 belong to the state or a local agency.

16 (c) The notice and demand issued pursuant to subdivision (b)
17 shall identify the record claimed to belong to the state or local
18 agency with reasonable specificity, and shall state that the secretary
19 is authorized to take legal action to recover the record if the person,
20 organization, or institution fails to respond in writing within the
21 required time or does not adequately demonstrate that the record
22 does not belong to the state or a local agency.

23 (d) The secretary shall send the notice and demand specified in
24 subdivision (b) by certified or registered mail, return receipt
25 requested.

26 6204.1. (a) If a person, organization, or institution that receives
27 a written notice and demand from the secretary pursuant to Section
28 6204 does not deliver the described record, does not respond to
29 the notice and demand within the required time, or does not
30 adequately demonstrate that the record does not belong to the state
31 or a local agency, the secretary may ask the Attorney General to
32 petition the superior court in the county in which the records are
33 located for an order requiring the return of the record.

34 (b) After a hearing, and upon a finding that the specified record
35 is in the possession of a person, organization, or institution not
36 authorized by law to possess the record, the court shall order the
37 record to be delivered to the archivist or other government official
38 designated by the court.

39 (c) The court may issue any order necessary to protect the record
40 from destruction, alteration, transfer, conveyance, or alienation by

1 the person, organization, or institution in possession of the record,
2 and may order the record to be surrendered into the custody of the
3 archivist pending the court's decision on the petition.

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

6 6204.2. (a) If a local agency has reasonable grounds to believe
7 that a record belonging to that local agency is in the possession of
8 a person, organization, or institution not authorized by law to
9 possess the record, it may request the secretary to act on its behalf
10 pursuant to the procedures specified in Sections 6204 and 6204.1,
11 or undertake on its own behalf the same procedure available to the
12 secretary under those sections, subject to subdivisions (b), (c), and
13 (d).

14 (b) If a person, organization, or institution that receives a written
15 notice and demand from a local agency issued pursuant to this
16 section does not deliver the described record, does not respond to
17 the notice and demand within the required time, or does not
18 adequately demonstrate that the record does not belong to the local
19 agency, the local agency may request the county district attorney
20 or, where applicable, the city attorney, to petition the superior court
21 in the county in which the record is located for an order requiring
22 the return of the record.

23 (c) After a hearing, and upon a finding that a specified record
24 is in the possession of a person, organization, or institution not
25 authorized by law to possess the record, the court shall order the
26 record to be delivered to the local agency or a government official
27 designated by the court.

28 (d) The court may issue any order necessary to protect the record
29 from destruction, alteration, transfer, conveyance, or alienation by
30 the person, organization, or institution in possession of the record,
31 and may order the record to be surrendered into the custody of the
32 local agency pending the court's decision on the petition.

33 6204.3. (a) Notwithstanding any other provision of this chapter,
34 an organization or institution having *physical* custody of a record
35 shall be exempt from Sections 6204 to 6204.2, inclusive, if the
36 organization or institution meets both of the following
37 requirements:

38 (1) It follows professional practices recommended by the Society
39 of American Archivists, as used by the archivist, for the
40 management, care, and preservation of historical records.

1 (2) It requires that all records it receives or maintains are subject
2 to inspection to the same extent that the records would be subject
3 to inspection and not exempt from disclosure pursuant to Chapter
4 3.5 (commencing with Section 6250) if received or maintained by
5 a public agency.

6 (b) If an organization or institution refuses public inspection of
7 a record in its custody in violation of the requirements described
8 in paragraph (2) of subdivision (a), the archivist or local agency,
9 or a designated representative, shall contact the organization or
10 institution to inform it of those requirements and, if appropriate,
11 facilitate inspection of the record. If an organization or institution
12 continues to deny public inspection consistent with paragraph (2)
13 of subdivision (a), the secretary, on behalf of the archivist or the
14 local agency may pursue recovery of the records under this chapter.

15 6204.4. In an action brought pursuant to this chapter, the court
16 may award reasonable attorney's fees and costs to the prevailing
17 party.