

AMENDED IN SENATE APRIL 29, 2003

**SENATE BILL**

**No. 772**

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**Introduced by Senator Bowen**

February 21, 2003

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An act to amend Section 25322 of the Public Resources Code, relating to the State Energy Resources Conservation and Development Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 772, as amended, Bowen. State Energy Resources Conservation and Development Commission: reports: confidentiality and disclosure.

Existing law requires the State Energy Resources Conservation and Development Commission to manage a data collection system for obtaining information necessary to develop specified energy policy reports and analyses and energy shortage contingency planning efforts, and to support other duties of the commission, as prescribed. Existing law requires that the data collection system include specified requirements regarding the confidentiality of the information collected by the commission. Subject to specified confidentiality requirements, existing law authorizes the commission to grant requests for disclosure of records of information collected by the commission for the data collection system.

This bill would require the commission to grant a disclosure request if disclosure will not result in an unfair competitive disadvantage to the person ~~that~~ *who* submitted the information, unless the public interest served by not disclosing the information clearly outweighs the public interest served by disclosing the information, or unless another applicable provision of law exempts the information from disclosure.

*The bill would exempt information withheld by the commission from disclosure under the California Public Records Act.*

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. Section 25322 of the Public Resources Code is  
2 amended to read:  
3 25322. (a) The data collection system managed pursuant to  
4 Section 25320 shall include the following requirements regarding  
5 the confidentiality of the information collected by the  
6 commission:  
7 (1) A person required to present information to the  
8 commission pursuant to this section may request that specific  
9 information be held in confidence. The commission shall grant the  
10 request in the following circumstances:  
11 (A) The information is exempt from disclosure under the  
12 California Public Records Act, Chapter 3.5 (commencing with  
13 Section 6250) of Division 7 of Title 1 of the Government Code.  
14 (B) The information satisfies the confidentiality requirements  
15 of Article 2 (commencing with Section 2501) of Chapter 7 of  
16 Division 2 of Title 20 of the California Code of Regulations, as  
17 those regulations existed on January 1, 2002.  
18 (C) On the facts of the particular case, the public interest served  
19 by not disclosing the information clearly outweighs the public  
20 interest served by disclosure of the information.  
21 (2) The commission may, by regulation, designate certain  
22 categories of information as confidential, which removes the  
23 obligation to request confidentiality for that information.  
24 (3) Confidential information pertinent to the responsibilities of  
25 the commission specified in this chapter that is obtained by another  
26 state agency; or the California Independent System Operator or its  
27 successor, shall be available to the commission and shall be treated  
28 in a confidential manner.  
29 (4) Information presented to or developed by the commission  
30 and deemed confidential pursuant to this section shall be held in  
31 confidence by the commission. Confidential information shall be  
32 aggregated or masked to the extent necessary to assure  
33 confidentiality if public disclosure of the specific information



1 would result in an unfair competitive disadvantage to the person  
2 supplying the information.

3 (b) Requests for records of information shall be handled as  
4 follows:

5 (1) If the commission receives a written request to publicly  
6 disclose information that is being held in confidence pursuant to  
7 paragraph (1) or (2) of subdivision (a), the commission shall  
8 provide the person making the request with written justification  
9 for the confidential designation and a description of the process to  
10 seek disclosure.

11 (2) If the commission receives a written request to publicly  
12 disclose a disaggregated or unmasked record of information  
13 designated as confidential under paragraph (1) or (2) of  
14 subdivision (a), notice of the request shall be provided to the  
15 person ~~that~~ *who* submitted the record. Upon receipt of the notice,  
16 the person ~~that~~ *who* submitted the record may, within five working  
17 days of receipt of the notice, provide a written justification of the  
18 claim of confidentiality.

19 (3) The commission or its designee shall rule on a request made  
20 pursuant to paragraph (2) on or before 20 working days after its  
21 receipt. The commission shall deny the request if the disclosure  
22 will result in an unfair competitive disadvantage to the person ~~that~~  
23 *who* submitted the information. If disclosure will not result in an  
24 unfair competitive disadvantage to the person ~~that~~ *who* submitted  
25 the information, the commission shall grant the request unless the  
26 public interest served by not disclosing the information clearly  
27 outweighs the public interest served by disclosing the information,  
28 or unless another applicable provision of law exempts the  
29 information from disclosure.

30 (4) If the commission grants the request pursuant to paragraph  
31 (3), it shall withhold disclosure for a reasonable amount of time,  
32 not to exceed 14 working days, to allow the submitter of the  
33 information to seek judicial review.

34 (c) Information submitted to the commission pursuant to this  
35 section is not confidential if the person submitting the information  
36 has made it public.

37 (d) The commission shall establish, maintain, and use  
38 appropriate security practices and procedures to ensure that the  
39 information it has designated as confidential, or received with a  
40 confidential designation from another government agency, is



1 protected against disclosure other than that authorized using the  
2 procedures in subdivision (b). The commission shall incorporate  
3 the following elements into its security practices and procedures:  
4 (1) Commission employees shall sign a confidential data  
5 disclosure agreement providing for various remedies, including,  
6 but not limited to, fines and termination for wrongful disclosure  
7 of confidential information.  
8 (2) Commission employees, or contract employees of the  
9 commission, shall only have access to confidential information  
10 when it is appropriate to their job assignments and if they have  
11 signed a nondisclosure agreement.  
12 (3) Computer data systems that hold confidential information  
13 shall include sufficient security measures to protect the data from  
14 inadvertent or wrongful access by unauthorized commission  
15 employees and the public.  
16 (e) Data collected by the commission on petroleum fuels in  
17 Section 25320 shall be subject to the confidentiality provisions of  
18 Sections 25364 to 25366, inclusive.  
19 (f) *Information withheld by the commission pursuant to this*  
20 *section is not subject to disclosure under the California Public*  
21 *Records Act (Chapter 3.5 (commencing with Section 6250) of*  
22 *Division 7 of Title 1 of the Government Code).*

