

Introduced by Senator WaltersFebruary 24, 2012

An act to amend Sections 9072, 9073, 9074, 9075, 9077, and 9080 of, to add Section 9081 to, and to repeal Section 9079 of, the Government Code, relating to legislative records.

LEGISLATIVE COUNSEL'S DIGEST

SB 1442, as introduced, Walters. Legislative Open Records Act.

The Legislative Open Records Act (LORA) requires that a legislative record, as defined, be open to public inspection unless the record is exempt from disclosure under the act.

This bill would amend LORA to broaden the records subject to disclosure by making the following changes, among others:

(a) Include as a legislative record a writing that contains information relating to the conduct of the public's business prepared, owned, used, retained, or subject to control by a consultant of the Legislature.

(b) Remove the exemption under LORA that allows the Legislature to withhold a record if on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

(c) Replace the exemption under LORA for preliminary drafts, notes, and legislative memorandum with an exemption for intralegislativememoranda containing the author's recommendations or opinions, if the public interest in withholding the record is manifestly greater than the public interest in disclosure.

(d) Remove the exemption under LORA for correspondence of and to individual Members of the Legislature and their staff.

(e) Remove the exemption under LORA for records maintained or in the custody of the Legislative Counsel.

(f) Remove the exemption under LORA for records maintained or in the custody of the majority and minority caucuses, and the majority and minority consultants, of each house of the Legislature.

(g) Replace the exemption under LORA for records of complaints to or investigations conducted by, or records of security procedures of, the Legislature with an exemption for records the disclosure of which reasonably could be expected to pose a substantial security risk to the Legislature.

The bill would require a record subject to disclosure to be provided as an electronic file, whenever possible, at the option of the requester. The bill would require certain information relating to legislative expenditures and meetings and appointments of Members of the Legislature to be produced and published by the Legislature on a monthly basis. The bill would repeal a provision of LORA authorizing the court to award costs and attorney’s fees to the Legislature if a clearly frivolous suit is brought against the Legislature pursuant to LORA. The bill would prohibit the Legislature from selling, exchanging, furnishing, or otherwise providing a legislative record subject to disclosure to a private entity in a manner that prevents the Legislature or any state agency from disclosing the record directly.

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 9072 of the Government Code is amended
2 to read:
3 9072. As used in this article:
4 (a) “Person” includes any natural person, corporation,
5 partnership, limited liability company, firm, or association.
6 (b) “Legislature” includes any Member of the Legislature, any
7 legislative officer, any standing, joint, or select committee or
8 subcommittee of the Senate and Assembly, and any other agency
9 ~~or~~, employee, *or consultant* of the Legislature.
10 (c) “Legislative records” means any writing prepared on or after
11 December 2, 1974, ~~which~~ *that* contains information relating to the
12 conduct of the public’s business prepared, owned, used, ~~or~~ retained,
13 *or subject to control* by the Legislature.
14 (d) “Writing” means *any* handwriting, typewriting, printing,
15 ~~photostating~~, photographing, *photocopying, electronic mail,*

1 *facsimile, text message, and every other means of recording upon*
2 *on any tangible thing any form of communication or representation,*
3 *including letters, words, pictures, sounds, or symbols, or*
4 *combination combinations thereof, and all papers, maps, magnetic*
5 *or paper tapes, photographic films and prints, magnetic or punched*
6 *cards, discs, drums, and other documents regardless of the manner*
7 *in which the record has been stored.*

8 SEC. 2. Section 9073 of the Government Code is amended to
9 read:

10 9073. (a) Legislative records are open to inspection at all
11 times during the normal office hours of the Legislature and any
12 person has a right to inspect any legislative record, except as
13 hereafter provided. Any person shall be furnished reasonable
14 opportunities for inspection of legislative records and reasonable
15 facilities for making memoranda or abstracts therefrom. Any person
16 may receive a copy of a legislative record if ~~such~~ *the record is of*
17 *a nature permitting such copying. At the option of the person*
18 *requesting the legislative record, the record shall be provided,*
19 *whenever possible, as an electronic file, in which case no fee may*
20 *be charged to the requester. The Legislature may establish fees,*
21 *not to exceed ten cents (\$0.10) per page, reasonably calculated to*
22 *reimburse it for its actual cost in making such paper copies*
23 *available, provided such fee shall not exceed ten cents (\$0.10) per*
24 *page. Reimbursable costs for this purpose do not include costs for*
25 *finding and retrieving requested records, assessing the applicability*
26 *of an exemption, or redacting exempt information.*

27 (b) *The following shall be produced and published by the*
28 *Legislature, without request, on a monthly basis, in a manner*
29 *providing the public ready and free access by means of the*
30 *Internet:*

31 (1) *Records and information sufficient to show, for each Member*
32 *of the Legislature, the date, time, location, participants, and subject*
33 *matter of all appointments and meetings of the Member relating*
34 *to government matters during the preceding month.*

35 (2) *Records and information sufficient to show, both in the*
36 *aggregate and by separate expense type, the costs incurred by*
37 *each Member's office, by each committee or subcommittee, and*
38 *by each of the caucuses, during the preceding month.*

39 (3) *Records and information sufficient to show, for the office*
40 *of each Member of the Legislature and for each committee and*

1 *subcommittee, the compensation paid to all employees and*
 2 *consultants during the preceding month, both in the aggregate*
 3 *and by recipient.*

4 (4) *Records or information sufficient to show all transfers or*
 5 *reassignments of employees and consultants of the Legislature*
 6 *during the preceding month.*

7 (5) *Records or information sufficient to show, for each Member's*
 8 *office and for each committee and subcommittee of the Legislature,*
 9 *all expenses for, or related to, travel and the names of the persons*
 10 *for which the expenses are claimed during the preceding month.*

11 SEC. 3. Section 9074 of the Government Code is amended to
 12 read:

13 9074. (a) All requests to inspect any legislative record shall
 14 be made to the appropriate Rules Committee of each house of the
 15 Legislature or the Joint Rules Committee, ~~except that all requests~~
 16 ~~to inspect any legislative record in the possession of the Auditor~~
 17 ~~General shall be made to the Joint Legislative Audit Committee.~~
 18 ~~Such~~ *Those* committees shall be considered to have custody of all
 19 legislative records and shall be responsible for making all
 20 legislative records available for inspection. ~~Such~~ *Those* committees
 21 shall promptly inform any person whether any legislative record
 22 shall be made available for inspection. ~~Such~~ *The* legislative records
 23 shall be made available for inspection promptly and without
 24 unnecessary delay. Whenever ~~such~~ *a* committee withholds any
 25 legislative record from inspection, within four working days of
 26 the request to inspect ~~such~~ *a* record, the committee shall justify in
 27 writing the withholding of ~~such~~ *a* record by demonstrating that the
 28 record in question is exempt under the express provisions of this
 29 article ~~or that on the facts of the particular case the public interest~~
 30 ~~served by not making the record public clearly outweighs the public~~
 31 ~~interest served by disclosure of the record,~~ provided that when the
 32 Legislature is not in session, ~~such~~ *the* committee shall furnish ~~such~~
 33 written justification within 10 working days of the request to
 34 inspect ~~such~~ *the* record. The Rules Committee of each house; ~~and~~
 35 the Joint Rules Committee, ~~and the Joint Legislative Audit~~
 36 ~~Committee~~ shall adopt written guidelines stating the procedures
 37 to be followed when making legislative records available for
 38 inspection.

39 ~~The~~

1 (b) *If a legislative record contains information that is exempt*
2 *from disclosure and the exempt portions may reasonably be*
3 *segregated, the Legislature shall allow inspection and copying of*
4 *the record after redaction of the portions that are exempt from*
5 *disclosure.*

6 (c) *The amendment of this section made at the 1981–82 Regular*
7 *Session of the Legislature does not constitute a change in, but is*
8 *declaratory of, the existing law.*

9 SEC. 4. Section 9075 of the Government Code is amended to
10 read:

11 9075. Nothing in this article shall be construed to invalidate
12 or affect the operation of ~~Sections~~ *Section 10207; or 10208, 10525,*
13 ~~and 10526 of this code,~~ or Temporary Joint Rule 37 of the Senate
14 and Assembly in effect on the effective date of this article, or to
15 require the disclosure of records that are any of the following:

16 (a) ~~Preliminary drafts, notes, or legislative~~ *Intralegislative*
17 *memoranda containing the author's recommendations or opinions,*
18 *if the public interest in withholding the record is manifestly greater*
19 *than the public interest in disclosure, except as provided in Section*
20 *9080.*

21 (b) Records pertaining to, *and created in connection with,*
22 pending litigation to which the Legislature is a party, or to claims
23 made pursuant to Division 3.6 (commencing with Section 810) of
24 Title 1, until the litigation or claim has been finally adjudicated or
25 otherwise settled.

26 (c) Personnel, medical, or similar files, the disclosure of which
27 would constitute an unwarranted invasion of personal privacy;
28 ~~provided that the Senate Committee on Rules, the Assembly~~
29 ~~Committee on Rules, or the Joint Rules Committee shall determine~~
30 ~~whether disclosure of these records constitutes an unwarranted~~
31 ~~invasion of personal privacy.~~

32 (d) ~~Records pertaining to the names and phone~~ *Telephone*
33 *numbers of senders and recipients of telephone and telegraph*
34 *communications, provided that records—of showing other*
35 *information pertaining to the communication, including the total*
36 *charges for—any such the communication, shall be open for*
37 *inspection.*

38 (e) ~~Records pertaining to the name and location of recipients of~~
39 ~~automotive fuel or lubricants expenditures, provided that records~~

1 of the total charges for those expenditures shall be open for
2 inspection.

3 (f) In the custody of or maintained by the Legislative Counsel,
4 except those records in the public data base maintained by the
5 Legislative Counsel that are described in Section 10248. Legislative
6 records shall not be transferred to the custody of the Legislative
7 Counsel to evade the disclosure provisions of this chapter.

8 (g) In the custody of or maintained by the majority and minority
9 caucuses and majority and minority consultants of each house of
10 the Legislature, provided that legislative records shall not be
11 transferred to the custody of the majority and minority caucuses
12 and majority and minority consultants of each house of the
13 Legislature to evade the disclosure provisions of this chapter.

14 (h) Correspondence of and to individual Members of the
15 Legislature and their staff, except as provided in Section 9080.

16 (i)

17 (e) Records the disclosure of which is exempted or prohibited
18 pursuant to provisions of federal or state law, including, but not
19 limited to, provisions of the Evidence Code relating to privilege.
20 *However, the Legislature, as a deliberative body whose*
21 *deliberations are conducted in public, is not subject to the*
22 *deliberative process privilege applicable to the Governor pursuant*
23 *to the decision of the California Supreme Court, interpreting the*
24 *California Public Records Act (Ch. 3.5 (commencing with Section*
25 *6250) Div. 7, Title 1), in Times Mirror Co. v. Superior Court (1991)*
26 *53 Cal.3d 1325.*

27 (j) ~~Communications~~

28 (f) *Confidential communications from private citizens a*
29 *constituent to his or her representative Member of the Legislature,*
30 *except as provided in Section 9080.*

31 (k) ~~Records of complaints to or investigations conducted by, or~~
32 ~~records of security procedures of, the Legislature.~~

33 (g) *Records the disclosure of which reasonably could be*
34 *expected to pose a substantial security risk to the Legislature.*

35 SEC. 5. Section 9077 of the Government Code is amended to
36 read:

37 9077. (a) Whenever it is made to appear by verified petition
38 to the superior court of the county where the records or some part
39 thereof are situated that certain legislative records are being
40 improperly withheld from a member of the public, the court shall

1 order the committee charged with withholding the records to
2 disclose the legislative record or show cause why the committee
3 should not do so. The court shall decide the case after *having the*
4 *option of* examining the record in camera, if permitted by
5 subdivision (b) of Section 915 of the Evidence Code, papers filed
6 by the parties, and such oral argument and additional evidence as
7 the court may allow.

8 If

9 (b) If the court finds that the committee's decision to refuse
10 disclosure is not justified under the provisions of Section 9074 or
11 9075, ~~he~~ *the judge* shall order the committee to make the record
12 available for inspection. If the judge determines that the committee
13 was justified in refusing to make the record available for inspection,
14 he *or she* shall return the item to the committee without disclosing
15 its content with an order supporting the decision refusing
16 disclosure. Any person who fails to obey the order of the court
17 shall be cited to show cause why he *or she* is not in contempt of
18 court.

19 SEC. 6. Section 9079 of the Government Code is repealed.

20 ~~9079. If the court finds that the plaintiff's case is clearly~~
21 ~~frivolous, it shall award court costs and reasonable attorney fees~~
22 ~~to the public agency.~~

23 SEC. 7. Section 9080 of the Government Code is amended to
24 read:

25 9080. (a) The Legislature finds and declares that legislative
26 records relating to bills, resolutions, or proposed constitutional
27 amendments before the Legislature provide evidence of legislative
28 intent that may be important in the subsequent interpretation of
29 laws enacted in the Legislature. The Rules Committee of each
30 house of the Legislature and the Joint Rules Committee shall
31 inform each committee of the Senate and Assembly, and each joint
32 committee of the Legislature, of their responsibility to preserve
33 legislative records and make them available to the public.

34 (b) Each committee of the Senate or Assembly, and each joint
35 committee of the Legislature, having custody of legislative records
36 relating to a bill, resolution, or proposed constitutional amendment
37 assigned to that committee, shall maintain the legislative records
38 described in subdivision (d) in an official committee file. The
39 committee shall preserve those records in its custody, or, in the
40 alternative, may arrange with the State Archives to lodge some or

1 all of the records there under the condition that the records be
2 preserved.

3 (c) “Committee” for purposes of this section includes any entity
4 of the Senate or Assembly responsible for preparing analyses of
5 bills, resolutions, or proposed constitutional amendments that are
6 to be put to a vote by a quorum of the members of the Senate or
7 Assembly.

8 (d) “Legislative records,” for purposes of this section, means
9 records contained in an official committee file, including, but not
10 limited to, all of the following:

- 11 (1) Committee staff analyses.
- 12 (2) Written testimony.
- 13 (3) Background material submitted to the committee.
- 14 (4) Press releases.
- 15 (5) Written commentary submitted to the committee on a bill,
16 resolution, or proposed constitutional amendment. For purposes
17 of this paragraph, “written commentary” does not include ~~the~~
18 ~~following:~~

19 ~~(A) Material~~ *material* not utilized by the staff of a fiscal
20 committee in the preparation of any analysis for the members of
21 that committee.

22 ~~(B) Communications determined by the committee or its staff~~
23 ~~to be confidential.~~

24 (6) Versions of bills, resolutions, or proposed constitutional
25 amendments assigned to the committee.

26 (7) Relevant interim hearing materials, studies, case materials,
27 and articles.

28 (e) Legislative records contained in an official committee file
29 shall be open to inspection and copying by the public, pursuant to
30 Sections 9073 and 9074. Each committee of the Senate or
31 Assembly, and each joint committee of the Legislature, shall adopt
32 and implement written procedures consistent with Sections 9073
33 and 9074 for the public’s access to official committee files
34 maintained in the committee’s office. The procedures shall provide
35 for the time, place, and other conditions under which committee
36 files may be inspected and copied. Each committee shall make
37 copies of its written procedures available to the public.

38 (f) The Rules Committee of each house of the Legislature or,
39 alternatively, the Joint Rules Committee shall provide for the
40 storage of any official committee file that is not maintained in the

1 office of the committee that created the file or lodged with the
2 State Archives. The Rules Committees of each house of the
3 Legislature or the Joint Rules Committee, as the case may be, shall
4 adopt and implement written procedures consistent with Section
5 9073 for the public's access to official committee files so stored
6 in its custody. The procedures shall provide for the time, place,
7 and other conditions under which committee files may be inspected
8 and copied, and the committee shall make copies of its written
9 procedures available to the public.

10 (g) Nothing in this section requires making any legislative record
11 available for inspection that relates to any unchaptered bill,
12 resolution, or proposed constitutional amendment introduced in
13 the current legislative session, except in accordance with the
14 requirements and limitations specified in Sections 9073, 9074, and
15 9075.

16 SEC. 8. Section 9081 is added to the Government Code, to
17 read:

18 9081. The Legislature shall not sell, exchange, furnish, or
19 otherwise provide a legislative record subject to disclosure pursuant
20 to this article to a private entity in a manner that prevents the
21 Legislature or any state agency from disclosing the record directly
22 pursuant to this article. The Legislature shall not allow a private
23 entity to control the disclosure of information that is otherwise
24 subject to disclosure pursuant to this article.