

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 473 (Chau)
Version: February 8, 2021
Hearing Date: June 29, 2021
Fiscal: No
Urgency: No
AWM

SUBJECT

California Public Records Act

DIGEST

This bill nonsubstantively recodifies and reorganizes the California Public Records Act (CPRA) to make it easier to understand and use.

EXECUTIVE SUMMARY

Since 1968, the CPRA has granted the public a right to inspect the records and writings of state and local government, unless the records and writings are expressly exempted from disclosure. Over time, the CPRA has been amended in piecemeal bits and pieces; the result is a byzantine, cumbersome set of disclosure procedures and exemptions that are extremely difficult for members of the public to decipher. In 2016, the Legislature asked the California Law Revision Commission (Commission) to study the CPRA and recommend legislation that would make the CPRA more user-friendly without making any substantive changes to its rights and exemptions. The Commission published its recommended recodification and reorganization in 2019, and this bill would enact those recommendations, with the changes taking effect on January 1, 2023. A companion bill to this bill – AB 474 (Chau, 2021) – would, if this bill is enacted and signed, make technical and conforming changes to references to the CPRA throughout the Codes to reflect the recodified CPRA.

This bill is sponsored by the author. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Affirms that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny. (Cal. Const., art. I, § 3(b)(1).)
- 2) Requires that any statute, court rule, or any authority that limits the right of public access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (Cal. Const., art. I, § 3(b)(2).)
- 3) Establishes the CPRA, which reaffirms that access to information concerning the people's business is a fundamental and necessary right of every person in this state, and generally establishes the procedures for the disclosure of public records and certain exemptions to the disclosure requirement. (Gov. Code, tit. 1, div. 7, ch. 3.5, §§ 6250 et seq.)

This bill:

- 1) Establishes the CPRA Recodification Act of 2021 (Act), which recodifies and reorganizes the CPRA without making any substantive changes.
- 2) Repeals, as of January 1, 2023, the CPRA in its existing chapter within Division 7 of Title 1 of the Government Code, and reorganizes the CPRA's provisions into a new Division 10 within Title 1.
- 3) Provides the following with respect to the effect of the recodification and reorganization:
 - a) Nothing in the Act is intended to substantively change the law relating to inspection of public records; the Act is intended to be entirely nonsubstantive in effect. Every provision of this division and every other provision of this act, including, without limitation, every cross-reference in every provision of the act, shall be interpreted consistent with the nonsubstantive intent of the act.
 - b) A provision of the recodified CPRA, or any other provision of the CPRA Recodification Act of 2021, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be considered as a restatement and continuation thereof and not as a new enactment.
 - c) A reference in a statute to a previously existing provision that is restated and continued in the reorganized CPRA, or in any other provision of the Act, shall, unless a contrary intent appears, be deemed a reference to the restatement and continuation.

- d) A reference in a statute to a provision of this division, or any other provision of the Act, which is substantially the same as a previously existing provision, shall, unless a contrary intent appears, be deemed to include a reference to the previously existing provision.
 - e) A judicial decision or Attorney General opinion interpreting a previously existing provision is relevant in interpreting any provision of the recodified CPRA; and Legislature's, enactment of the Act, does not reflect any Legislative assessment of any judicial decision or Attorney General decision opinion regarding the CPRA or its correctness.
 - f) The provisions of the recodified CPRA shall not be deemed in any manner to affect the status of judicial records as it existed immediately before the effective date of the Act, nor to affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state, nor to limit or impair any rights of discovery in a criminal case.
- 4) Delays implementation of the Act until January 1, 2023.

COMMENTS

1. Author's comment

According to the author:

The California Public Records Act (CPRA) was enacted in 1968 to promote public access to public records, while also recognizing competing interests. In enacting the CPRA, the Legislature, "mindful of the right of individuals to privacy," found and declared that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."

Since its enactment, the CPRA has been revised over and over again, in a piecemeal fashion. This has resulted in a statute that is poorly organized and cumbersome for members of the public to use and understand, impeding fulfillment of the goals underlying the CPRA.

To address that problem, the Legislature asked the California Law Revision Commission to study the CPRA on a priority basis and prepare a report containing recommended legislation that would make the CPRA more user-friendly, without changing its substance. More specifically, the Legislature asked the Commission to develop legislation that would:

1. Reduce the length and complexity of current sections.
2. Avoid unnecessary cross-references.

3. Neither expand nor contract the scope of existing exemptions to the general rule that records are open to the public pursuant to the current provisions of the CPRA.
4. To the extent compatible with (3), use terms with common definitions.
5. Organize the existing provisions in such a way that similar provisions are located in close proximity to one another.
6. Eliminate duplicative provisions.
7. Clearly express legislative intent without any change in the substantive provisions.

In November 2019, the Commission completed a report that includes draft legislation to significantly improve the organization and expression of the CPRA, without making any changes to outcomes under that law. AB 473 would codify the Commission's report to significantly improve the CPRA's text.

2. This bill nonsubstantively recodifies and cleans up the CPRA as recommended by the Commission

The CPRA, which was enacted in 1968,¹ was modeled after the federal Freedom of Information Act and recognizes that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."² To ensure the protection of that right, the CPRA requires that documents and writings of a public agency be open and available for public inspection, unless they are expressly exempt from disclosure.³ The CPRA provides procedures by which state and local agencies must disclose documents,⁴ as well as enforcement procedures that allow a member of the public to seek judicial review of a denial of documents and awards attorney fees and costs if the court determines the denial was not justified.⁵

Since its enactment, the CPRA has been amended numerous times; the result is an unwieldy cluster of requirements and exemptions that are difficult for members of the public – the beneficiaries of the CPRA – to understand.

In 2016, the Legislature tasked the Commission with studying the CPRA and preparing a report containing recommended legislation to conduct a nonsubstantive clean-up of the CPRA to make it more user-friendly.⁶ The Commission completed its report in 2019⁷

¹ AB 1381 (Bagley, Ch. 1473, Stats. 1968).

² Gov. Code, § 6250.

³ *Id.*, §§ 6250-6270.

⁴ *Id.*, §§ 6253-6253.21, 6254.5.

⁵ *Id.*, §§ 6258-6259.

⁶ ACR 148 (Chau, Res. Ch. 150, Stats. 2016).

⁷ See *California Public Records Act Clean-Up*, 46 Cal. L. Comm'n Reports 207 (2019), available at clrc.ca.gov/pub/Printed-Reports/Pub241-G400.pdf [last visited Jun. 25, 2021].

and identified numerous structural problems with the CPRA as currently situated in the Government Code, including:

- Piecemeal subject matter: according to the Commission, “[i]nstead of being grouped together, provisions with the same subject matter are sometime separated that can make key material hard to find.”⁸ Other provisions are buried among unrelated material and can be easily overlooked.⁹
- Unsystematic numbering: over time, the Legislature has used unsystematic decimal numbering, which makes it more difficult for users (especially lay users) to ascertain the proper sequence of code sections and locate them.¹⁰
- Incorrect cross-references: the Commission checked each cross-reference to statutes located outside the CPRA and found that some were “plainly erroneous,” and while many others were simply confusing.¹¹

The Commission concluded that these, and similar problems, impede fulfillment of the purposes underlying the CPRA.¹²

Consistent with its mandate, the Commission’s 2019 report also provided recommended legislation on how to structurally, but not substantively, recodify and reorganize the CPRA.¹³ The proposed legislation relocates the CPRA from Chapter 3.5 of Division 7 of Title 1 of the Government Code to a new division within Title 1, Division 10. The new Division 10 is divided into six parts, grouped by subject matter: (1) general provisions, (2) disclosures and exemptions generally, (3) procedures and related matters, (4) enforcement, (5) specific types of public records, and (6) other exemptions from disclosure.¹⁴ Due to COVID-19, however, the Legislature did not act on the recodification recommendations in 2020.¹⁵

This bill implements the Commission’s 2019 recommendations to recodify and reorganize the CPRA. Another bill pending before this Committee, AB 474 (Chau, 2021) would, if both bills pass, replace existing references to the CPRA in the various state Codes with references to the recodified provisions.¹⁶ Both bills will take effect on January 1, 2023.

⁸ *Id.* at p. 213.

⁹ *Id.* at pp. 213-214.

¹⁰ *Id.* at p. 214.

¹¹ *Id.* at pp. 232-233.

¹² *Id.* at p. 214.

¹³ *Id.* at p. 217.

¹⁴ *Id.* at p. 226.

¹⁵ See AB 2138 (Chau, 2020).

¹⁶ See *California Public Records Act Clean-Up: Conforming Revisions*, 46 Cal. L. Revision Comm’n Reports 563 (2019), available at clrc.ca.gov/pub/Printed-Reports/Pub241-G400-CR.pdf [last visited Jun. 25, 2021].

3. Comments from the Commission

According to the Commission, writing about this bill and AB 474:

The CPRA was enacted over fifty years ago to promote access to public records, while also recognizing competing interests. Since then, the Legislature has continually refined the CPRA in an incremental manner, striving for the correct balance between the public's fundamental right to know what their government is doing and competing considerations (particularly privacy interests).

As a result, the statute has become poorly organized and cumbersome to use and understand. To address this problem, the Legislature directed the Law Revision Commission to study the CPRA and prepare a report containing recommended legislation that would make the CPRA more user-friendly, without changing its substance...

The Commission believes that the long-term benefits of having a better organized, more user-friendly statutory scheme would soon outweigh any transaction costs. AB 473 and AB 474 would make the CPRA more readily accessible and understandable to persons using it, thus furthering its underlying purposes. Importantly, the new statutory scheme would also afford ample room for future refinement of the CPRA, promoting sound development of the law.

SUPPORT

None known

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

AB 474 (Chau, 2021) enacts various technical and conforming changes related to this bill; AB 474 would become operative only if AB 473 is enacted and becomes operative on January 1, 2023. AB 474 will be heard by this Committee on the same day as this bill.

AB 343 (Fong, 2021) establishes within the State Auditor's Office the California Public Records Act Ombudsperson, who would review and investigate denials by state agencies of public records requests. AB 343 is pending before the Senate Judiciary Committee.

Prior Legislation:

AB 2438 (Chau, 2020) was contingent on the passage of AB 2138 (Chau, 2020), and would have made various technical and confirming changes relating to the recodification implemented by that bill. AB 2438 was held in the Assembly Judiciary due to COVID-19-related bill limits.

AB 2138 (Chau, 2020) was substantially similar to this bill and would have implemented the Commission's recommendations on recodifying the CPRA. AB 2138 was held in the Assembly Judiciary Committee due to COVID-19-related bill limits.

AB 289 (Fong, 2019) would have established within the State Auditor's Office the California Public Records Act Ombudsperson, who would review and investigate denials by state agencies of public records requests. AB 289 failed passage in the Senate Judiciary Committee.

SCR 91 (Roth, Res. Ch. 158, Stats. 2018) authorized the Commission to continue and complete its study of the CPRA, among other topics, and to prepare recommended legislation as soon as possible concerning revision of the CPRA and related provisions.

ACR 148 (Chau, Res. Ch. 150, Stats. 2016) authorized and requested the Commission to study, report on, and prepare recommended legislation as soon as possible concerning the revision of the portions of the CPRA and related provisions that would accomplish specified goals, including reducing the length and complexity of current sections and clearly expressing legislative intent without any change in the substantive provisions.

PRIOR VOTES:

Assembly Floor (Ayes 78, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)
