

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

AB 474 (Chau)
Version: June 21, 2021
Hearing Date: June 29, 2021
Fiscal: No
Urgency: No
AWM

SUBJECT

California Public Records Act: conforming revisions

DIGEST

This bill enacts various technical and conforming changes related to another bill, AB 473 (Chau, 2021), which recodifies and reorganizes the California Public Records Act (CPRA); this bill would become operative only if AB 473 is enacted, and both bills would become operative on January 1, 2023.

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 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; AB 473 (Chau, 2021), which will be heard the same day as this bill, implements those recommendations, with the changes taking effect on January 1, 2023. This bill is a companion to AB 473 and is contingent upon its enactment; if both bills are passed, it will 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.)
- 4) Establishes, throughout the Codes, additional documents and information exempt from the CPRA's disclosure requirement.

This bill:

- 1) Updates references to the CPRA to reflect the recodification and reorganization of those provisions as recommended by the Commission and as set forth in AB 473 (Chau).
- 2) Makes the above changes contingent upon enactment of AB 473 (Chau).
- 3) Makes the above changes effective as of January 1, 2023.
- 4) States that this bill does not make any substantive changes and therefore does not impose any new limitation on the public's right of access.
- 5) Provides that any section of any act enacted by the Legislature during the 2021 calendar year, other than a section of the annual maintenance of the codes bill or another bill with a subordination clause, that takes effect on or before January 1, 2022, and that amends, amends and renumbers, amends and repeals, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, amended and repealed, added, repealed and added, or repealed by this bill, shall prevail over this bill, whether that bill is chaptered before or after this bill.
- 6) Makes other nonsubstantive technical and confirming changes.

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. Assemblymember Chau has introduced this draft legislation in AB 473. However, if AB 473 is enacted, cross-references to the CPRA throughout the codes will become outdated. AB 474, therefore, is a companion bill that fixes the cross-references.

2. In the event that the CPRA Recodification of 2021 Act is enacted, this bill will make nonsubstantive changes to update references to the newly recodified CPRA

The CPRA, which was enacted in 1968,¹ actually predates California’s constitutional recognition of a right to access public records.² The CPRA was modeled after the federal Freedom of Information Act and requires that documents and writings of a public agency be open and available for public inspection, unless they are expressly exempt from disclosure.³ 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 streamline the CPRA and make it more user-friendly.⁴ The Commission completed its report in 2019 and provided recommended legislation on how to structurally, but not substantively, recodify and reorganize the CPRA.⁵ Due to COVID-19, however, the Legislature did not act on the recodification recommendations in 2020.⁶

This year, the Commission’s recodification legislation is contained in AB 473 (Chau 2021), which is currently pending before this Committee. The analysis of AB 473 is incorporated herein by reference.

This bill is a companion to AB 473’s CPRA recodification and is contingent upon the passage of AB 473.⁷ If both bills are enacted, this bill will update all of the Code’s existing references to the CPRA to reflect the CPRA’s recodification. Like AB 473, this bill is intended to make only nonsubstantive changes. Both bills will take effect January 1, 2023.

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

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

² Cal. Const., art. I, § 3, adopted by SCA 1 (Burton, Res. Ch. 1, Stats. 2004) and added by initiative, Gen. Elec. (Nov. 2, 2004), Prop. 59.

³ Gov. Code, §§ 6250-6270.

⁴ ACR 148 (Chau, Res. Ch. 150, Stats. 2016).

⁵ 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].

⁶ See AB 2138 (Chau, 2020).

⁷ 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].

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 473 (Chau, 2021) recodifies and reorganizes the provisions of the CPRA in the CPRA Recodification Act of 2021, without making any substantive changes. AB 473 is pending before this Committee and will be heard 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 Committee 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 76, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)
