

First Supplement to Memorandum 2021-35

2021 Legislative Program: California Public Records Act Clean-Up

Assembly Bill 473 (Chau) would implement the Commission's proposed recodification of the California Public Records Act ("CPRA").¹ A companion bill, Assembly Bill 474 (Chau), contains the conforming revisions for the recodification.²

Both bills passed out of the Assembly without a dissenting vote. In the Senate, each bill passed out of the Senate Committee on Judiciary by a vote of 11-0. The bills are now pending on the Senate floor. There is no known opposition.

A few issues relating to the bills are discussed below. **Absent input, the staff recommends treating this memorandum as a consent item at the upcoming meeting.** If anyone has a concern about a proposed revision, please express it before the meeting or be prepared to raise it for discussion at the meeting.

BILL COORDINATION AMENDMENTS OF AB 473

The CPRA recodification bill (AB 473) was recently amended to coordinate it with three other pending bills that would affect the CPRA:

- AB 386 (Cooper).
- SB 823 (Committee on Health).
- AB 562 (Low).

1. *California Public Records Act Clean-Up*, 46 Cal. L. Revision Comm'n Reports 207 (2019). The CPRA is currently codified as Government Code Sections 6250-6276.48.

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. For the Commission's recommendation on the conforming revisions, see *California Public Records Act Clean-Up: Conforming Revisions*, 46 Cal. L. Revision Comm'n Reports 563 (2019).

One of those bills, AB 386, recently failed passage in the Senate Committee on Judiciary. Reconsideration was granted, but the bill probably will not be enacted this year. There does not appear to be any reason to discuss it further at this time.

The other two bills would affect provisions in the CPRA index, not substantive provisions of the CPRA. Determining how to coordinate those bills with AB 473 did not involve any policy decisions or significant drafting decisions that require the Commission's attention.

TECHNICAL AMENDMENTS OF AB 474

The bill consisting of conforming revisions (AB 474) has been amended twice since the Commission last considered its status. Those amendments were purely technical in nature, correcting mistakes or making other minor revisions to properly implement the Commission's intentions.

One set of revisions undid some earlier changes made by the Office of Legislative Counsel. In particular, several provisions in AB 474 refer to the "State Department of Health Services," which no longer exists. In May, the Office of Legislative Counsel updated twelve such references as follows:

"State Department of Health Care Services"³

Soon afterwards, the Commission approved revised Comments reflecting those changes.⁴

Some of the statutory revisions caused concern, however, because the former "State Department of Health Services" was subdivided into more than one entity, not just the new "State Department of Health Care Services."⁵ To eliminate that concern, the twelve insertions of the word "Care" were undone when AB 474 was amended a week ago.

3. Those references were in the following provisions: Bus. & Prof. Code § 22954; Food & Agric. Code § 13134; Health & Safety Code §§ 1457, 25968, 39660; Welf. & Inst. Code § 14087.36(aa).

4. See First Supplement to Memorandum 2021-25, Exhibit pp. 3, 5, 6, 10; Minutes (June 2021), pp. 3-4.

5. The Office of Environmental Health Hazard Assessment ("OEHHA") informed Assemblymember Chau's office that the activities described in Food and Agricultural Code Section 13134 are currently performed by OEHHA and the Department of Public Resources, not by the Department of Health Care Services.

See also Memorandum 2019-14, p. 2 ("The California Public Health Act of 2006 ... divided the statutory responsibilities of the former Department of Health Services between (1) the newly named Department of Health *Care* Services ..., and (2) a newly created agency, the California Department of Public Health"); Minutes (Feb. 2019), p. 9.

Accordingly, **the revised Comments that the Commission approved for the following provisions in June are no longer necessary:**

- Food & Agric. Code § 13134.
- Health & Safety Code § 25968.
- Health & Safety Code § 39660.
- Welf. & Inst. Code § 14087.36.

The original, published versions of those Comments are correct as is.

In addition, the revised Comment to Health and Safety Code Section 1457 should be further revised as follows:

Health & Safety Code § 1457 (amended). Patient records of county hospital

Comment. Section 1457 is amended to reflect nonsubstantive reorganization of the California Public Records Act. See *California Public Records Act Clean-Up*, 46 Cal. L. Revision Comm'n Reports 207 (2019).

The section is also amended to make ~~technical changes~~ a technical change.

Is this approach acceptable to the Commission?

Respectfully submitted,

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