Calif. budget bill threatens access to public records

By Annalise Mantz and Jeffrey Dastin, Sacramento Bee

A budget bill awaiting Gov. Jerry Brown's signature would make it optional for local governments to comply with several key provisions of the California Public Records Act.

The change is intended to save the state money because it typically reimburses local agencies for providing services it mandates.

Brown's administration says it expects little effect on public access to records. Many local governments told the *Bee* they intend to comply anyway and pay the costs themselves.

Yet advocates of open government say the changes essentially would gut provisions that ensure the public and the media get responses to their records requests. They warn it would do the most damage in places where there is a need to protect the public's interests – local governments that already seek to restrict access or have a history of corruption.

Peter Scheer, executive director of the First Amendment Coalition, said citizens and journalists who request public records would now have to trust local governments and agencies to skirt the "very big hole" the bill opens in the Public Records Act.

"I think the biggest cities will continue to comply, or they will say that they are adhering to the provisions, and in practice they may not really be adhering to them," Scheer said. "Once they become optional as a matter of law, I'm not sure how enforceable they will be."

The language of Assembly Bill 76, one of several bills in the

budget package for the coming fiscal year, would make multiple provisions of the records act “optional best practices.” It adds a requirement that local governments who choose not to follow “best practices” publicly announce that they won’t comply with that portion of the act.

Local governments could choose whether to help members of the public craft their records requests to increase the chances they will obtain what they are seeking. The governments could opt to release records on paper rather than electronically.

The measure would eliminate a requirement that governments respond within 10 days with a determination about whether the records are wholly or partially disclosable. It also would eliminate a requirement that governments provide a legal justification for not releasing documents.

The Legislative Analyst’s Office has estimated that removing the mandates would save California tens of millions of dollars.

Terry Francke, general counsel at Californians Aware, said the way the measure is written conceals the effect of the changes.

“(It) allow(s) the governor and the Legislature to say, ‘The CPRA is still there, we didn’t repeal it,’ when the effect is really to gut the act of response to your request,” Francke said.

He said he has concerns about the minority of agencies that are already not fond of releasing information to the public.

“If you tell local agencies that are already rogues under the CPRA that any legal duty they have is no longer present, then it’s going to serve the interest of those who have something to hide most,” Francke said.

Brown’s administration maintains that the backbone of the Public Records Act would remain intact. Department of Finance

spokesman H.D. Palmer said that making those provisions optional would cut the state's costs without infringing on public right to access government records.

"Californians will continue to have a constitutional access to rights of information," Palmer said. "The Legislature only chose to change a few provisions."

Last year's budget deal triggered a suspension of state mandates tied to the Brown Act, which regulates meetings of local agencies that must be open to the public. Palmer said that change was similarly minor and that the administration expects local governments are likely to remain responsive to public records requests.

Jean Hurst, a lobbyist with the California State Association of Counties, predicted that many counties would continue to follow the best-practices provisions in order to avoid backlash.

She said shortages of staff and funding make it unlikely that counties would gamble with the extra expense of a potential lawsuit.

"Why would we waste the time and money on litigation over a records request?" she said.

Hurst also said that responding to requests for records has become routine for most local agencies and that changing their policy would be more of a hassle than complying with the law.

Mike Applegarth, principal analyst in the El Dorado County Administrative Office, agreed with Hurst but noted that records requests can be a burden.

"I think open-government laws like the Brown Act and the Public Records Act are just part of the fabric of local government, and I can't see El Dorado County deviating from that," Applegarth said. "We would definitely have to take it

on a case-by-case basis. We have in the past received very voluminous records requests, and it’s very challenging to respond.”

Both Placer and Yolo counties also said they would continue to comply with the act. Placer County Supervisor Jennifer Montgomery, who represents District 5, said potential costs would not deter the county from responding to public records requests. “We’re going to be sure that we remain committed to being responsive to the public – honest, fair and above board in our dealings,” Montgomery said. “If we have to cover those costs, then we will cover those costs.”

Several Sacramento area school officials and board members contacted by the *Bee* also said they didn’t have much of an appetite for changing the way their districts deal with records requests.

California is not the only state to roll out changes to its open records laws in recent years.

In 2011, Utah legislators passed House Bill 477, which modified the state’s Government Records Access and Management Act to prohibit elected officials’ text messages, voice mails and communications from being released. The widely unpopular bill also allowed the state to keep more records private and increase fees for viewing public records.

Utah Gov. Gary Herbert eventually asked legislators to repeal the bill, and they complied.

Mark Horvit, executive director of Investigative Reporters and Editors, said both Utah and California represent a nationwide trend toward more stringent records laws.

“In general, the state legislatures have been rolling out these suspensions to public records requests laws,” Horvit said. “Now, for some reason, lawmakers are finding a raft of excuses to prohibit the public from finding out what

government is doing.”

Opponents of California’s changes also criticize the bill for being hastily written late in the budget process.

When the Pacific Media Workers Guild sent Brown a letter urging him to veto AB 76, the organization not only objected to the effect the bill would have on journalists making records requests but also to the principle of crafting the “trailer” bill at the last minute.

“Equally egregious is the surreptitious manner in which (the bill) and other trailer bills have been attached to the budget package,” the letter said. “The Guild strongly urges either that you remove the afore-cited sections from (the bill) before signing it into law or that you veto the entire bill.”

Without a full guarantee of legal coverage, open government advocates say citizens would have to take more responsibility for ensuring access to public documents.

Jim Ewert, legal counsel for the California Newspaper Publishers Association, guessed that in cities and counties with active citizens, agencies would feel obligated to continue responding to records requests within 10 days as an act of good faith. The problem, he said, would be in places like the city of Bell, which earlier this year saw the mayor and four City Council members convicted of corruption.

“To the extent that there is a vibrant presence, (the change to the law) may have little impact at all. The expectation won’t change among the constituents,” Ewert said. “In those areas such as the city of Bell where this may not be the case, this has to be very damaging.”