

EXHIBIT A

AMENDED IN ASSEMBLY SEPTEMBER 1, 2011

AMENDED IN ASSEMBLY AUGUST 22, 2011

AMENDED IN SENATE MAY 10, 2011

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL

No. 326

Introduced by Senator Yee
(Coauthor: Assembly Member Dickinson)

February 14, 2011

An act to add Chapter 1.45 (commencing with Section 68180) to Title 8 of the Government Code, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

SB 326, as amended, Yee. Court records: public access.

Existing law requires the Judicial Council to adopt rules of court to establish the standards and guidelines for the creation, maintenance, reproduction, and preservation of court records, and requires that these standards and guidelines reflect industry standards for each medium used, ensure the accuracy and preserve the integrity of the records, and ensure that the public can access and reproduce the records. Specifically, unless access is otherwise restricted by law, court records created, maintained, preserved, or reproduced under specified provisions are required to be made reasonably accessible to all members of the public for viewing and duplication, and electronic court records must be viewable at the court, whether or not they are accessible remotely. Additionally, rules of court require courts to provide public access to electronic records, as specified.

This bill would require the Judicial Council, in consultation with stakeholder groups, and within 18 months of the date of enactment of

this act, to adopt a rule of court to require courts to provide the public with same-day access to case-initiating civil and criminal court records, as defined, *at no cost to the requester*, for viewing at the courthouse. ~~The bill would require the rule to allow a court to charge a nominal fee for providing a copy of these records.~~

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. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Timely public access to court records and documents as
- 4 public documents is an important right and necessity for an
- 5 informed citizenry.
- 6 (b) The use of new electronic technologies for filing court
- 7 actions and modernizing access to court records can, while intended
- 8 to streamline and improve court functions and public access to
- 9 court records, actually result in delays in access to court documents.
- 10 (c) Delays in public access to court documents and filings should
- 11 be minimized, therefore ensuring free flow of public information
- 12 in a timely and cost-effective manner.
- 13 (d) Delays in public access to case-initiating documents have a
- 14 special significance because those documents are the means by
- 15 which the public becomes aware that the powers of the judiciary
- 16 have been invoked with respect to a particular controversy or crime.
- 17 However, the use of electronic technologies for filing court actions
- 18 and modernizing access to court records have in many instances
- 19 had the unintended consequence of increasing delays in access to
- 20 those case-initiating court records.
- 21 (e) It is the intent of the Legislature to ensure, as California’s
- 22 courts move forward to implement various electronic filing and
- 23 other technologies, that case-initiating documents, as well as other
- 24 court filings and documents, continue to be available to the public
- 25 on a timely basis.
- 26 SEC. 2. Chapter 1.45 (commencing with Section 68180) is
- 27 added to Title 8 of the Government Code, to read:

1 CHAPTER 1.45. ACCESS TO CASE-INITIATING TRIAL COURT
2 RECORDS
3

4 68180. The following definitions apply to this chapter:

5 (a) (1) “Case-initiating civil and criminal court records” means
6 all of the following:

7 (A) Any complaint or petition in an unlimited civil case, as
8 defined in Section 88 of the Code of Civil Procedure.

9 (B) Any writ petition, as provided for in Title 1 (commencing
10 with Section 1067) of Part 3 of the Code of Civil Procedure.

11 (C) Any indictment, information, or complaint in felony and
12 misdemeanor criminal actions.

13 (2) “Case-initiating civil and criminal court records” includes
14 both electronic and nonelectronic records.

15 (3) For the purposes of this chapter, “case-initiating civil and
16 criminal court records” does not include records that are sealed or
17 proposed to be sealed by court order and are confidential in
18 accordance with Rules 2.550 and 2.551 of the California Rules of
19 Court, or that are otherwise made confidential by law, including,
20 but not limited to, juvenile court records made confidential by
21 Section 827 of the Welfare and Institutions Code, Child Support
22 Case Registry Forms, as developed by the Judicial Council pursuant
23 to Section 4014 of the Family Code, adoption records made
24 confidential by Section 9200 of the Family Code, pleadings in
25 child custody proceedings containing information made
26 confidential by Section 3429 of the Family Code, determination
27 of parentage records made confidential by Section 7643 of the
28 Family Code, child and spousal support enforcement program
29 records made confidential by Section 17212 of the Family Code,
30 or any other case-initiating document that is confidential by law.

31 (b) “Public” means an individual, a group, or an entity,
32 including, but not limited to, the print or electronic media, or the
33 representative of an individual, group, or entity.

34 68181. (a) The Judicial Council, in consultation with
35 stakeholder groups, shall adopt, within 18 months of the date of
36 enactment of the act adding this section, a rule or rules of court to
37 require courts to provide the public with same-day access to
38 case-initiating civil and criminal court records, *at no cost to the*
39 *requester*, for viewing at the courthouse. To the extent possible
40 and practicable, the rule or rules shall provide for same-day access

1 to those records that are received by the court within 30 minutes
2 of the court closing for that day. However, in no case shall these
3 records be made available later than 60 minutes after the court
4 opens the next court day.

5 ~~(b) The rule or rules shall allow a court to charge a nominal fee~~
6 ~~for providing a copy of these records, if a copy is requested at the~~
7 ~~courthouse.~~

8 (e)

9 (b) The Legislature specifically recognizes the importance of
10 timely access not just to case-initiating civil and criminal court
11 records, but to all court records and documents. Nothing in this
12 statute or in the rule or rules of court to be adopted pursuant to this
13 statute may be construed to limit or otherwise negatively affect
14 the public's right of timely access to court records as a general
15 matter.

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EXHIBIT B

BILL ANALYSIS

SENATE JUDICIARY COMMITTEE
 Senator Noreen Evans, Chair
 2011-2012 Regular Session

SB 326 (Yee)
 As Amended April 25, 2011
 Hearing Date: May 3, 2011
 Fiscal: Yes
 Urgency: No
 TW

SUBJECT

Court Records: Public Access

DESCRIPTION

This bill would require the Judicial Council of California to adopt a rule or rules of court to require courts to provide public access to case-initiating civil and criminal court records, as defined, by no later than the end of the day on which those records are received by the court.

BACKGROUND

_____ Courts have long held that the public has a right of access to court records. The California Supreme Court stated that "it is a first principle that the people have the right to know what is done in their courts." (In re Shortridge (1893) 99 Cal. 526, 530.) Public access is necessary because "if public court business is conducted in private, it becomes impossible to expose corruption, incompetence, inefficiency, prejudice, and favoritism." (Estate of Hearst v. Trustees of Hearst Testamentary Trust (1977) 67 Cal.App.3d 777, 784.)

The right of public access to court records begins when the court record is filed with the court. (Bank of America National Trust & Savings Association v. Hotel Rittenhouse Associates (1986) 800 F.2d 339, 345.) Further, "While the courts have an inherent right to control their own records, preclusion from public inspection is permitted only upon a showing that revelation would tend to undermine individual security, personal liberty, or private property, or injure the public or the public good." (Copley Press, Inc. v. Superior Court (1992) 6 (more)

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Cal.App.4th 106, 111.)

Although the public has a well-founded right of access to court records, the author reports increasing delays in public access to court records, with some courts apparently delaying public access to as much as one month for newly filed complaints.

This bill, sponsored by Californians Aware, Courthouse News Service, and the First Amendment Coalition, would require the Judicial Council of California to adopt a rule or rules of court to require courts to provide public access to case-initiating civil and criminal court records, as defined, by no later than the end of the day on which those records are received by the court.

CHANGES TO EXISTING LAW

Existing law, the California Constitution, declares the people's right of access to information concerning the conduct of the people's business. (Cal. Const., art I, sec. 3.)

Existing law provides that, unless access is otherwise restricted by law, court records shall be made reasonably accessible to all members of the public for viewing and duplication in paper or electronic form. (Gov. Code Sec. 68150(1).)

Existing law provides that court records sealed by court order are not open to public inspection. (Cal. Rules of Court, rule 2.550.)

Existing law provides that, unless confidentiality is required by law, court records are presumed to be open. (Cal. Rules of Court, rule 2.550.)

This bill would define "case-initiating civil and criminal court

records" to mean: (1) any complaint or petition filed in an unlimited civil case; (2) any petition for writ of review; and (3) any indictment, information, or complaint in felony and misdemeanor criminal actions. This definition would include both electronic and nonelectronic records.

This bill would provide that "case-initiating civil and criminal court records" does not include records sealed or proposed to be

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sealed by court order and are confidential under existing law, including but not limited to, certain juvenile court records, adoption records, child custody pleadings, and child and spousal support enforcement records.

This bill would require the Judicial Council to adopt a rule or rules of court to require courts to provide public access to case-initiating civil and criminal court records on the same day on which these records were filed in either paper or electronic form.

COMMENT

1. Stated need for the bill

The author writes:

The problem to be remedied is a drastic and widespread deterioration in the timeliness of public access to court records. In the case of newly filed civil complaints, a delay in access effectively hides from the public the fact that a new lawsuit has been initiated. These delays in access are an obvious matter of concern to the news media, who are deprived of the ability to inform other interested members of the public on the business of the courts while it is still newsworthy. They are also a problem for the parties to the proceeding, who may not be able to learn about a court filing that directly impacts them until they receive service of the filing days - or even weeks - later. And delays in access may also impact those in the business and legal community who may be indirectly affected by a legal proceeding.

Finally, delays in access hinder the public's ability to oversee the activities of an important branch of government while those activities are still current, thus impairing the self-government that is so essential to the functioning of our democratic form of government.

Courthouse News Service, a sponsor of this bill, writes:

Courthouse News has directly experienced the deterioration of timely access to the civil court record. Its reporters make regular (in many cases, daily) in-person visits to courthouses throughout California to review newly filed civil complaints and determine which ones merit news coverage. When Courthouse

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News has encountered access delays, its first step has always been to try to resolve those delays through cooperative discussions with court staff. In the past, these efforts have worked well, usually leading to solutions that ensured that interested persons could review and report on new civil complaints in a timely manner without imposing any significant cost or burden on courts.

In the last few years, however, Courthouse News has seen a fundamental shift in the landscape. Procedures that traditionally promoted timely access are unceremoniously dismantled or scaled back. And while Courthouse News has continued its attempts to resolve these problems through discussions with court staff, these efforts are becoming increasingly unproductive. Repeatedly, a solution reached after months of work with a particular court administrator disintegrates as soon as he or she leaves the court, and the delays return. Other courts have simply refused to improve access altogether.

2. Providing same-day public access to court records

This bill would require courts to provide access to case-initiating civil and criminal court records on the same day on which the court records were filed with the court. Existing law provides the public with reasonable access to court records. (Gov. Code Sec. 68150.) However, "reasonable access" is not defined under existing law. Proponents of this bill argue that,

while some courts are providing same-day access to court records, many other courts have failed and refused to provide a system whereby the public has access to court record information in a timely manner. The sponsors report that courts are claiming that the use of electronic technologies for filing court actions and modernizing access to court records have in many instances increased delays in access to such case-initiating court records.

The Judicial Council, an opponent of this bill, states that the same-day access provision of this bill "would be completely unworkable for the courts, particularly given the judicial branch's current fiscal situation, and would actually impede public access to court records. . . . SB 326 sets a standard for access that cannot be achieved without a significant increase in court staffing to accomplish this objective. . . . Requesting a court record filed minutes before the court closes to be available to the public that same day at the courthouse is

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simply a logistical impossibility."

The author argues that the courts in years past have simply placed the day's court records "in a designated media bin that reporters would check at the end of the day as part of their regular courthouse news beat." However, some courts now claim they are unable to provide immediate access to court records through the media bin process. Proponents of this bill argue that one cost-effective way to provide same-day public access to newly filed court records is to require the filing parties to provide an additional copy of the documents being filed, which would be placed into a bin for public access.

That proposed alternative raises several logistical and other issues, however. Existing law requires court records to be created and maintained in a manner that ensures accuracy and preserves the integrity of the records throughout their maintenance, and these court records must be indexed for convenient access. (Gov. Code Sec. 68150.) The Judicial Council argues that existing law requires newly filed court records to be created and maintained properly, and providing a bin with copies of these records for the public's review and potential disintegration of these court record copies contravenes the public's access to the complete records. Many courts are understaffed and would be unable to provide additional staff to supervise the court records copy bin to police the public's review of the records.

Further, copies of documents that are confidential by operation of law must be flagged and separated from court records that would be placed in the public review bin. Most importantly, requiring filing parties to provide an additional courtesy copy to be placed into a public review bin "would be unduly burdensome for litigants and thereby diminish access to justice [and] would impose significant workload burdens for courts to manage this flow of paper."

The proponents of this bill reiterate that the public has a constitutional right to access court records, regardless of how the court manages to provide such access. They point to a recent court case that held that a court failing to provide access to newly-filed case-initiating court records was in violation of the party's constitutional rights, which constitutes irreparable harm. (Courthouse News Service v. Jackson (S.D. Tex. 2010) 38 Media L. Rep. 1894.) The Jackson court entered a permanent injunction and final judgment

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providing that the Harris County District Clerk's Office was enjoined from denying Courthouse News with all petitions and case-initiating documents in civil cases filed and received by the clerk's office between midnight and the time the clerk's office closes (5:00 p.m. Central Standard Time, Monday through Friday), except in the following circumstances:

- (1) where the filing party is seeking emergency relief, such as a temporary restraining order, the document has been sealed or deemed confidential;
- (2) where the clerk's office is in critical staffing mode or completely closed for business due to inclement weather, building evacuation or other emergency;
- (3) where a party has electronically filed a case-initiating document with a third-party provider but the document has not been received by the clerk's office;
- (4) where a case-initiating document has been rejected for lack of a filing fee and immediately returned to the filing

party; and
(5) where other extraordinary circumstances outside the control of the clerk's office make compliance literally impossible. (Id. at pgs. 3-4.)

Proponents of this bill argue that the provision of this bill that would provide same-day public access to court records is already being followed by a number of courts, and this bill, which is consistent with what other courts such as the Jackson court are determining as constitutional, is necessary to make sure the public has access to court records in all state courts.

In order to address the concerns that the "same-day" access provision of this bill is unworkable and impractical, the committee may wish to consider the following amendments, which provide a more realistic approach to providing same-day access. Further, after full implementation of the California Case Management System, the courts should be able to provide timely public access to case-initiating civil and criminal court records more easily and quickly.

Suggested Amendments :

1. On page 4, strike lines 17 through 28.
2. On page 4, on line 17 insert:

68181. (a) The Judicial Council, in consultation with stakeholder groups, shall adopt, within 18 months of

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enactment of this Act, a rule or rules of court to require courts which have fully implemented the California Case Management System to provide, to the extent possible and practicable, the public with same-day access to case-initiating civil and criminal court records.

3. Limited definition of court records to be made publicly available under the provisions of this bill

This bill would require courts to make case-initiating civil and criminal court records publicly accessible in either paper or electronic form. Exempt from the definition of case-initiating civil and criminal court records are documents that are sealed or proposed to be sealed by court order or are confidential by operation of existing law. Existing law provides that documents under seal or requested to be under seal and court records made confidential by operation of law are to be withheld from public access. (Cal. Rules of Court, rule 2.550.) Examples of confidential records to which public access is restricted by law are records of the family conciliation court (Fam. Code Sec. 1818(b)), juvenile court records (Welf. & Inst. Code Sec. 827), and search warrant affidavits sealed under People v. Hobbs (1994) 7 Cal.4th 948.

As introduced, this bill did not provide restrictions for sealed and confidential documents that are withheld from public access under existing law. The Los Angeles County District Attorney's Office expressed concern over this lack of restrictions, but stated its support of the bill as long as the bill was amended to exempt sealed and confidential court records from the provisions of the bill. The Judicial Council also expressed concern over the unlimited right of public access to court records under the introduced bill. Although this bill has been amended to provide protections under existing law for sealed and confidential records, the Judicial Council remains opposed to this bill because the court clerks, in addition to the other existing intake procedure requirements, would have to determine whether the document being filed was a document falling under the definition of a case-initiating document, which would further slow down the intake procedure and add additional burdens to the already strained court system.

Support : California Newspaper Publishers Association; Los Angeles County District Attorney's Office

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Opposition : Judicial Council of California

HISTORY

Source : Californians Aware; Courthouse News Service; First Amendment Coalition

Related Pending Legislation : None Known

Prior Legislation : None Known

EXHIBIT C



Judicial Council of California
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April 27, 2011

Hon. Noreen Evans, Chair
Senate Judiciary Committee
State Capitol, Room 4034
Sacramento, California 95814

Subject: SB 326 (Yee), as amended April 25, 2011 – Oppose
Hearing: Senate Judiciary Committee – May 3, 2011

Dear Senator Evans:

I regret to inform you that the Judicial Council continues to oppose SB 326 as amended April 25th, which would require the Judicial Council to adopt a rule of court requiring courts to make case initiating documents in civil and criminal matters available for public inspection at the courthouse no later than the end of the same day on which those records are received by the court. The council believes that SB 326 would be completely unworkable for the courts, particularly given the judicial branch's current fiscal situation, and would actually impede public access to court records.

The sponsors of SB 326 allege that courts are increasingly failing to provide same-day access to "case-initiating documents" and that the failure to provide such access is "contrary to the fundamentally public nature of adjudicative court records." While the council strongly favors timely public access to court records that are subject to public disclosure, SB 326 sets a standard for access that cannot be achieved without a significant increase in court staffing.

Many courts make court records available within one court day of their filing, yet this turnaround time is deemed insufficient by the sponsors of SB 326. They assert that courts are performing "an ever-growing list of additional administrative tasks that they have interposed between the

filing of a document and its being made available to the public and the press.” Yet the courts note that one of those tasks may be the optical scanning of the document so that it can be made available to the public electronically and remotely in those cases in which remote access is appropriate. Providing remote electronic access to all on a next-day basis may better promote the objective of public access and accountability than reallocating resources to prioritize same-day access to paper records at the courthouse to those few who can come to the courthouse on a daily basis. However, the findings in SB 326 specifically lament the delays that may result from the use of electronic technologies. The council believes that any minor time delays are more than outweighed by the substantial public benefit to the public of providing electronic access to court records.

Many courts are unable to meet the same day standard because they must complete basic case processing tasks before they release the records to the public in order to ensure that they do not release confidential information, that the filing is valid (e.g. it is accompanied by the appropriate filing fee and is directed to the proper court), and to have sufficient information such that the court can protect the accuracy and integrity of the record prior to its release. These tasks are important functions of the court in its role as custodian of these records, and the speed with which access is provided must be reasonably balanced with these responsibilities. SB 326 has been amended to expressly provide that confidential records need not be released, but in order to protect confidential records, courts must review the filings before providing them to the requestor. On any given day the volume of filings may be such that courts cannot satisfy both requirements – if they perform the required screening, they will not be able to release records on the day that they are received.

Sponsors have suggested that courts can simply collect newly filed records in a box while they await processing and provide access to those files on that basis. The courts, however, note that it is not appropriate to subject those records to unsupervised review before the court has entered sufficient information to protect the accuracy and integrity of the record. The only way for courts to comply with this standard would appear to be to require that all parties submit two copies of any document filed with the court. Yet, even this mandate, which would be unduly burdensome for litigants and thereby diminish access to justice, would impose significant workload burdens for courts to manage this flow of paper and sort those filings that are confidential from those that are not.

It is also critical to note that many court filings are not readily available for public access on the same day they are filed because the court needs to act upon them in a timely manner. Requests for temporary restraining orders for domestic violence, elder abuse, and civil harassment must be acted upon by the court on the day that they are filed unless they are filed too late in the day for the court to act upon them. Taking action on these matters before they become publicly available is an appropriate course of action, and best serves the interest of the underlying statutes that seek to provide immediate protection to those who need it. Criminal filings for in-custody defendants

must lead to a timely arraignment of those defendants, and the court needs the filing in order to process the case and complete the arraignment. Courts need the flexibility to prioritize these critical functions and to provide access to the records within a reasonable time frame.

Finally, SB 326 provides no relief to courts for records that are filed late in the day. Requiring a court record filed minutes before the court closes to be available to the public that same day at the courthouse is simply a logistical impossibility. As amended, SB 326 continues to include these time sensitive filings, and fails to address how public access could be provided when the filing occurs late in the day. Would courts be forced to reduce the hours in which filings are accepted in order to create enough time to make new filings available before the courthouse closes? SB 326, with its singular emphasis on same day access would force courts to consider such illogical approaches.

The council is continuing to gather information on the costs to implement SB 326 on a statewide basis, but would note that even as amended, SB 326 would require approximately 2.5 million filings to be made available to the public on the day that they are filed. To complete the necessary processing of these filings would impose tremendous burdens on court operations at a time when courts are facing significant budget reductions. Many of our courts are seeing an increase in filings at the same time that they are laying off staff and/or leaving many positions vacant. Implementation of SB 326 in that context would have very negative impacts on the courts and require significant additional staff to accomplish its objectives without major disruptions and delays in all other areas of court operations.

For these reasons, the Judicial Council opposes SB 326.

Sincerely,



Tracy Kenny
Attorney

TK/yt

cc: Members, Senate Judiciary Committee

Hon. Leland Yee, Member of the Senate

Ms. Tara Welch, Counsel, Senate Judiciary Committee

Mr. John O'Malley, Courthouse News Service

Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor

Ms. Kirsten Kolpitzke, Deputy Director of Legislation, Governor's Office of Planning and Research

Mr. Mike Petersen, Consultant, Senate Republican Office of Policy

EXHIBIT D



Judicial Council of California

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June 9, 2011

Hon. Mike Feuer, Chair
Assembly Judiciary Committee
State Capitol, Room 2013
Sacramento, California 95814

Subject: SB 326 (Yee), as amended May 10, 2011 – Neutral

Dear Assembly Member Feuer:

The Judicial Council is pleased to inform you that it has removed its opposition to SB 326 and adopted a neutral position on the bill as it was amended on May 10th. SB 326 requires the Judicial Council, within 18 months of enactment of the legislation, to adopt a rule of court that would require courts that have fully implemented the California Case Management System (CCMS) to provide, to the extent possible and practicable, same day access to specified civil and criminal case initiating documents. The council was opposed to prior versions of SB 326 because they would have required all courts, regardless of their technology infrastructure, to make court filings available on the day that they were received by the court without exception. A number of concerns with this approach were raised which included: (1) the scope of records to be provided was overly broad and included high volume filings such as traffic tickets which are of little public interest, (2) courts cannot make records available before they have received preliminary processing and given resource constraints and current technology, that may take more than a day, (3) some filings need to be acted upon by the court immediately and cannot be made available until that action is complete, and (4) the introduced version of the bill made no exception for documents that are confidential as a matter of law.

Hon. Mike Feuer

June 9, 2011

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The May 10th version of SB 326 addresses each of these concerns. The scope of the records to be made available has been limited and does not include limited civil or small claims filings or any infractions, and it only encompasses "case initiating documents", thus excluding the many other filings received by the court in these cases. The requirement that the mandate to make the records available would only apply in those courts that have fully implemented CCMS will address many of the case processing issues that were raised with the prior version. With electronic filing, and an electronic document management system, CCMS will significantly expedite the time it takes to make a record available to the public and reduce the workload burden on the courts to accomplish initial case processing. Yet even with CCMS, it is clear that there will be circumstances in which courts cannot meet a same day mandate, and the SB 326 amendments address this situation as well, by requiring such access only to the extent "possible and practicable." Thus courts who are unable to meet this requirement because the court had to act on the filing before it could be made public, or simply because the filing came too late in the day to be made available on that same day, will not run afoul of the requirements to be developed pursuant to this legislation.

The council recognizes the importance of timely public access to court records. The only issue has been establishing reasonable parameters for providing such access. In its current form, SB 326 strikes a balance and will require timely public access without placing undue burdens on the courts that must provide this access. As a result, it is no longer necessary for the council to oppose SB 326, and we have adopted a neutral position on the May 10th amended version of the bill.

Sincerely,



Tracy Kenney
Attorney

cc: Members, Assembly Judiciary Committee
Hon. Leland Yee, Member of the Assembly
Ms. Leora Gershenson, Counsel, Assembly Judiciary Committee
Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Kirsten Kolpitzke, Deputy Director of Legislation, Governor's Office of Planning and Research
Mr. Mark Redmond, Consultant, Assembly Republican Office of Policy

EXHIBIT E

COMPLETE BILL HISTORY

BILL NUMBER : S.B. No. 326
 AUTHOR : Yee
 TOPIC : Court records: public access.

TYPE OF BILL :

- Active
- Non-Urgency
- Non-Appropriations
- Majority Vote Required
- Non-State-Mandated Local Program
- Fiscal
- Non-Tax Levy

BILL HISTORY

2011

Sept. 1 From committee with author's amendments. Read second time and amended. Re-referred to Com. on APPR.

Aug. 25 Set, second hearing. Placed on APPR. suspense file. Held in committee and under submission.

Aug. 22 From committee with author's amendments. Read second time and amended. Re-referred to Com. on APPR.

Aug. 17 Hearing postponed by committee.

July 6 Set, first hearing. Hearing canceled at the request of author.

June 21 From committee: Do pass and re-refer to Com. on APPR. with recommendation: To consent calendar. (Ayes 10. Noes 0.) (June 21). Re-referred to Com. on APPR.

June 9 Referred to Com. on JUD.

June 1 In Assembly. Read first time. Held at Desk.

May 31 Read third time. Passed. (Ayes 39. Noes 0. Page 1184.) Ordered to the Assembly.

May 24 Read second time. Ordered to third reading.

May 23 From committee: Be placed on second reading file pursuant to Senate Rule 28.8.

May 13 Set for hearing May 23.

May 10 Read second time and amended. Re-referred to Com. on APPR. (Corrected May 11.)

May 9 From committee: Do pass as amended and re-refer to Com. on APPR. (Ayes 5. Noes 0. Page 860.) (May 3).

Apr. 25 From committee with author's amendments. Read second time and amended. Re-referred to Com. on JUD.

Apr. 21 Set for hearing May 3.

Feb. 24 Referred to Com. on JUD.

Feb. 15 From printer. May be acted upon on or after March 17.

Feb. 14 Introduced. Read first time. To Com. on RLS. for assignment. To print.

EXHIBIT F



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

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August 8, 2011

Hon. Felipe Fuentes, Chair
Assembly Appropriations Committee
State Capitol, Room 2114
Sacramento, California 95814

Subject: SB 326 (Yee), as proposed to be amended – Oppose/Fiscal Impact Statement
Hearing: Assembly Appropriations Committee – August 17, 2011

Dear Assembly Member Fuentes:

The Judicial Council regrets to inform you that it has renewed its opposition to SB 326 as it is proposed to be amended because the requirement that courts make initial case filings available on a same day basis would be completely unworkable for the courts. In order to secure passage of SB 326 from the Senate Judiciary Committee, the author accepted amendments to the bill that made the same day access rule contingent upon a court having fully implemented the California Court Case Management System (CCMS). The amendments also provided these courts with the flexibility to implement this requirement “to the extent possible and practicable.” In requesting those amendments, the Senate Judiciary Committee was clear that while timely public access is critical, it is unreasonable to mandate immediate access at the same time that the Legislature is imposing substantial cuts to the budgets of the trial courts. The current amendments to SB 326 would eliminate the provisions relating to CCMS, and only allow courts flexibility on the same day access requirement until the first hour of the next court day. Thus the amended version of SB 326 would require courts, regardless of their technology infrastructure, to process and make available to the public most new civil and criminal filings within the same day or the first hour of the next day without exception. Subsequent to the Senate Judiciary Committee hearing, the ongoing cuts to the judicial branch in the budget were increased by an additional \$150 million.

Most courts were not in a position to comply with the same day mandate in SB 326 before these additional cuts were enacted, but in the face of even deeper reductions, courts will not have sufficient staff available to fulfill the requirements of SB 326.

Many courts are unable to meet the same day standard because they must complete basic case processing tasks before they release the records to the public in order to ensure that they do not release confidential information, that the filing is valid (e.g., it is accompanied by the appropriate filing fee and is directed to the proper court), and to have sufficient information such that the court can protect the accuracy and integrity of the record prior to its release. These tasks are important functions of the court in its role as custodian of these records, and the speed with which access is provided must be reasonably balanced with these responsibilities. SB 326 is being proposed to expressly provide that confidential records need not be released, but in order to protect confidential records, courts must review the filings before providing them to the requestor. On any given day the volume of filings may be such that courts cannot satisfy both requirements – if they perform the required screening, they will not be able to release records on the day that they are received. While the amendments would allow the court one additional hour to complete these tasks on the following day, that level of flexibility is not sufficient given the resource shortages that courts currently face. In order to comply, courts would need to hire significantly more staff at a substantial cost.

The council recognizes the importance of timely public access to court records. The only issue has been establishing reasonable parameters for providing such access. In its prior form, SB 326 struck a reasonable balance that would have required timely public access without placing undue burdens on the courts that must provide this access. The proposed amendments eliminate that balance and make SB 326 unworkable and very costly for the courts.

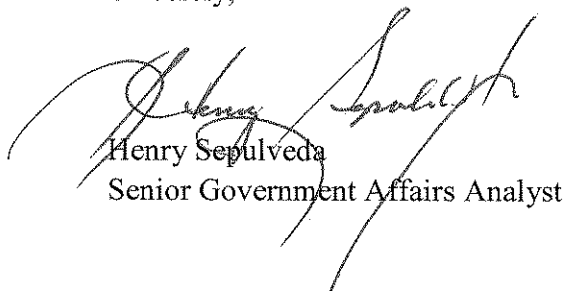
Fiscal Impact

In light of the \$350 million budget cut to the judicial branch for FY 2011-2012, and the corresponding reductions in court staff and operating hours necessitated by that budget cut as well as the budget reductions imposed in the last several years, the additional tasks imposed by this measure on the trial courts cannot realistically be accomplished without: (1) diverting existing court resources from other current constitutional and statutory responsibilities (resulting in burgeoning delays in processing of civil and criminal cases), or (2) additional court staff. While the number of additional court staff needed to comply with the requirements of SB 326 will vary from court to court, we estimate that the cost for additional court staff on a statewide basis would be between \$5 – 10 million, annually. The additional ongoing costs may be mitigated to the extent that an improved court case management system is implemented in certain trial courts in future years.

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Please contact Tracy Kenny or me at 916-323-3121, or at henry.sepulveda@jud.ca.gov, or tracy.kenny@jud.ca.gov if you would like further information or have any questions about the impact of this legislation on the judicial branch.

Sincerely,



Henry Sepulveda
Senior Government Affairs Analyst

cc: Members, Assembly Appropriations Committee
Hon. Leland Yee, Member of the Senate
Ms. Susan Chan, Office of Senator Leland Yee
Mr. Chuck Nicol, Principal Consultant, Assembly Appropriations Committee
Mr. Allan Cooper, Fiscal Consultant, Assembly Republican Fiscal Office
Mr. Michael Miyao, Budget Analyst, Department of Finance