

CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM

BILL ANALYSIS

Assembly Bill 1209

Assembly Member Nakano (As amended 7/27/03)

Position:

Support

Proponents:

SCSA and Office of Homeland Security (Sponsors),
Association of California Water Agencies,
California State Building Standards Commission, CalSTRS,
San Bernardino County Sheriffs' Department,
East Bay Municipal Utility District, Santa Clara Valley Water
District, CalPERS Board of Administration

Opponents:

California First Amendment Coalition,
California Newspaper Publishers Association,
California for Alternatives to Toxics

SUMMARY

Assembly Bill 1209 exempts documents prepared by or for a public agency that assesses vulnerability to terrorist attack or other criminal acts that disrupt public agency operations, or harm or compromise the safety of the personnel or public access to a public building or facility, subject to specified criteria from the California Public Records Act (PRA).

HISTORY

Chapter 175, Statutes of 2002 (SB 1643—Johnson) exempts security-related documents in the possession of local governments from the Public Records Act and allows local governments to hold closed sessions to discuss emergency situations including criminal or terrorists attacks.

Chapter 1113, Statutes of 2002 (AB 2072—Mountjoy) enables a state body subject to the Open Meeting Act to discuss security issues in closed session—specifically matters posing threat of criminal or terrorist activity against personnel, property, buildings, facilities or equipment.

Chapter 177, Statutes of 1989 (AB 1284—Quankenbush) authorizes the Teachers' Retirement Board (Board) and the California Public Employees' Retirement System (CalPERS) Board to meet in closed session to consider matters pertaining to the recruitment or removal of the Chief Investment Officer of each System and adds authorization for the CalPERS Board to meet in closed session to consider personnel matters pertaining to the Chief Executive Officer.

Chapter 1320, Statutes of 1987 (SB 200—Roberti) provides, among other things, that a state body prior to holding a closed session to discuss litigation, must require its legal counsel to

prepare and submit a memorandum stating the specific reasons and legal authority for closed session.

SUMMARY OF CHANGES

The July 27, 2003 amendments:

- Require an agency's vulnerability assessment and/or emergency response plan to be available to the public, unless the public agency determines the public interest served by nondisclosure outweighs disclosure;
- Exempt customer lists provided to a state or local police agency by an alarm or security company, at the request of the agency;
- Eliminate proposed changes to the Bagley-Keene Open Meeting Act.

CURRENT PRACTICE

The PRA (Government Code Section 6254) exempts from its public disclosure requirements local government documents that assess vulnerability to terrorist and or criminal acts. Additionally, the Ralph Brown Act allows a local agency or legislative body to hold a closed session when considering issues related to the security of public facilities and services. Local legislative bodies may hold an emergency meeting in closed session with law enforcement officials, if agreed to by a two-thirds vote of members present or by unanimous vote if less than two-thirds of the members are present.

The California State Teachers' Retirement System (CalSTRS) as a qualifying "state body" under the Bagley-Keene Open Meeting Act (Government Code Section 11121) is authorized to conduct meetings that are open to the public. Until January 1, 2006, upon a two-thirds vote, a state body may hold a closed meeting to consider matters posing a threat or potential threat of criminal or terrorist activity directed at the state body or its facilities, including personnel, buildings, electronic equipment and electronic data. After meeting in closed session, the state body would reconvene in open session and report the general nature of the matters considered, whether action was taken in closed session, and to submit written notification of these matters to the Legislature.

Under existing law, protection of security documents is not consistent between state and local government. Currently, unless criminal or terrorist activity is directed at state property, state employees or state governmental bodies cannot discuss security issues in a closed session. To do so would violate open meeting laws. Unfortunately, having an open session could disclose security preparations or potential targets to terrorists or criminals.

DISCUSSION

AB 1209 provides an increased level of protection for the security-related documents of public agencies, and eliminates concerns related to disclosure of security issues that compromise the public agency's operations, the safety of personnel or public access to public buildings and facilities.

The author believes this proposal would reduce uncertainty concerning public disclosure of critical information regarding vulnerability to attack or means to prevent and respond to these attacks. Additionally, AB 1209 provides public agencies an equitable format for securing documents and for discussing issues of terrorism or other criminal acts.

This bill permits CalSTRS to disclose documentation prepared that assesses vulnerability to terrorist attack or other criminal acts that could disrupt agency operations, harm or compromise personnel safety or public right of facility access, only after determining whether the threat of terrorism or criminal acts has passed. This bill makes no changes to the Bagley-Keene Open Meeting Act as they affect CalSTRS.

FISCAL IMPACT

Benefit Program Cost– None

Administrative Costs/Saving – Minor cost savings

BOARD POSITION

Support. This bill would ensure that security documentation and deliberations have the same protection for a public agency. This legislation is consistent with CalSTRS' goal to foster board culture and practices that promote efficient and effective governance.