

SENATE THIRD READING

SB 749 (Durazo)

As Amended September 10, 2019

Majority vote

SUMMARY:

Provides that certain records provided by private industry employers to public agencies pursuant to a contract with a state or local agency are public records, not trade secrets.

Major Provisions

- 1) Provides that, unless contrary to Section 19542 of the Revenue and Taxation Code, notwithstanding any other law or effort to maintain their secrecy, the following records that are prepared, owned, used, or retained by a public agency, are public records for the purposes of this chapter and are not trade secrets:
 - a) Records of wages, benefits, working hours, and other employment terms and conditions of employees working for a private industry employer, or a subcontractor of a private industry employer, pursuant to a contract entered into on or after January 1, 2020, with a state or local agency.
 - b) Records of compliance with domestic content requirements specified in Section 5323(j) of Title 49 of the United States Code, or with any state or local law mandating domestic content in state or local agency procurement or limiting or prohibiting the use of articles, materials, or supplies mined, produced, or manufactured in foreign countries.
 - c) Records of a private industry employer's compliance with job creation, job quality, or job retention obligations in a contract or agreement with a state or local agency or pursuant to a state or local law.
- 2) Clarifies that the bill does not require 1) disclosure of the name and other personal identifying information of an employee that is exempt from disclosure pursuant to this chapter; or, 2) a private employer to violate the requirements of a federal contract or federal law.
- 3) Exempts Section 17059.2 and 23689 of the Revenue and Taxation Code.
- 4) Exempts the following public records from the provisions of the bill:
 - a) Contracts between a public agency and a private industry employer entered into on or before January 1, 2020.
 - b) Records that include communications between the state or local agency and specified state or local officials, on matters posing a threat to the security of a public building, a threat to the security of essential public services, or a threat to the public's right of access to public services or public facilities.
- 5) Makes findings that the bill furthers the purposes of the California Public Records Act (CPRA).

COMMENTS:

This bill involves the legal question about whether documents and information within those documents that are provided by a private company to a public agency and related to a contract with an agency are public records—that are required by the CPRA to be disclosed to the public upon request (See Government Code Section 6253 *et seq.*)—or trade secrets that are exempt from disclosure under the CPRA (Government Code Section 6254(k)). The bill seeks to answer that question, which is the subject of frequent and contentious disputes involving public agencies (that often feel conflicted between obligations to comply with the CPRA and requests from the private companies that provide the information or records to withhold the information) and the courts, with a definitive answer: that the information is not a trade secret and not exempt from disclosure in response to a request pursuant to the CPRA, regardless of any effort on the part of the company to prevent its disclosure.

According to the Author:

SB 749 positions California to be a leader in creating good jobs and open government. As a global economic leader, California's strives to govern and purchase for the common good. SB 749 would make clear that all information in a public contract between a private industry employer and a state or local agency pertaining to job creation, job quality, and job retention, as well as Buy America laws compliance, is not exempted from the California Public Records Act (CPRA) as a trade secret or for any other reason.

Arguments in Support:

A large coalition of labor organizations, civil rights groups, and anti-poverty advocates supports the bill for a number of reasons, including the following:

The public's access to critical information is essential to holding companies accountable to their promises in exchange for taxpayer monies.

Transparency is especially critical when government agencies contract with private companies for new goods and services and/or invest public funds in those companies in the form of public grants and subsidies.

Arguments in Opposition:

A large coalition of business groups opposes the bill on a number of grounds, including that the Legislature should not unilaterally declare that certain information is and can never be a trade secret:

While payroll, employee benefit, other terms and conditions of employment, documents related to job creation, retention, or compliance with "domestic content requirements specified in Section 5323(j) of Title 49 of the United States Code," may not always qualify as a "trade secret," that is a question of fact for a judge or jury to determine in a case of compelled disclosure. The Legislature should not be unilaterally deciding by statute which records/documents of a private industry should be treated as a trade secret or not, and compelled public disclosure, thereby eliminating any economic value of the information. It is a factual determination based upon the circumstances of the case, records, and information at issue.

FISCAL COMMENTS:

According to the Assembly Appropriations analysis, costs (General Fund) in excess of \$150,000 for state agencies to review and provide public information obtained from private industry employers and subcontractors about the wages, benefits and working conditions of the private contractors' employees.

VOTES:**SENATE FLOOR: 21-12-5**

YES: Allen, Atkins, Beall, Bradford, Caballero, Durazo, Hertzberg, Hueso, Jackson, Leyva, McGuire, Mitchell, Monning, Pan, Portantino, Roth, Skinner, Stern, Umberg, Wieckowski, Wiener

NO: Archuleta, Bates, Borgeas, Chang, Dodd, Grove, Jones, Moorlach, Morrell, Nielsen, Stone, Wilk

ABS, ABST OR NV: Galgiani, Glazer, Hill, Hurtado, Rubio

ASM JUDICIARY: 8-3-1

YES: Mark Stone, Chau, Chiu, Gabriel, Holden, Kalra, Petrie-Norris, Reyes

NO: Gallagher, Kiley, Obernolte

ABS, ABST OR NV: Maienschein

ASM APPROPRIATIONS: 12-5-1

YES: Gonzalez, Bloom, Bonta, Calderon, Carrillo, Chau, Eggman, Gabriel, Eduardo Garcia, Maienschein, Quirk, Robert Rivas

NO: Bigelow, Brough, Diep, Fong, Obernolte

ABS, ABST OR NV: Petrie-Norris

ASSEMBLY FLOOR: 43-16-20

YES: Bauer-Kahan, Berman, Boerner Horvath, Bonta, Carrillo, Chau, Chiu, Chu, Cooley, Frazier, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Grayson, Holden, Jones-Sawyer, Kalra, Kamlager-Dove, Levine, Low, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Quirk, Reyes, Luz Rivas, Robert Rivas, Blanca Rubio, Salas, Santiago, Mark Stone, Ting, Weber, Wicks, Wood, Rendon

NO: Bigelow, Brough, Chen, Choi, Cunningham, Flora, Fong, Gallagher, Kiley, Lackey, Mathis, Mayes, Melendez, Obernolte, Patterson, Voepel

ABS, ABST OR NV: Aguiar-Curry, Arambula, Bloom, Burke, Calderon, Cervantes, Cooper, Daly, Diep, Eggman, Gray, Irwin, Limón, Maienschein, Petrie-Norris, Quirk-Silva, Ramos, Rodriguez, Smith, Waldron

UPDATED:

VERSION: September 10, 2019

CONSULTANT: Alison Merrilees / JUD. / (916) 319-2334

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