



**California Special Districts Association**  
*Districts Stronger Together*

April 17, 2017

The Honorable Rob Bonta  
 California State Assembly  
 State Capitol Building, Room 2148  
 Sacramento, CA 95814



**RE: AB 1479 (Bonta). Public Records: Supervisor of Records: Fines Notice of Opposition (as amended 03/21/17)**

Dear Assembly Member Bonta:

The undersigned organizations must respectfully oppose Assembly Bill (AB) 1479. As amended, the measure places substantial burdens on local agencies by adding onerous, costly and unnecessary requirements in processing California Public Records Act (CPRA) requests. AB 1479 would mandate that every local agency assign a “Supervisor of Record” to review each public records act denial prior to the final determination being issued. Additionally, the measure establishes new and costly punitive damages assessed to agencies above and beyond plaintiffs’ attorney fees established in current law.

**Creates New Costs and Impediments to Process Public Records Act Requests in a Timely Manner:**

Local agencies strive to comply with the strict guidelines inherent with the CPRA; this measure runs counter to that intent. AB 1479 would cause further delays in processing requests by creating an additional step in the process whereby every request would have to be reviewed by the Supervisor of Record before a final determination from the agency can be issued.

Additionally, our agencies have seen a significant spike in CPRA request in recent years. For example, in 2013 the City of Sacramento processed 1,800 CPRA requests. In 2016 the city processed 4,002 requests—and that number is projected to increase in 2017. This measure fails to take into account that many of these requests are often made from requesters and/or private entities who reside outside of our jurisdictional boundaries. Moreover, these serial filers make incredibly complex data requests which are then repackaged and sold. Due to the increased volume of such requests, many agencies large and small have already had to hire additional staff dedicated solely to review documents in association with CPRA requests.

**Creates Increased Litigation for Local Agencies:**

Under the CPRA, the requester can file suit on the day after responsive records are due which could be as early as eleven days after the request if there has been no extension of time. Once a suit is filed, generous attorneys’ fees established in current law may still be awarded under the “catalyst” theory even if the agency discloses the requested records after the litigation has commenced. It is our contention that adding the additional punitive damages award provision—which could be as high as \$5,000 per violation will lead to a litany of satellite litigation given the grounds for punitive damages are so vast. Under this measure damages can be awarded on every type of violation, no matter how significant, no matter if a denial was made in good faith, etc.

In addition, viewed more broadly, the idea of punitive damages becoming a fixture in legislation against public entities is a troublesome precedent. Local agencies already potentially face significant liability exposure each time a request is denied due to the potential award of attorneys' fees.

The bill also appears to authorize a requestor to sue a public agency if the agency has "assessed an unreasonable fee upon a requester." However, the term "unreasonable" is not expressly defined in this measure, thereby creating uncertainty for agencies and increasing their exposure to litigation. Agencies are expressly authorized to charge certain fees, and there are existing avenues to challenge improper fees that have more exacting standards under current law.

In *County of Santa Clara v. Superior Court (Naymark)* (2009) 171 Cal.App.4th 119, the court found that Government Code sections 6258 and 6259 are narrow in terms of the types of lawsuits that are permitted under those sections. Under current law, lawsuits cannot be brought under Government Code sections 6258 or 6259 to challenge other alleged deficiencies in CPRA compliance—such as the production of a request that has already occurred but was late. However, this bill makes amends Government Code section 6259 to authorize the court to assess damages if a court finds a violation of the CPRA because the agency "failed to furnish a properly requested record or a portion thereof in a timely manner, assessed an unreasonable fee upon a requester, or otherwise did not act in good faith to comply with this chapter." But those causes of actions are not permitted under Government Code section 6259, per the courts determination in *Naymark*. The result is that this measure creates a situation whereby there is a remedy provided for a cause of action that is not available. This is untenable.

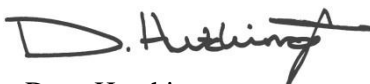
**AB 1479 does not and is Unable to Mirror the 'Massachusetts' Model:**

While we appreciate the attempt by the proponents to model this proposal on what was adopted in the state of Massachusetts, AB 1479 misses the mark. Under the Massachusetts Public Records Law, the State established a dedicated funded department under the Secretary of the Commonwealth (California's equivalent to the Secretary of State's Office). Appeals of determinations made by the municipal Records Access Officer (RAO) can be appealed and reviewed by the state The Secretary of the Commonwealth's RAO where the final determination of the request is made. Moreover, municipal RAO's are have the ability to charge and recover fees for the time spent searching, redacting, photocopying and refiling a record up to \$25 per hour. Furthermore, a local agency has the ability to petition The Secretary of the Commonwealth's RAO for permission to assess and charge a higher hourly rate if needed.

These cost recovery provisions outlined in Massachusetts law are a *critical* component in the viability of having regional RAO's. Under Massachusetts law, in most cases every hour spent processing public records act requests are cost neutral. However, under California Proposition 42 all costs are placed squarely on the shoulders of local public agencies when responding to CPRA requests. Proposition 42 prevents local agencies from recouping virtually any current or future costs associated with the increased staffing/staff time that would be required to comply with this measure.

For these reasons we respectfully **oppose** Assembly Bill 1479. If you have any questions regarding our position, please do not hesitate to contact Dane Hutchings at the League of California Cities at (916) 658-8210, Dillon Gibbons at the California Special Districts Association at (916) 442-7887, Dorothy Johnson at the California State Association of Counties at (916) 327-7500, Danielle Blacet with the California Municipal Utilities Association at 916-326-5802, Amber King with Association of California Healthcare Districts at 916-266-6100 or Jolena Voorhis with Urban Counties of California.

Sincerely,



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League of California Cities



Danielle Blacet  
California Municipal Utilities Association



Jolena Voorhis  
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Dillon Gibbons  
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Amber King  
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cc: Members, Assembly Judiciary Committee  
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