

IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

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SIERRA CLUB,  
Petitioner

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
COUNTY OF ORANGE,  
Respondent.

COPY

NOV 28 2011

COUNTY OF ORANGE,  
Real Party in Interest.

PROBATE CLERK  
COUNTY OF ORANGE

AFTER A DECISION BY THE CALIFORNIA COURT OF APPEAL,  
FOURTH APPELLATE DISTRICT, DIVISION 3, NO. G044138

ORANGE COUNTY SUPERIOR COURT  
Honorable James J. Di Cesare  
No. 30-2009-00121878-CU-WM-CJC

PETITIONER SIERRA CLUB'S MOTION  
REQUESTING JUDICIAL NOTICE  
EXHIBITS VOLUME 2 OF 3

Sabrina D. Venskus, SBN 219153; Venskus@lawsv.com  
Dean Wallraff, SBN 275908; DWallraff@lawsv.com  
Venskus & Associates, P.C.  
21 South California Street, Suite 204  
Ventura, California 93001  
Telephone: (805) 641-0247  
Facsimile: (213) 482-4246

*Attorneys for Petitioner,*  
THE SIERRA CLUB

No. S194708

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OF THE STATE OF CALIFORNIA**

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***Attorneys for Petitioner,***  
**THE SIERRA CLUB**

## Table of Exhibits

Vol. 1	Exhibit 1	Portions of the legislative history of California Assembly Bill No. 2799, (1999-2000, Regular Session).
	Exhibit 2	Selected pages of "GIS Needs Assessment Study," prepared for County of Orange, California, by Geographic Technologies Group.
	Exhibit 3	Official ballot information for the California 2004 General Election concerning Proposition 59, "Arguments and Rebuttals" web page.
	Exhibit 4 (PA-000952-000953; 955-957; 959-967)	Portions of the legislative history of California Assembly Bill No. 3265, (1987-1988, Regular Session).
Vol. 2	Exhibit 4 (PA-000969-000970; 972-977; 979; 981-982; 984-1007; 1009-1010; 1012-1013; 1015-1026; 1028-1029; 1031)	Portions of the legislative history of California Assembly Bill No. 3265, (1987-1988, Regular Session).
Vol. 3	Exhibit 4 (PA-001033-001072; 1074-1078; 1080)	Portions of the legislative history of California Assembly Bill No. 3265, (1987-1988, Regular Session).
	Exhibit 5	American Heritage Dictionary definition of "program," p.1401, (4 <sup>th</sup> ed., 2006.)
	Exhibit 6	Excerpts from Paul E. Ceruzzi, <i>A History of Modern Computing</i> , cover page plus pages 272 through 277. (MIT Press 1998.)
	Exhibit 7	LexisNexis generated report showing all relevant amendments to the Public Records Act, and highlighted.
	Exhibit 8	Portions of the legislative history of California Assembly Bill No. 1978, (2007-2008, Regular Session).

WAYS AND MEANS COMMITTEE ANALYSIS

Author: Cortese

Amended: 04/04/88

Bill No.: AB 3265

Policy Committee: G.O.

Vote: 17-00

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Urgency: No

Hearing Date: 05/04/88

State Mandated Local Program: No

Staff Comments By:

Disclaimed:

Judi Smith *Judi*

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Summary

This bill provides that "computer software" which is developed or maintained by a public agency is not a "public record" for purposes of the California Public Records Act. The public agency may sell, lease or license the software for commercial or noncommercial use. The information stored on computers would retain its public record status.

For purposes of this bill, computer software would include computer readable data bases, computer programs and computer graphics systems.

Fiscal

Potential revenue gain to state and local agencies from the sale of computer software.

Comments

1. The Public Records Act allows the sale, lease or license of public records only at the "direct costs of duplication". This bill would allow a public agency to sell the software at a cost which would include the expense of developing the software.
2. The City of San Jose has developed various computer readable programs for civic planning purposes which a number of utility companies, engineering firms, private consultants and other commercial interests are requesting under the California Public Records Act.

JS

LIS - 5

PA-000969

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Bill No.: AB 3265

Recommendation

Do pass consent. This bill is sponsored by the City of San Jose.

Judi

FL

LEGISLATIVE INTENT SERVICE (800) 666-1917



LIS - 6

AF-1

PA-000970

STATE BOARD OF EQUALIZATION  
LEGISLATIVE BILL ANALYSIS

Bill Number: AB 3265 Date Amended: 4/4/88  
Author: Cortese Tax: Administration  
Board Position: Neutral Related Bills: SB 1848  
SB 1949

BILL SUMMARY:

This bill would add Section 6254.9 to the Government Code (Public Records Act) to provide that State and local agencies would not be prohibited from selling, leasing, or licensing computer software for commercial or noncommercial use. This bill also provides that computer software is not itself a public record.

ANALYSIS:

In General:

The Public Records Act (PRA) provides "public access" to any records maintained by State and local agencies which are not otherwise exempt from disclosure, thus ensuring every person's right to public information and encouraging open government.

All provisions of the PRA relate to the access of records. There are various exemptions from mandatory disclosure of records. The agency generally has discretion to make more records available than the act requires, provided the release does not violate other confidentiality statutes. An agency may charge a sufficient amount to cover direct costs to recover documents and to duplicate them under the PRA.

The Board currently handles requests for information under the PRA. The Board has set base prices for making certain records available to the public upon request. These base prices cover the cost of compiling, copying, and mailing the information requested.

Background:

According to the author's office, this bill is sponsored by the City of San Jose. The City would like to recoup their development costs of computer databases sold to the public.

LIS - 7

ARC-1

PA-000972

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LEGISLATIVE INTENT SERVICE



COMMENTS:

1. The Board's Information Management Division has approximately 15 active weekly subscribers to information in the sales and use tax registration database. There are numerous other requests for information from the registration database. The Board sells the information on magnetic tape, labels, or index cards. The magnetic tape contains only data. No computer programs are included.
2. The Board has no plans at this time to develop computer programs that would be usable to the public. Consequently, this bill would not affect the Board's administrative procedures.
3. The April 4, 1988 amendments to the bill do not change the effect of the bill. In its present form the bill speaks more directly to the intent of the bill.

COST ESTIMATE:

This bill would have no impact on Board costs.

REVENUE ESTIMATE:

Unknown.

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Analysis prepared by: Robin J. Kulakow 323-7169 04/07/88  
 Contact: Margaret Shedd Boatwright 322-2376

*RGK 1/1/88*  
*ce/4/9/88*  
*[Signature]*  
*4/8/88*

*ARC 2*

**LEGISLATIVE ANALYSIS**

*Business, Transportation & Housing Agency*

DEPARTMENT <i>Teale Data Center</i>	AUTHOR <i>Assemblyman Cortese</i>	NUMBER <i>AB 3285</i>
SUBJECT <i>Public records: computer software</i>		<i>As Amended</i>

Summary:

*This proposed bill would provide that computer software developed or maintained by a state or local agency is not itself a public record under the act and would authorize the agency to sell, lease, or license the software for commercial or noncommercial use.*

Analysis:

A. Detailed:

*Under this proposed bill, "computer software" includes computer readable data bases, computer programs, and computer graphics systems.*

*Also, this bill is not intended to affect the public record status of information merely because it is stored in a computer.*

B. Cost:

*This bill, if implemented as introduced, would have no direct impact on Teale's budget.*

Legislative History:

*This legislation is being introduced by Assembly Member Cortese.*

Recommended Position:

*The Teale Data Center DEFERS to the Department of Finance since the bill deals with significant policy issues.*

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DEPARTMENTS THAT MAY BE AFFECTED		GOVERNOR'S OFFICE	
POSITION <i>DEFER TO FINANCE</i>		POSITION NOTED	_____
DEPARTMENT <i>[Signature]</i>	AGENCY	POSITION APPROVED	<input checked="" type="checkbox"/>
DATE <i>5/2/86</i>	DATE <i>MAY 2 1986</i>	POSITION DISAPPROVED	_____
CC:		BY: <i>[Signature]</i>	DATE: <i>5/1/86</i>

ARC-3



Honorable Dominic L. Cortese  
 Member of the Assembly  
 State Capitol, Room 6031  
 Sacramento, CA 95814

DEPARTMENT Finance	AUTHOR Cortese	BILL NUMBER AB 3265
SPONSORED BY	RELATED BILLS	LAST AMENDED June 9, 1988

**BILL SUMMARY**

This bill would provide that computer software, developed by the State or Local Government, is not a public record. This act would authorize a State or Local Government agency to sell, or lease the software for commercial or noncommercial use.

**FISCAL SUMMARY--STATE LEVEL**

Code/Department Agency or Revenue Type	SO (Fiscal Impact by Fiscal Year)				Code			
	LA (Dollars in Thousands)							
	RV	FC	1988-89	FC	1989-90	FC	1990-91	Fund

None

**ANALYSIS**

**A. Specific Findings**

The bill defines computer software developed by the State or Local Government as not itself a public record and, therefore, not subject to the Public Record Management Act. The bill would permit a governmental agency to sell, lease or license the software for commercial or noncommercial purposes.

The bill specifically includes computer mapping systems as computer software, thereby permitting their sale.

The bill excludes a governmental agency from any implied warranty that may be inferred by the sale of computer software, or errors, omissions, or other defects in the computer software.

The bill specifies that any data that may be stored on a computer still retains its public record status.

**B. Fiscal Analysis**

The potential revenue generated by the sale of computer programs, graphics, and information data bases could be substantial depending on the price of the information, program or graphics, and conditions of the sales or licensing agreement. Since the demand and conditions of sale or license are not known, it is not possible to estimate the potential revenue.

POSITION	DEPARTMENT	DIRECTOR	DATE
NEUTRAL			

Principal Analyst (83) Joe Pujail	Date 6-16-88	Ofc. Inf. Tech., Dir. Steve E. Kolodney	Date	Governor's Office Position noted Position approved Position disapproved by: _____ Date: _____
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ARC-4

Honorable Dominic L. Cortese  
Member of the Assembly  
State Capitol, Room 6031  
Sacramento, CA 95814

DEPARTMENT Finance	AUTHOR Cortese	BILL NUMBER AB 3265
SPONSORED BY	RELATED BILLS	LAST AMENDED June 15, 1988

**BILL SUMMARY**

This bill would provide that computer software, developed by the State or Local Government, is not a public record. This act would authorize a State or Local Government agency to sell, or lease the software for commercial or noncommercial use.

**FISCAL SUMMARY---STATE LEVEL**

Code/Department Agency or Revenue Type	(Fiscal Impact by Fiscal Year)			Code Fund
	SO LA CO	(Dollars in Thousands)		
	RV	FC 1988-89	FC 1989-90	FC 1990-91

None

**ANALYSIS**

**A. Specific Findings**

The bill defines computer software developed by the State or Local Government as not itself a public record and, therefore, not subject to the Public Record Management Act. The bill would permit a governmental agency to sell, lease or license the software for commercial or noncommercial purposes.

The bill specifically includes computer mapping systems as computer software, thereby permitting their sale.

The bill excludes a governmental agency from any implied warranty that may be inferred by the sale of computer software, or errors, omissions, or other defects in the computer software.

The bill specifies that any data that may be stored on a computer still retains its public record status.

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POSITION	DEPARTMENT DIRECTOR	DATE
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NEUTRAL

Principal Analyst (83) Joe Pujals	Date 6/20/88	Ofc. Inf. Tech., Steve E. Kolodney	Dir. Date 6/21/88	Governor's Office Position noted Position approved Position disapproved
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ARC-5

STATE BOARD OF EQUALIZATION - LEGISLATIVE OFFICE

BILL ANALYSIS ACTION

Date: June 20, 1988

Bill No: AB 3265 Date Amended: 06/15/88

Author: Cortese Tax: Administration

Position: Neutral Related Bills: SB 1848  
SB 1949

- We have no interest in the bill in its present form and will not prepare an analysis.
- We are following the bill but will not prepare an analysis on it in its present form.
- The current amendments do not affect our previous analysis and we have no further comments.
- See comments

COMMENTS:

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Please direct further inquiries to:

*MS*  
Margaret Shedd Boatwright  
(322-2376) *MS*  
*6/22/88*

*cc*  
*6/22/88*

*ARC-6*

AB 3265 (Cortese)  
7/21/88

ASSEMBLY GOVERNMENTAL ORGANIZATION COMMITTEE  
REPUBLICAN ANALYSIS

AB 3265 (Cortese) -- PUBLIC RECORDS: PROPRIETARY INFORMATION  
Version: 6/15/88 Vice-Chairman: Frank Hill  
Recommendation: Support Vote: Majority.

Summary: Declares that computer software developed by public agencies is not public record and allows public agencies to sell or lease such software to help recoup costs of developing it. Fiscal effect: Unknown potential revenue to public agencies from marketing computer software

Supported by City of San Jose (sponsor), California Municipal Utilities Assoc., San Diego Association of Governments, Sacramento County, League of California Cities, California Association of Licensed Investigators Opposed by California Land Title Assoc. Governor's position: Unknown (Dept. of Finance neutral)

Comments: The Public Records Act allows public entities to charge for the cost of duplicating. This bill amends the act to allow agencies to recover development and maintenance costs of computer software by selling or licensing computer programs and data bases that have been developed sometimes at considerable public expense. Passing such costs along to those who will use them for business-oriented purposes is in the taxpayers' best interest.

This does not affect the ability of the public to obtain information stored on computers.

Assembly Republican Committee Vote  
Governmental Organization -- 4/12/88  
(17-0) Ayes: All Republicans  
Ways & Means -- 5/3/88  
(23-0) Ayes: All Republicans  
Assembly Republican Floor Vote -- 5/12/88  
(79-0) Ayes: All Republicans  
Senate Republican Floor Vote -- 6/30/88  
(37-0) Ayes: All Republicans present & voting  
Consultants: Susan Ricci/Shannon Hood

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ARC-7

STAFF ANALYSIS OF ASSEMBLY BILL NO. 3265 (Cortese)  
As Amended June 9, 1988

SUBJECT

Public records: computer software

DESCRIPTION

1. AB 3265 specifies that "computer software", as defined, which is developed by a state or local agency is not itself a public record for purposes of the California Public Records Act, but that information stored on computers retains its public record character.
2. The bill permits a public agency to sell, lease, or license its computer software for commercial or noncommercial use.
3. The measure specifies that the provisions of this bill shall not be construed to create an implied warranty on the part of the public agency for errors, omissions, or other defects in any computer software.

BACKGROUND

The California Public Records Act requires each state and local agency upon receiving any request for a copy of records in its possession which are subject to public disclosure to make the records promptly available upon payment of fees covering the direct costs of duplication. The purpose of the Act is to allow access to information concerning the conduct of the people's business. The Act also provides that copies of computer data shall be provided in a form determined by the agency.

The City of San Jose, the sponsor of this bill, has developed various computer readable data bases and other computer stored information for various civic planning purposes. A number of private parties have requested use of the city's software under the Public Records Act for profit-making purposes. The sponsor argues that the proprietary information requested has been developed and maintained by the city at great public expense.

According to the author, the purpose of this bill is to clarify that computer software is not itself a public record and to authorize a public agency to sell, lease, or license the software at a cost greater than the direct costs of duplication, as specified by the Public Records Act. The bill would permit the city of San Jose and other governmental agencies to recoup development costs of computer databases sold to the public.

(CONTINUED)

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PA-000981



KNOWN POSITIONS:

The following SUPPORT AB 3265:

- City of San Jose
- City of San Diego
- County of Los Angeles
- State Association of County Auditors
- County of San Diego
- County of Sacramento
- California Municipal Utilities Association
- California Association of Licensed Investigators
- San Diego Association of Governments

There is NO KNOWN OPPOSITION.

WRITTEN COMMUNICATION: On file

FISCAL COMMITTEE: Senate Appropriations

\* \* \* \* \*

AT:dm

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Administrative Services Committee  
RE: Legislative Proposal for Authority  
to Sell or License Proprietary  
Information

January 19, 1968  
Page 2

Attached is an interesting article which shows that this issue was recently addressed in Minnesota.

### Analysis

The Public Records Act (the Act) requires state and local government agencies to make any identifiable public record promptly available to any person so requesting, upon payment of fees covering the direct costs of duplication, or a statutory fee, if applicable. Govt. Code § 6257. A "public record" includes "magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents." Govt. Code § 6257(1).

Section 6256 provides in part that "Computer data shall be provided in a form determined by the agency". There is no case law interpreting this provision, nor is "computer data" defined in the Act. The provision does indicate a legislative recognition that information which is stored in a computer is capable of being reproduced in a variety of forms, including printed or "hard" copies, as well as computer readable tapes or discs. It is clear that the Public Records Act does not obligate government agencies to provide computer stored or generated information in computer readable form. There is no clear legal authority for the sale or licensing of the computer information in computer readable forms such as tapes or discs.

It is recommended that the City propose an amendment to the Public Records Act which would clearly express a legislative recognition of the distinction between public records subject to mandatory disclosure under the Act and public investments in creative programs and proprietary information systems. The attached proposal clearly exempts proprietary information from

LIS - 9

14041/02751

SP-1

PA-000984

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disclosure under the Act and expressly authorizes government agencies to recoup the substantial public investments of creativity, manpower, and public funds required for development.

This amendment also contains a clear statement that the "hard copy" of the data or information remains a public record available upon request.

Recommendations

It is recommended that the City Council sponsor the attached legislative proposal during the 1988 regular session.

JOHN R. WELLS, CITY ATTORNEY

By Kimberly A. Marlow  
KIMBERLY A. MARLOW

JRG:KAM:jc

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SP-2



**CITY OF SAN JOSE - MEMORANDUM**

---

**TO:** Administrative Services Committee      **FROM:** Joan R. Gallo  
City Attorney  
**SUBJECT:** Legislative Proposal For Authority to Sell or License Proprietary Information      **DATE:** January 19, 1988

---

**APPROVED**

**DATE**

---

**Background**

The City of San Jose, like many other government agencies has developed various computer readable data bases, computer programs, computer graphics systems and other computer stored information at considerable research and development expense. For example, the City's Department of Public Works has recently completed development of a data base for a computer mapping system known as the Automated Mapping System (AMS).

The AMS is the product of eight years of efforts on the part of Public Works to collect and store on computer magnetic tape, city wide information regarding the location of public improvements and natural features. This wide range of data can be arranged in various ways to produce many types of maps for specialized uses, such as fire response, sewer collection, or police beat maps. Public Works estimates that development costs to date have exceeded \$2 million dollars.

Since AMS was developed, the City has received a number of requests from utility companies, engineering firms, map companies and other commercial concerns, for copies of the system in computer readable form, i.e. on magnetic tape. These requests have often come in the form of a request for public records under the Public Records Act.

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LEGISLATIVE INTENT SERVICE



JRG:KAM:jc

Administrative Services Committee

RE: Legislative Proposal for Authority  
to Sell or License Proprietary  
Information

January 19, 1988  
Page 4

### Legislative Proposal

Add the following provision to Govt. Code Section 6256.

§ 6256

All information or data stored in a computer remains subject to disclosure pursuant to this Section and Section § 6257. However, nothing in this Chapter shall prohibit an agency from selling proprietary information or requiring a licensing agreement for payment of royalties to the agency prior to any subsequent sale, distribution, or commercial use of such proprietary information by any person receiving such information.

Proprietary information shall include computer readable data bases, computer programs, and computer graphics systems.

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LEGISLATIVE INTENT SERVICE



SP-4

PA-000987

## Member Technology Brief: Hennepin County

Hennepin County, Minn., has turned its staff-developed geographic information system into a moneymaker by selling the system's marketing rights to a private firm. UtilMap, as it's called, has already earned the County \$500,000, plus guaranteed royalties of \$1,750,000, and additional royalties of 15 percent of all sales.

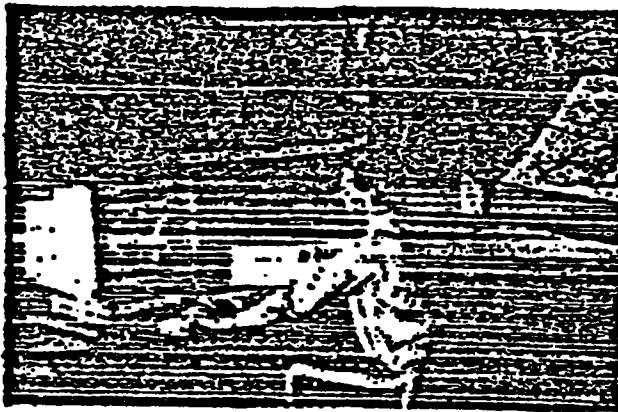
The revenue windfall is the result of years of County work developing a sophisticated geographic information system, followed by Hennepin's successful lobbying effort to win state legislation allowing the sale or licensing of software in the open market.

After determining that a market existed for the UtilMap program, the County was able to convince the state to permit computer programs to be classified as nonpublic, trade secret information and to allow them to be sold or licensed outside of the competitive bidding process.

Hennepin County then secured a copyright for the system and registered its name and trademarks. Finally, they held a conference to demonstrate the product to potential vendors, published a call for proposals, selected a vendor, and negotiated a lucrative contract.

What made the effort so worth while was, of course, UtilMap, a computer-aided engineering, mapping, planning, and facilities management system developed through a collaboration between Hennepin County staff and the City of Minneapolis Public Works Department engineers.

UtilMap can produce "seamless" wide-area mapping databases for multiagency land record and infrastructure management applications. Engineers can use its design and drafting components for topographic modeling and to develop and test alternate road designs. The Minneapolis



Hennepin County staff developed the UtilMap program, then lobbied the state legislature to allow them to sell the marketing rights.

street design division was able to reduce its staff significantly with considerable savings using UtilMap.

The system's unique graphic capabilities allow users to create thematic maps for demographic and modeling purposes. Thematic maps can display statistical information geographically in colors, symbols, or shading patterns, giving complex data meaning at a glance.

For example, one map displays day-care facility locations over a background of shading patterns showing the ratio of children under five to those facilities, by census tract. City planners used the map to help evaluate potential locations for new day-care facilities.

The system's graphics database design simplifies data

sharing and ensures that up-to-date information is being viewed by all users at all times. Fourth-generation language manages non-graphic information as well as inquiries and updates to mainframe and personal computer databases.

UtilMap currently runs on Apollo Computer Inc.'s interactive graphics workstations. Because the workstations are not dependent on a central processor, a user's system can start with just one workstation, allowing low start-up costs.

For more information on Hennepin County's efforts to market UtilMap, contact Robert L. Hanson, Hennepin County Information Services Department, 612/343-3234. For more information on the computer system, contact Chuck McGlover, UtilMap, Inc., 800/541-1891.

## INSIDE PTI

**NEW MEMBER**—Arapahoe County, Colo. (pop. 254,000) is the seventh jurisdiction from Colorado to become a PTI member. Colorado now ranks behind California, Texas, and Virginia in having the largest number of member jurisdictions from an individual state.

**WEST COAST NEWS**—Bill Masconik, director of west coast operations for PTI, has been appointed to the steering committee for the Western States Government Technology Conference, which will be held May 18-20, 1988, in Sacramento, Calif. The conference theme is "Building Strategic Partnerships." Last year's conference attracted more than 3,000 people from the public and private sector. For more information on the conference, call 812/443-7133.

**IT'S A BOY**—PTI Education and Training Manager Susan Benton gave birth to a 6lb, 7oz. boy on October 23. Susan and son Peter are doing fine.

**NLC CONFERENCE**—PTI will host a number of activities during the 1987 NLC Congress of Cities, December 12-15, in Las Vegas, Nevada. The Urban Consortium will hold its annual meeting, and PTI will sponsor several workshops on technology and management issues. Look for us at the P'I Learning Center.

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LEGISLATIVE INTENT SERVICE



## Community Energy Systems Conference Coming to Washington

The U.S. Department of Housing and Urban Development and the U.S. Department of Energy, in cooperation with USCM, PTI and several other associations and institutions, will sponsor the Sixth Annual Conference on Community Energy Systems, January 19-20, in Washington, D.C.

The two-day conference will focus on "Energy Efficient Economic Development: Commu-

nity Energy Systems as Building Blocks," and is designed to give district heating developers, city and county elected officials, real estate developers, building owners and managers, and local economic development officials the opportunity of finding out just how district heating and cooling—or Community Energy Systems (CES)—can help cities, developers, and businesses.

Conference registration is \$120 prior to January 5, 1988; \$150 after that date. For more information, contact: Ronald Musselwhite or Debra DeHoney, U.S. Conference of Mayors, 202/293-7330; Wyndham Clarke or Andrew Euston, HUD 202/755-5504, or contact PTI's Rich Zelinski, 202/26-2443; or PTI ZELINSKI on LINUS.

SP5

COUNTY OF SAN DIEGO  
LEGISLATIVE ANALYSIS

Bill Number: AB 3265 (as introduced) -- Public Records: Proprietary Information

Author: Assembly Member Cortese

Present Law: Requires each state or local agency, upon receiving any request for a copy of records in its possession which are subject to public disclosure, to make the records promptly available upon payment of fees covering direct costs of duplication or any applicable statutory fee.

Proposed Law: Would provide that existing law does not prohibit an agency from selling proprietary information or requiring a licensing agreement for payment of royalties to the agency prior to any subsequent sale, distribution, or commercial use of the information.

Recommendation: Support (CAO)

Discussion: The California Public Records Act requires that when records subject to public disclosure are requested, each state or local agency must make records promptly available upon payment of reasonable fees for direct cost of duplication or any applicable statutory fee. In many cases, this information which must be provided as a service to the public at a nominal cost is purchased by vendors for resale at a profit.

AB 3265 would specifically provide that this provision does not prohibit an agency from selling proprietary information or requiring a licensing agreement for payment of royalties to the agency prior to a subsequent sale, distribution, or commercial use the proprietary information by any person receiving the information. This bill would define "proprietary information" to include computer readable data bases, computer programs, and computer graphics systems. The bill would further provide that any fee or royalty imposed for proprietary information must be based on the cost of developing and maintaining the information and must take into consideration whether the persons requesting the information contributed to the development of the information.

AB 3265 could potentially provide needed funds to assist in offsetting costs associated with making records generally available to the public, but which are subsequently sold by the requesting party for profit-making purposes. The Recorder and Assessor receive a number of such requests regularly. In addition, this provision could potentially benefit the ongoing joint agency effort for the completion and implementation of the Regional Urban Information System (RUIS). The bill

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LEGISLATIVE INTENT SERVICE



SP-6

PA-000989

March 11, 1988

**LEGISLATIVE UPDATE: AB 3265 (CORTESE) -  
AMENDMENT TO PUBLIC RECORDS ACT  
REGARDING PROPRIETARY INFORMATION**

Introduction

AB 3265 would clarify the California Public Records Act (the "Act") (Government Code Section 6250 et seq.) regarding the application of the Act to proprietary information. Proprietary information includes computer readable data bases, computer programs, and computer graphics systems.

Currently, the Act requires each state and local agency upon receiving any request for a copy of records in its possession which are subject to public disclosure to make the records promptly available upon payment of fees covering the direct costs of duplication. The purpose of the Act is to allow access to information concerning the conduct of the people's business (Section 6250). The Act also provides in Section 6256 that copies of computer data shall be provided in a form determined by the agency.

AB 3265 would clarify the application of the Act by authorizing public agencies to sell proprietary information or to require a licensing agreement for payment of royalties to the agency prior to any subsequent sale, distribution, or commercial use of the proprietary information by any persons receiving the information. The fee or royalty imposed must be based on the cost of developing and maintaining the information.

Staff proposes that AB 3265 provides an option to the agency not previously available which is to sell or license proprietary information and to recover costs of development and maintenance when it is determined to be appropriate to do so. Therefore, it is my

**RECOMMENDATION**

that the Executive Committee approve Resolution 88-57 supporting AB 3265.

Discussion

This bill was proposed by the City of San Jose. The City has been faced with some of the same problems that SANDAG has had over the last few years regarding demands for proprietary information (as defined in AB 3265) for use by the requesting party for profit-making purposes. Generally, the proprietary information requested has been developed and maintained by the public agency at great public expense. In most cases, SANDAG has not been distributing such proprietary information, but complying with the Act by making the data stored therein available for review and reproduction.



SP-7

Examples of issues SANDAG has faced regarding requests for transfer of computer readable information are:

o Subarea Transportation Models

As part of SANDAG's Local Technical Assistance (LTA) program, computer transportation models and databases are developed for subarea transportation studies. These models and their associated databases allow transportation planners and engineers to evaluate the impacts of proposed land use development on existing and proposed transportation facilities. These subarea transportation studies and the development of the computer models generally cost between \$25,000 and \$50,000. The development of these subarea databases also make use of data produced from other SANDAG work program activities, such as the Regional Growth Forecasts. Requests have been made from a number of transportation consultants that copies of these subarea models and databases be made available in computer readable form. Many of these consultants utilize the same computer software used by SANDAG for transportation modelling. To date, these subarea models have been released to a consultant only through the member agency at a \$500 copy fee. A written agreement is signed limiting the use of the database for the member agency's project and that database as well as any update to the database must be returned upon the completion of the project.

o Surveys

As part of SANDAG's Overall Work Program, major surveys such as the Travel Behavior Survey and the Regional On-Board Transit Survey have been conducted. The Travel Behavior Survey, which was a survey of members of over 2,700 households about their travel habits, cost over \$150,000 to complete. The computer databases developed from this and the transit surveys are used to calibrate our transportation models and provide necessary information for making short range and operational transportation planning decisions. Requests have been made from the private sector (college research centers) for these databases in computer readable form.

o Series 7 Subarea Database

SANDAG has been in contact with the City of San Diego Water Utilities Department and their master plan consultant concerning the availability of the "Series 7 database." The Series 7 database includes an inventory of existing land use, proposed land uses, and the resulting allocation of population, housing and employment out to the year 2010. The Series 7 database is maintained in a format that would allow the geographic analysis required for developing water demand models and the Water Utilities master plan. The overall development cost of this database was more than \$250,000 and requires maintenance and updates. To date, no arrangement with the City of San Diego and their consultant has been made.

  
KENNETH E. SULZER  
Executive Director

SP-8



N-AB3265  
L

STATE BOARD OF EQUALIZATION  
LEGISLATIVE BILL ANALYSIS

*cc Randy*

Bill Number:	<u>AB 3265</u>	Date Amended:	<u>4/4/88</u>
Author:	<u>Cortese</u>	Tax:	<u>Administration</u>
Board Position:	<u>Neutral</u>	Related Bills:	<u>SB 1848</u> <u>SB 1949</u>

BILL SUMMARY:

This bill would add Section 6254.9 to the Government Code (Public Records Act) to provide that State and local agencies would not be prohibited from selling, leasing, or licensing computer software for commercial or noncommercial use. This bill also provides that computer software is not itself a public record.

ANALYSIS:

In General:

The Public Records Act (PRA) provides "public access" to any records maintained by State and local agencies which are not otherwise exempt from disclosure, thus ensuring every person's right to public information and encouraging open government.

All provisions of the PRA relate to the access of records. There are various exemptions from mandatory disclosure of records. The agency generally has discretion to make more records available than the act requires, provided the release does not violate other confidentiality statutes. An agency may charge a sufficient amount to cover direct costs to recover documents and to duplicate them under the PRA.

The Board currently handles requests for information under the PRA. The Board has set base prices for making certain records available to the public upon request. These base prices cover the cost of compiling, copying, and mailing the information requested.

Background:

According to the author's office, this bill is sponsored by the City of San Jose. The City would like to recoup their development costs of computer databases sold to the public.

*SP-9*

LEGISLATIVE INTENT SERVICE (800) 666-1917



COMMENTS:

1. The Board's Information Management Division has approximately 15 active weekly subscribers to information in the sales and use tax registration database. There are numerous other requests for information from the registration database. The Board sells the information on magnetic tape, labels, or index cards. The magnetic tape contains only data. No computer programs are included.
2. The Board has no plans at this time to develop computer programs that would be usable to the public. Consequently, this bill would not affect the Board's administrative procedures.
3. The April 4, 1988 amendments to the bill do not change the effect of the bill. In its present form the bill speaks more directly to the intent of the bill.

COST ESTIMATE:

This bill would have no impact on Board costs.

REVENUE ESTIMATE:

Unknown.

LEGISLATIVE INTENT SERVICE (800) 666-1917



Analysis prepared by: Robin J. Kulakow 323-7169 <sup>BJK 1/28</sup> 04/07/88  
 Contact: Margaret Shedd Boatwright 322-2376

ca/4/9/88

*[Handwritten signature]*  
4/8/88

EP-10



SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION  
RALPH C. DILLS, CHAIRMAN

BACKGROUND INFORMATION REQUEST

Measure: AB 3265  
Author : Assemblyman Cortese

1. Origin of the bill:

a. Who is the source of the bill? What person, organization, or governmental entity requested introduction?  
City of San Jose

b. Has a similar bill been before either this session or a previous session of the legislature? If so, please identify the session, bill number and disposition of the bill.  
No.

c. Has there been an interim committee report on the bill? If so, please identify the report.  
No.

2. What is the problem or deficiency in the present law which the bill seeks to remedy?  
To recover costs incurred in developing computer programs and graphics systems.

3. Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by committee staff.  
Attached background information from City of San Jose.

4. Please attach copies of letters of support or opposition from any group, organization, or governmental agency who has contacted you either in support or opposition to the bill.  
See attached.

5. If you plan substantive amendments to this bill prior to hearing, please explain briefly the substance of the amendments to be prepared.  
Amendments to address concerns of TRW; Assoc. Credit Bureaus; and Neff/Thomas, Incorporated. These amendments will clarify "data bases."

6. List the witnesses you plan to have testify.  
Roxanne Miller-Legislative Representative, City of San Jose  
Kimberly A. Marlow, Staff Attorney, City of San Jose  
Timothy T. C. Wei, Director of Information Systems, City of San Jose

LEGISLATIVE PRINTING SERVICE (800) 668-1917



RETURN THIS FORM TO: SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION  
Phone 445-1193

SP-11

MAR 25 1988

# CALIFORNIA LAND TITLE ASSOCIATION

P.O. BOX 13968 • SACRAMENTO, CALIFORNIA 95853 • (916) 444-2647

March 25, 1988

The Honorable Dominic Cortese  
Member of the Assembly  
State Capitol  
Sacramento, California 95814

Re: Opposition to Assembly Bill 3265

Dear Dom:

The California Land Title Association (CLTA) has taken an "opposed" position on your AB 3265 relating to the sale of information by a local agency.

The two primary areas of concern are assessor's records and recorder's records which the assessor and recorder are required by law to prepare and maintain.

In each case the title industry uses the information to expedite transfers of real property and in so doing aids both the assessor and recorder by ensuring the prompt payment of property taxes and documentary transfer taxes.

The CLTA believes that where the local agency is required by law to maintain information which we can use to the benefit of the title industry and local government then charges should not exceed duplicating costs. Where it is other types of information developed by a local agency, then we have no objection to AB 3265.

Sincerely,

  
Lawrence E. Green  
Executive Vice President  
and Counsel

LEG:vo

cc: Mile Belote  
Ralph Simoni

LEGISLATIVE INTENT SERVICE (800) 666-1917



SP-12

Arthur Terzakis  
Rm 5048



# THE CITY OF SAN DIEGO

DEPARTMENT OF  
INTERGOVERNMENTAL  
RELATIONS

June 7, 1988

The Honorable Ralph Dills  
California State Senate  
State Capitol, Room 5050  
Sacramento, CA 95814

Re: AB 3265 (Cortese) - SUPPORT  
Hearing: Tuesday, June 14, 1988

Dear Senator Dills:

The City of San Diego supports AB 3265 (Cortese) which provide that existing law does not prohibit an agency from selling proprietary information or requiring a licensing agreement for payment of royalties to the agency prior to the subsequent sale or distribution of the information. AB 3265 is scheduled to be heard in your Governmental Organization Committee on Tuesday, June 14, 1988.

AB 3265 specifically deals with the types on information in the Regional Urban Information System (RUIS) in San Diego. RUIS is a joint city/county project to automate the land based information in to one central data base. The bill would allow the implementation of pricing policies which have been developed, and would facilitate the development of new policies for information which will be collected in the future.

On behalf of the City of San Diego I urge you to vote "Aye" on AB 3265 (Cortese). Should you have any questions please do not hesitate to contact me at (916) 448-9006.

Sincerely,

*Kathryn C. Rees*

Kathryn C. Rees  
Legislative Advocate

KCR/MRT

cc: The Honorable Dom Cortese

1100 - 11th Street  
Suite 210  
Sacramento, CA 95814  
(916) 448-9006

City Administration Building  
202 C Street  
San Diego, CA 92101  
(619) 236-6276

1620 I St., NW, Ste. 300  
Washington, D.C. 20006  
(202) 429-0180  
(202) 293-3306

SP-13  
PA-000996

LEGISLATIVE INTENT SERVICE (800) 666-1917



Dills 5050



**COUNTY OF LOS ANGELES  
CHIEF ADMINISTRATIVE OFFICE**

713 HALL OF ADMINISTRATION / LOS ANGELES, CALIFORNIA 90012  
974-1101

MEMBERS OF THE BOARD  
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MICHAEL D. ANTONOVICH

RICHARD B. DIXON  
CHIEF ADMINISTRATIVE OFFICER

June 7, 1988

Honorable Ralph Dills, Chairman  
Senate Governmental Organization Committee  
State Capitol, Room 5050  
Sacramento, CA 95814

RE: Assembly Bill 3265 (Cortese), As Amended April 4,  
1988, relating to Public records -- SUPPORT

Dear Senator Dills:

The Los Angeles County Board of Supervisors supports Assembly Bill 3265 (Cortese), which is scheduled for hearing before your Senate Governmental Organization Committee on Tuesday, June 14, 1988.

Under existing law, certain public records are to be made available for public inspection. A fee may be charged to offset the cost of duplicating the material.

Assembly Bill 3265 would provide that computer software developed or maintained by a state or local agency is not a public record under the Public Records Act. Further, the bill would allow the public agency to sell, lease or license the software for commercial or noncommercial use.

Assembly Bill 3265 could result in increased revenues from the sale and licensing of software developed for the County.

We respectfully request the Committee's "AYE" vote on Assembly Bill 3265.

Very truly yours,

Clancy Leland  
Legislative Representative

CL:WS:DS  
AB3265

cc: Assembly Member Dominic Cortese  
Each Member and Consultant,  
Senate Governmental Organization Committee

(800) 666-1917

LEGISLATIVE INTENT SERVICE



SP-14

PA-000997

State Association of County Auditors S-AB3265

May 6, 1988

cc: Randy

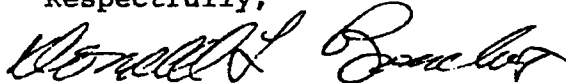
Honorable Dominic Cortese  
24th Assembly District  
State Capitol  
Sacramento, CA 95814

Dear Assemblyman Cortese:

Our Association has reviewed your AB 3265 and is in support of that measure.

Local government has borne the cost of systems development in an effort to become more efficient and to better serve the public. Those systems have also benefitted the private sector by providing current information of much value. It is only proper, then, that the private and the public sector share in the cost of systems development.

Respectfully,



DONALD L. BOUCHET  
Contra Costa County Auditor-Controller  
and Chairman, County Auditors' Association  
Legislative Committee

DLB:mp

LEGISLATIVE INTENT SERVICE (800) 668-1917



SP-15

PA-000998

S-AB3265

*Patricia Gayman*  
SACRAMENTO REPRESENTATIVE  
COUNTY OF SAN DIEGO

1100 K STREET, SUITE 100  
SACRAMENTO, CALIFORNIA 95814  
(916) 447-2868

cc Rand

April 19, 1988

The Honorable Dom Cortese  
Member of the Assembly  
State Capitol, Room 6031  
Sacramento, CA 95814

Re: AB 3265. (Set for hearing  
in Assembly Ways & Means)

Dear Dom:

The San Diego County Board of Supervisors at its meeting April 19, voted to support your Assembly Bill 3265. Attached is a copy of the County's analysis upon which this support is based.

Please let me know if I can provide you with any assistance in securing passage of this measure.

Sincerely,



Patricia Gayman  
Sacramento Representative

PG:clb

Attachment

cc: Assembly Member Vasconcellos, Chair  
Assembly Ways & Means Committee  
Mr. Tim Gage, Consultant  
Assembly Ways & Means Committee  
County Supervisors Association  
of California  
Office of Intergovernmental Affairs

LEGISLATIVE INTENT SERVICE (800) 666-1917



SP-16

PA-000999

S-AB3265 n



**CITY OF SAN JOSE, CALIFORNIA**

801 NORTH FIRST STREET  
SAN JOSE, CALIFORNIA 95110  
(408) 277-4000

April 29, 1988

CITY MANAGER

Assembly Member John Vasconcellos  
Chair, Assembly Ways & Means Committee  
Room 6026, State Capitol  
Sacramento, California 95814

RE: Assembly Bill 3265 (Cortese) - SUPPORT

Dear Assembly Member Vasconcellos:

Assembly Bill 3265 relating to public records: proprietary information was introduced by Assembly Member Cortese at the request of the City of San Jose. It is our understanding that the bill is now scheduled for hearing on Tuesday, May 3 before the Assembly Ways & Means Committee

Assembly Bill 3265 proposes to amend the Public Records Act to clarify the distinction between public records subject to mandatory disclosure under the Act and public investments in creative programs and proprietary information systems.

The City of San Jose, as well as many other governmental agencies, have developed various computer readable data bases and other computer stored information at considerable research and development expense. As you are aware, the Public Records Act requires state and local governmental agencies to make any identifiable public record promptly available to any person so requesting, upon payment to cover the direct costs of duplication, or a statutory fee, if applicable. Although the Act does not obligate governmental agencies to provide computer stored or generated information in computer readable form, there is not clear authority for the sale or licensing of the computer information in computer readable forms such as tapes or discs.

Passage of AB 3265 will clarify under the Public Records Act an exemption of proprietary information from disclosure under the Act and authorize government agencies to recoup public investments of creativity, manpower and public funds required for development.

Your "aye" vote on AB 3265 would be appreciated.

Sincerely,

ROXANNE L. MILLER  
Legislative Representative  
Sacramento Office (916) 443-3946

RLM:sc

cc: Members of Assembly Ways & Means Committee  
Judi Smith, Committee Consultant  
Assembly Member Dominic Cortese

SP-17

LEGISLATIVE INTENT SERVICE (800) 666-1917



S-AB 3265

G.O.  
T



CITY OF SAN JOSE, CALIFORNIA

801 NORTH FIRST STREET  
SAN JOSE, CALIFORNIA 95110  
(408) 277-4000

March 31, 1988

CITY MANAGER

*ce Ready*

Assembly Member Richard Floyd  
Chair, Assembly Governmental Organization Committee  
Room 4016, State Capitol  
Sacramento, California 95814

RE: Assembly Bill 3265 (Cortese) - SUPPORT

Dear Assembly Member Floyd:

Assembly Bill 3265 relating to public records: proprietary information was introduced by Assembly Member Cortese at the request of the City of San Jose. It is our understanding that the bill is now scheduled for hearing on Tuesday, April 5 before the Assembly Governmental Organization Committee.

Assembly Bill 3265 proposes to amend the Public Records Act to clarify the distinction between public records subject to mandatory disclosure under the Act and public investments in creative programs and proprietary information systems.

The City of San Jose, as well as many other governmental agencies, have developed various computer readable data bases and other computer stored information at considerable research and development expense. As you are aware, the Public Records Act requires state and local governmental agencies to make any identifiable public record promptly available to any person so requesting, upon payment to cover the direct costs of duplication, or a statutory fee, if applicable. Although the Act does not obligate governmental agencies to provide computer stored or generated information in computer readable form, there is not clear authority for the sale or licensing of the computer information in computer readable forms such as tapes or discs.

Passage of AB 3265 will clarify under the Public Records Act an exemption of proprietary information from disclosure under the Act and authorize government agencies to recoup public investments of creativity, manpower and public funds required for development.

Your "aye" vote on AB 3265 would be appreciated.

Sincerely,

ROXANNE L. MILLER  
Legislative Representative  
Sacramento Office (916) 443-3946

RLM:sc

cc: Members of Assembly  
Governmental Organization Committee  
Jeff Ruch, Committee Consultant  
✓ Assembly Member Dominic Cortese

SP-18

LEGISLATIVE INTENT SERVICE (800) 666-1917







## CITY OF SAN JOSÉ, CALIFORNIA

801 NORTH FIRST STREET  
SAN JOSE, CALIFORNIA 95110  
(408) 277-4000

CITY MANAGER

June 9, 1988

Senator Ralph Dills  
Chair, Senate Governmental Organization Committee  
Room 5050, State Capitol  
Sacramento, California 95814

RE: ASSEMBLY BILL 3265 (CORTESE) - SUPPORT

Dear Senator Dills:

Assembly Bill 3265 relating to public records: proprietary information was introduced by Assembly Member Cortese at the request of the City of San Jose. It is our understanding that the bill is now scheduled for hearing on Tuesday, June 14 before the Senate Governmental Organization Committee.

Assembly Bill 3265 proposes to amend the Public Records Act to clarify the distinction between public records subject to mandatory disclosure under the Act and public investments in creative programs and proprietary information systems.

The City of San Jose, as well as many other governmental agencies, have developed various computer readable data bases and other computer stored information at considerable research and development expense. As you are aware, the Public Records Act requires state and local governmental agencies to make any identifiable public record promptly available to any person so requesting, upon payment to cover the direct costs of duplication, or a statutory fee, if applicable. Although the Act does not obligate governmental agencies to provide computer stored or generated information in computer readable form, there is not clear authority for the sale or licensing of the computer information in computer readable forms such as tapes or discs.

Passage of AB 3265 will clarify, under the Public Records Act, an exemption of proprietary information from disclosure under the Act and authorize government agencies to recoup public investments of creativity, manpower and public funds required for development.

Your "aye" vote on AB 3265 would be appreciated.

Sincerely,

ROXANNE L. MILLER  
Legislative Representative  
Sacramento Office (916) 443-3946

RLM:sc

cc: Members, Senate Governmental Organization Committee  
✓ Arthur Terzakis, Committee Consultant  
Assembly Member Dominic Cortese

SP-19

LEGISLATIVE INTENT SERVICE (800) 666-1917

PA-001002



# COUNTY OF SACRAMENTO

1100 K STREET, SUITE 301  
SACRAMENTO, CALIFORNIA 95814-3941  
(916) 440-6509

**BAXTER C. CULVER**  
Legislative Advocate

June 13, 1988

**DONNA BUTLER**  
Legislative Assistant

The Honorable Ralph Dills  
Chair, Senate Governmental Organization  
Room 5050, State Capitol  
Sacramento, California 95814

Subject: AB 3265 -- Support (Senate G.O. 6/14/88)

Dear Senator Dills:

This is to advise you of Sacramento County's support for AB 3265, relating to computer software.

AB 3265 would provide that computer software developed or maintained by a state or local agency is not itself a public record, and would authorize the agency to sell, lease, or license the software for commercial or noncommercial use.

Sacramento County currently operates a Property Data Base Access Program (PDB), and your legislation would appropriately authorize charging outside users for on-line computer access. It has been our experience in the Treasurer-Tax Collectors's Office that title company representatives are allowed behind public counters to access staff PDB terminals on a regular basis. Title companies have requested two dedicated terminals onsite for their shared use. Additional private sector demand is expected to come from real estate firms, large developers, and tax service agencies.

Your support for AB 3265 will be appreciated.

Very truly yours,

Baxter Culver  
Legislative Advocate

cc: County Executive  
Assemblyman Cortese  
Members, Senate Governmental Organization Committee

SP-20

LEGISLATIVE INTENT SERVICE (800) 666-1917



PA-001003

S-AB 3265

1



# COUNTY OF SACRAMENTO

1100 K STREET, SUITE 301  
SACRAMENTO, CALIFORNIA 95814-3941  
(916) 440-6509

**BAXTER C. CULVER**  
Legislative Advocate

**DONNA BUTLER**  
Legislative Assistant

April 1, 1988

*CC Randy*

The Honorable Dominic Cortese  
Member, California State Assembly  
Room 6031, State Capitol  
Sacramento, California 95814

Subject: AB 3265 -- Support

Dear Dom:

This is to advise you of Sacramento County's support for your AB 3265, relating to proprietary information.

Your bill would allow for the collection of royalties for information purchased from the Recorder for the expressed purpose of subsequent sale, distribution, or commercial use of the information. It would be difficult to estimate the fiscal impact of your bill, but we are certain it is significant.

Please contact me should you need further information.

Very truly yours,

**Baxter Culver**  
Legislative Advocate

cc: County Executive  
County Clerk/Recorder

(800) 666-1917

LEGISLATIVE INTENT SERVICE



EP-21

PA-001004

S-AB326:  
K



# CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION

1213 K STREET, SUITE 103 • SACRAMENTO, CALIFORNIA 95814 • (916) 441-1733 • FAX 441-4053

JERRY JORDAN, Executive Director

March 4, 1988

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Honorable Dominic L. Cortese  
State Capitol, Rm. 6031  
Sacramento, CA 95814

Dear Assemblymember Cortese:

The California Municipal Utilities Association supports your A.B. 3265, relating to public records.

Please let us know if we can be of assistance in securing passage of this legislation.

Sincerely,

Jerry Jordan

JJ/ael

*cc: Randy*

LEGISLATIVE INTENT SERVICE (800) 666-1917



SP-22

An organization for the protection of municipally owned utilities.  
C. M. U. A. members provide utility service to more than 70% of the people of California.

PA-001005

LAW OFFICES OF  
**BIDDLE & HAMILTON**

HOTEL SENATOR BUILDING  
SUITE 510  
1121 L STREET  
SACRAMENTO, CALIFORNIA 95814  
916-442-7401

S-AB 3265

R

W. CRAIG BIDDLE  
RICHARD L. HAMILTON  
CHRISTIAN M. KEINER  
TERRI A. DEMITCHELL

ORANGE COUNTY  
51 TOWN & COUNTRY BUSINESS PLAZA  
1111 TOWN & COUNTRY ROAD  
ORANGE, CALIFORNIA 92668  
714-541-3588

\*Professional Corporation

March 15, 1988

Honorable Dominic Cortese  
State Capitol  
Sacramento, CA 95814

cc Randy

Re: AB 3265

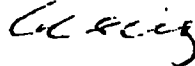
Dear Assembly Member Cortese:

I am pleased to inform you that our clients, the California Association of Licensed Investigators, are in support of your AB 3265 which would allow governmental agencies to sell proprietary information under certain circumstances.

The Association believes that the ability to sell this information would provide economic assistance to governmental agencies and would be beneficial to those groups or organizations desiring access to this information.

Very truly yours,

BIDDLE & HAMILTON



W. Craig Biddle

cc: Consultant, Assembly Governmental Organization Committee

LEGISLATIVE INTENT SERVICE (800) 666-1917



SP-23

PA-001006

S-163265

**San Diego  
ASSOCIATION OF  
GOVERNMENTS**

Suite 524, Security Pacific Plaza  
1200 Third Avenue  
San Diego, California 92101  
(619) 236-5300

MAR 21 1988

March 17, 1988

cc Randy -  
cc GO Com.

Assemblyman Dominic Cortese  
6031 State Capitol  
Sacramento, CA 95814

RE: AB 3265 (Cortese) - Support

Dear Assemblyman Cortese:

The Executive Committee of the San Diego Association of Governments unanimously approved Resolution 88-57 (attached hereto along with the staff report) supporting AB 3265. This bill is of great importance to SANDAG because it would provide the option under the California Public Records Act to recover development and maintenance costs by selling or licensing computer programs and computer readable data bases which have been developed at great public expense to those who are requesting them for business oriented purposes.

This bill is a fair and reasonable amendment to the act which does not invade the public's right to freely access public information for the cost of reproduction.

We appreciate your efforts in proposing this legislation and strongly urge the legislature to support it.

Sincerely,

KENNETH E. SULZER  
Executive Director

KES/rw

Enclosures

- cc: Assemblyman Bill Bradley, 76th District
- Assemblyman Peter R. Chacon, 79th District
- Assemblyman Robert Frazee, 74th District
- Assemblywoman Lucy Killea, 78th District
- Assemblyman Steve Peace, 80th District
- Assemblyman Larry Stirling, 77th District

Deborah Greenfield  
(619) 236-5300

LEGISLATIVE INTENT SERVICE (800) 666-1917



SP-24

MEMBER AGENCIES: Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solana Beach, Vista and County of San Diego.  
ADVISORY/LIAISON MEMBERS: California Department of Transportation, U.S. Department of Defense and Tijuana/Baja California Norte.

PA-001007

Legislative Analyst  
April 29, 1988

ANALYSIS OF ASSEMBLY BILL NO. 3265 (Cortese)  
As Amended in Assembly April 4, 1988  
1987-88 Session

AB 3265 (Am. 4/4/88)

Fiscal Effect:

Cost: None.

Revenue: Unknown, but probably minor, increased revenue to state and local government from the marketing of computer software.

Analysis:

This bill allows a state or local agency to sell, lease, or license computer software developed or maintained by the agency.

Currently, it is unclear whether a private company can access the computer software of a state or local agency under the California Public Records Act.

This bill:

- o Clarifies that computer software developed or maintained by a state or local agency is exempt from the California Public Records Act; and
- o Allows state and local agencies to sell, lease, or license the computer software.

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AB 3265--contd

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Fiscal Effect

This bill would result in unknown, but probably minor, increased revenue to state and local governments from the marketing of computer software.

7A/s7

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PA-001010



THIRD READING

<b>SENATE RULES COMMITTEE</b>  Office of Senate Floor Analyses 1100 J Street, Suite 120 445-8614	Bill No.	AB 3265
	Author:	Cortese (D)
	Amended:	6/15/88 in Senate
	Vote Required:	Majority

Committee Votes:

Senate Floor Vote: Page 6883, 6/30/88

COMMITTEE GOV. ORGANIZATION		
BILL NO.:	AB 3265	
DATE OF HEARING:	6-14-88	
SENATORS:	AYE	NO
Alquist		
Beverly	✓	
Garamendi		
B. Greene		
Keene	✓	
Lockyer	✓	
Maddy	✓	
Rosenthal		
Torres		
Campbell (VC)		
Dills (Ch)	✓	
TOTAL:	10	0

PLACED  
ON FILE  
PURSUANT  
TO SENATE  
RULE 28.8

Assembly Floor Vote: An act to amend Section 6254.9 to the Government Code, relating to public records.

Bill read third time.

The roll was called and the bill was passed by the following vote:  
**AYES (37)**—Senators Alquist, Ayala, Bergeson, Beverly, Boatwright, Campbell, Davis, Deddeh, Dills, Doolittle, Ellis, Garamendi, Keene, Leno, Lockyer, Maddy, Marks, McGorquodale, Mello, Montoya, Morgan, Nielsen, Pataki, Prasley, Roberti, Rogers, Rosenthal, Royce, Small, Soyars, Torres, Vucich, and Watson.  
**NOES (0)**—None.

Bill ordered transmitted to the Assembly.

Assembly Floor Vote: 79-0, P. 7422, 5/12/88

(Passed Assembly on Consent)

**SUBJECT:** Public records; computer software

**SOURCE:** City of San Jose

**DIGEST:** This bill would provide that computer software developed by a state or local agency is not itself a public record under the California Public Records Act and would authorize the agency to sell, lease, or license the software for commercial or noncommercial use.

**ANALYSIS:** The California Public Records Act requires each state and local agency upon receiving any request for a copy of records in its possession which are subject to public disclosure to make the records promptly available upon payment of fees covering the direct costs of duplication. The purpose of the Act is to allow access to information concerning the conduct of businesses. The Act also provides that copies of computer data shall be provided in a form determined by the agency.

1. This bill specifies that "computer software", as defined, which is developed by a state or local agency is not itself a public record for purposes of the California Public Records Act, but that information stored on computers retains its public record character.
2. Permits a public agency to sell, lease, or license its computer software for commercial or noncommercial use.
3. Specifies that the provisions of this bill shall not be construed to create an implied warranty on the part of the public agency for errors, omissions, or other defects in any computer software.

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4. Specifies that public records stored in a computer shall be disclosed as required by the public inspection chapter of the Public Records Act and that nothing in this bill is intended to limit any copyright protections.

**FISCAL EFFECT:** Appropriation: No Fiscal Committee: Yes Local: No

According to the Legislative Analyst:

Cost: None.

Revenue: Unknown, but probably minor, increased revenue to state and local government from the marketing of computer software.

**SUPPORT:** (Verified 6/23/88)

City of San Jose (source)  
 City of San Diego  
 County of Los Angeles  
 State Association of County Auditors  
 County of San Diego  
 County of Sacramento  
 California Municipal Utilities Association  
 California Association of Licensed Investigators  
 San Diego Association of Governments  
 Association of Monterey Bay Area Governments

**ARGUMENTS IN SUPPORT:** The source has developed various computer readable data bases and other computer stored information for various civic planning purposes. A number of private parties have requested use of the city's software under the Public Records Act for profit-making purposes. The sponsor argues that the proprietary information requested has been developed and maintained by the city at great public expense.

According to the author's office, the purpose of this bill is to clarify that computer software is not itself a public record and to authorize a public agency to sell, lease, or license the software at a cost greater than the direct costs of duplication, as specified by the Public Records Act. The bill would permit the city of San Jose and other governmental agencies to recoup development costs of computer databases sold to the public.

DLW:jk 6/23/88 Senate Floor Analyses



STATE BOARD OF EQUALIZATION - LEGISLATIVE OFFICE

BILL ANALYSIS ACTION

Date: June 20, 1988

Bill No: AB 3265 Date Amended: 06/15/88  
Author: Cortese Tax: Administration  
Position: Neutral Related Bills: SB 1848  
SB 1949

- We have no interest in the bill in its present form and will not prepare an analysis.
- We are following the bill but will not prepare an analysis on it in its present form.
- The current amendments do not affect our previous analysis and we have no further comments.
- See comments

COMMENTS:

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Please direct further inquiries to: Margaret Shedd Boatwright  
(322-2376)

*MSB*  
*ck*  
*6/22/88*  
*6/22/88*

LIS - 12

SFA-1

PA-001015

*JD*

STATE BOARD OF EQUALIZATION - LEGISLATIVE OFFICE  
BILL ANALYSIS ACTION

Date: June 15, 1988

Bill No: AB 3265 Date Amended: 06/09/88

Author: Cortese Tax: Administration

Position: Neutral Related Bills: SB 1848  
SB 1949

- We have no interest in the bill in its present form and will not prepare an analysis.
- We are following the bill but will not prepare an analysis on it in its present form.
- The current amendments do not affect our previous analysis and we have no further comments.
- See comments

COMMENTS:

LEGISLATIVE INTENT SERVICE (800) 666-1917



Please direct further inquiries to: Margaret Shedd Boatwright  
(322-2376)

*MS*  
*MS*  
*6/15/88*

SFA-2

PA-001016

110

Honorable Dominic L. Cortese  
Member of the Assembly  
State Capitol, Room 6031  
Sacramento, CA 95814

DEPARTMENT  
Finance

AUTHOR  
Cortese

BILL NUMBER  
AB 3265

SPONSORED BY

RELATED BILLS

LAST AMENDED  
June 15, 1988

**BILL SUMMARY**

This bill would provide that computer software, developed by the State or Local Government, is not a public record. This act would authorize a State or Local Government agency to sell, or lease the software for commercial or noncommercial use.

**FISCAL SUMMARY--STATE LEVEL**

Code/Department Agency or Revenue Type	SO (Fiscal Impact by Fiscal Year)				Code
	LA	CO	RV	FC	
None					

**ANALYSIS**

**A. Specific Findings**

The bill defines computer software developed by the State or Local Government as not itself a public record and, therefore, not subject to the Public Record Management Act. The bill would permit a governmental agency to sell, lease or license the software for commercial or noncommercial purposes.

The bill specifically includes computer mapping systems as computer software, thereby permitting their sale.

The bill excludes a governmental agency from any implied warranty that may be inferred by the sale of computer software, or errors, omissions, or other defects in the computer software.

The bill specifies that any data that may be stored on a computer still retains its public record status.

**B. Fiscal Analysis**

The potential revenue generated by the sale of computer programs, graphics, and information data bases could be substantial depending on the price of the information, program or graphics, and conditions of the sales or licensing agreement. Since the demand and conditions of sale or license are not known, it is not possible to estimate the potential revenue.

POSITION	DEPARTMENT DIRECTOR	DATE
NEUTRAL		

Principal Analyst	Date	Ofc. Inf. Tech., Dir.	Date	Governor's Office
(83) Joe Pujals	6/20/88	Steve E. Kolodney	6/20/88	Position noted
				Position approved
				Position disapproved

*J. Pujals*

6/20/88

*Steve E. Kolodney*

6/20/88

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PA-001017

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ST

Honorable Dominic L. Cortese  
Member of the Assembly  
State Capitol, Room 6031  
Sacramento, CA 95814

DEPARTMENT Finance	AUTHOR Cortese	BILL NUMBER AB 3265
SPONSORED BY	RELATED BILLS	LAST AMENDED June 9, 1988

**BILL SUMMARY**

This bill would provide that computer software, developed by the State or Local Government, is not a public record. This act would authorize a State or Local Government agency to sell, or lease the software for commercial or noncommercial use.

**FISCAL SUMMARY--STATE LEVEL**

Code/Department Agency or Revenue Type	SO (Fiscal Impact by Fiscal Year)			Code Fund
	LA	FC	FC	
None				

**ANALYSIS**

**A. Specific Findings**

The bill defines computer software developed by the State or Local Government as not itself a public record and, therefore, not subject to the Public Record Management Act. The bill would permit a governmental agency to sell, lease or license the software for commercial or noncommercial purposes.

The bill specifically includes computer mapping systems as computer software, thereby permitting their sale.

The bill excludes a governmental agency from any implied warranty that may be inferred by the sale of computer software, or errors, omissions, or other defects in the computer software.

The bill specifies that any data that may be stored on a computer still retains its public record status.

**B. Fiscal Analysis**

The potential revenue generated by the sale of computer programs, graphics, and information data bases could be substantial depending on the price of the information, program or graphics, and conditions of the sales or licensing agreement. Since the demand and conditions of sale or license are not known, it is not possible to estimate the potential revenue.

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POSITION	DEPARTMENT DIRECTOR	DATE
NEUTRAL		

Principal Analyst	Date	Ofc. Inf. Tech. Dir.	Date	Governor's Office
(83) Joe Pujals	6-16-88	Steve E. Kolodney		Position noted
				Position approved
				Position disapproved
				by: Date:

*Joe Pujals*

*Steve Kolodney*

SFA-4

CONSULTANT:

PHW  
(ST)

SENATE FLOOR ANALYSES WORKSHEET

<b>SENATE RULES COMMITTEE</b>	Bill No. <i>AS 3265</i>
Office of Senate Floor Analyses 1100 J Street, Suite 120 445-6614	Author: <i>Cortese (D)</i>
	Amended: <i>April 4, 1988 in Senate</i>
	Vote Required: <i>majority</i>

SUBJECT: *Public records: computer software*

SOURCE: *City of San Jose*

*Mar 12, 88 PAOC*

Assembly Floor Vote: *79-0 p. 7422*

DIGEST: *See bill (A)*

*5/12/88*

SUMMARY: *See CA - (B), (C),*

FISCAL EFFECT: Appropriation: *no* Fiscal Committee: *yes* Local: *no*

SUPPORT: *LA - (X)* Verification Date \_\_\_\_\_

*CA (D)*

OPPOSITION: Verification Date \_\_\_\_\_

*DOF*

ARGUMENTS IN SUPPORT:

*CA (E)*

ARGUMENTS IN OPPOSITION:

*DOF - (F)*

*SFA-5*

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Honorable Dominic L. Cortese  
 Member of the Assembly  
 State Capitol, Room 6031  
 Sacramento, CA 95814

DEPARTMENT Finance	AUTHOR Cortese	BILL NUMBER AB 3265
SPONSORED BY	RELATED BILLS	LAST AMENDED April 4, 1988

Dear Assembly Member Cortese:

Our office has reviewed AB3265, and on the basis of our analysis of available information, we regret that we must oppose your legislation. If you feel that we may have overlooked factors that may be important in evaluating your legislation, please do not hesitate to contact Nancy Sweet (445-8582) and she will arrange any assistance necessary.

**BILL SUMMARY**

This bill would provide that computer software, developed or maintained by the State, is not a public record. This act would authorize a State agency to sell, or lease the software for commercial or noncommercial use.

~~SUMMARY OF OPPOSITION~~ *a + The DOT*

1. ~~As written~~, the bill would permit the State to sell, license or lease computer software or data bases which it maintained but did not own.
2. The inclusion of data bases in paragraph (c) is contradictory to the intent expressed in paragraph (b) since the records maintained in data bases are subject to public records laws.
3. The bill does not provide for appropriate review of terms and conditions in licensing, sale or rental agreements to insure that the State receives the best possible value and that buyers receive uniform treatment.
4. The bill does not protect the State from warranty liability inferred by the sale or license of computer software.

**FISCAL SUMMARY--STATE LEVEL**

Code/Department Agency or Revenue Type	SO (Fiscal Impact by Fiscal Year)			Code Fund
	LA (Dollars in Thousands)	FC	FC	
None		RV FC 1988-89	FC 1989-90	FC 1990-91

POSITION \_\_\_\_\_ DEPARTMENT DIRECTOR \_\_\_\_\_ DATE \_\_\_\_\_

OPPOSE

Principal Analyst (83) Joe Pujals	Date 4-28-88	Ofc. Inf. Tech. Steve E. Kolodney	Dir. Date 4/28/88	Governor's Office Position noted Position approved Position disapproved by: _____ Date: _____
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**BILL ANALYSIS**

FORM DF-43 (REV 3/86 500 BU)

SFA-6

PA-001020

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AUTHOR	AMENDMENT DATE	BILL NUMBER
Cortese	April 4, 1988	AB 3265

## ANALYSIS

## A. Specific Findings

Adds Section 6254.9 to the Government Code as follows:

(a) Computer software developed or maintained by the State is not a public record. The agency may sell, lease or license the software for commercial or noncommercial purposes.

(b) Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer.

(c) As used in this section, "computer software" includes readable data bases, computer programs and computer graphic systems.

If software is not developed by the State, the State leases, rents or has license to use it. Without consent of the owner, the State could not legally lease, sell, or rent software it does not own. Section (a) should be amended to delete any reference to maintained software.

The definition of computer software in (c) includes data bases. The inclusion of data bases in paragraph (c) is contradictory to the intent expressed in paragraph (b) since data bases are organized files of record information subject to public record laws. In addition, the inclusion of information data bases in the definition of computer software makes them subject to sale, licensing, or rental which is contrary to the Section 6250 and 6252(d)(e) of the Government Code.

The terms and conditions involved in the sale, licensing or rental of software, graphics, or information data bases are complex and varied. To insure the State receives the best possible value and that vendors receive uniform treatment, agreements for sale, license or rental should be reviewed and approved by an appropriate control agency.

The bill should contain a disclaimer for the implicit warranty and liability for correct operation of the computer programs or the validity of the information data bases. When a person or organization buys, acquires a license or rents computer software there is the expectation that the product will operate correctly and produce valid results. Should the State license the software, the State would implicitly warrant the product to operate correctly and be free from error.

## B. Fiscal Analysis

The potential revenue generated by the sale of computer programs, graphics, and information data bases could be substantial depending on the price of the information, program or graphics, and conditions of the sales or licensing agreement. Since the demand and conditions of sale or license are not known, it is not possible to estimate the potential revenue.

SFA-7

**LEGISLATIVE ANALYSIS**

*Business, Transportation & Housing Agency*

DEPARTMENT <i>Teale Data Center</i>	AUTHOR <i>Assemblyman Cortese</i>	NUMBER <i>AB 3265</i>
SUBJECT <i>Public records: computer software</i>		As Amended

Summary:

This proposed bill would provide that computer software developed or maintained by a state or local agency is not itself a public record under the act and would authorize the agency to sell, lease, or license the software for commercial or noncommercial use.

Analysis:

A. Detailed:

Under this proposed bill, "computer software" includes computer readable data bases, computer programs, and computer graphics systems.

Also, this bill is not intended to affect the public record status of information merely because it is stored in a computer.

B. Cost:

This bill, if implemented as introduced, would have no direct impact on Teale's budget.

Legislative History:

This legislation is being introduced by Assembly Member Cortese.

Recommended Position:

The Teale Data Center DEFERS to the Department of Finance since the bill deals with significant policy issues.

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DEPARTMENTS THAT MAY BE AFFECTED		GOVERNOR'S OFFICE	
POSITION <i>DEFER TO FINANCE</i>		POSITION NOTED	<input checked="" type="checkbox"/>
DEPARTMENT <i>[Signature]</i>	AGENCY <i>Department of Finance</i>	POSITION APPROVED	<input checked="" type="checkbox"/>
DATE <i>5/1/88</i>	DATE <i>MAY 05 1988</i>	POSITION DISAPPROVED	<input type="checkbox"/>
CC:		BY: <i>[Signature]</i>	DATE: <i>5/1/88</i>

STATE BOARD OF EQUALIZATION  
LEGISLATIVE BILL ANALYSIS

Bill Number: AB 3265 Date Amended: 4/4/88  
Author: Cortese Tax: Administration  
Board Position: Neutral Related Bills: SB 1848  
SB 1949

BILL SUMMARY:

This bill would add Section 6254.9 to the Government Code (Public Records Act) to provide that State and local agencies would not be prohibited from selling, leasing, or licensing computer software for commercial or noncommercial use. This bill also provides that computer software is not itself a public record.

ANALYSIS:

In General:

The Public Records Act (PRA) provides "public access" to any records maintained by State and local agencies which are not otherwise exempt from disclosure, thus ensuring every person's right to public information and encouraging open government.

All provisions of the PRA relate to the access of records. There are various exemptions from mandatory disclosure of records. The agency generally has discretion to make more records available than the act requires, provided the release does not violate other confidentiality statutes. An agency may charge a sufficient amount to cover direct costs to recover documents and to duplicate them under the PRA.

The Board currently handles requests for information under the PRA. The Board has set base prices for making certain records available to the public upon request. These base prices cover the cost of compiling, copying, and mailing the information requested.

Background:

According to the author's office, this bill is sponsored by the City of San Jose. The City would like to recoup their development costs of computer databases sold to the public.

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SFA-9

PA-001023

COMMENTS:

1. The Board's Information Management Division has approximately 15 active weekly subscribers to information in the sales and use tax registration database. There are numerous other requests for information from the registration database. The Board sells the information on magnetic tape, labels, or index cards. The magnetic tape contains only data. No computer programs are included.
2. The Board has no plans at this time to develop computer programs that would be usable to the public. Consequently, this bill would not affect the Board's administrative procedures.
3. The April 4, 1988 amendments to the bill do not change the effect of the bill. In its present form the bill speaks more directly to the intent of the bill.

COST ESTIMATE:

This bill would have no impact on Board costs.

REVENUE ESTIMATE:

Unknown.

LEGISLATIVE INTENT SERVICE (800) 666-1917



Analysis prepared by: Robin J. Kulakow 323-7169 <sup>ROK 1/28</sup> 04/07/88  
 Contact: Margaret Shedd Boatwright 322-2376

*ce/4/9/88*  
*[Signature]*  
*4/8/88*

SFA-10

STATE BOARD OF EQUALIZATION  
LEGISLATIVE BILL ANALYSIS

Bill Number: AB 3265 Date introduced: 2/11/88  
Author: Cortese Tax: Administration  
Board Position: \_\_\_\_\_ Related Bills: SB 1848  
SB 1949

BILL SUMMARY:

This bill would amend the Public Records Act to provide that State and local agencies would not be prohibited from selling proprietary information or requiring a licensing agreement for payment of royalties to an agency for the subsequent sale, distribution, or commercial use of the information. This bill would allow agencies to charge a sufficient price to recover costs of computer programs developed by the agency and sold to the public.

ANALYSIS:

In General:

The Public Records Act (PRA) provides "public access" to any records maintained by State and local agencies which are not otherwise exempt from disclosure, thus ensuring every person's right to public information and encouraging open government.

All provisions of the PRA relate to the access of records. There are various exemptions from mandatory disclosure of records. The agency generally has discretion to make more records available than the act requires, provided the release does not violate other confidentiality statutes. An agency may charge a sufficient amount to cover direct costs to recover documents and to duplicate them under the PRA.

The Board currently handles requests for information under the PRA. The Board has set base prices for making certain records available to the public upon request. These base prices cover the cost of compiling, copying, and mailing the information requested.

Background:

According to the author's office, this bill is sponsored by the City of San Jose. The City would like to recoup their development costs of computer databases sold to the public.

SFA-11

PA-001025



COMMENTS:

1. The Board's Information Management Division has approximately 15 active weekly subscribers to information in the sales and use tax registration database. There are numerous other requests for information from the registration database. The Board sells the information on magnetic tape, labels, or index cards. The magnetic tape contains only data. No computer programs are included.
2. The Board has no plans at this time to develop computer programs that would be usable to the public. Consequently, this bill would not affect the Board's administrative procedures.

COST ESTIMATE:

This bill would have no impact on Board costs.

REVENUE ESTIMATE:

This bill would not affect state revenues.

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Analysis prepared by: Robin J. Kulakow 323-7169 03/02/88 RJK  
 Contact: Margaret Shedd Boatwright 322-2376  
 3/4/88 CR  
 3/2/88  
 3/4/88

SFA-12

CONCURRENCE IN SENATE AMENDMENTS

AB 3265 (Cortese) - As Amended: June 15, 1988

ASSEMBLY VOTE 79-0 ( May 12, 1988 ) SENATE VOTE 37-0 ( June 30, 1988 )

Original Committee Reference: G. O.

DIGEST

Existing law, the California Public Records Act, requires state and local agencies to furnish, at a reasonable cost, a copy of records to those persons who request them.

As passed by the Assembly, this bill specified that:

- 1) "Computer software," as defined, which is developed or maintained by a public agency is not a "public record" for purposes of the California Public Records Act, but that information stored on computers retains its public record character.
- 2) A public agency may sell, license, or lease its software for any purpose.

The Senate amendments:

- 1) Stipulate that the bill does not create an implied warranty on the part of the public agency for any defects in the software and does not limit any current copyright protections.
- 2) Specifically reference computer mapping systems and make other technical revisions.

FISCAL EFFECT

Potential revenue to state and local agencies from marketing of software.

COMMENTS

- 1) The City of San Jose, the sponsor of the bill, has developed computer readable mapping systems, graphics systems, and other computer programs for civic planning purposes. A number of utility companies, engineering firms, private consultants and other commercial interests are requesting the city's software under the California Public Records Act. The city introduced the bill in order to:
  - a) Make it clear that the software is not itself a public record.

- continued -



- b) Allow the city to sell, lease, or license the software at a cost greater than the "direct costs of duplication," as specified by the Public Records Act.
- 2) The city is concerned about recouping the cost of developing the software.
- 3) The bill draws a distinction between computer software and computer-stored information. The bill declares that information is not shielded from the California Public Records Act "merely because it is stored on a computer."

In addition, current law also provides that "computer data shall be provided in a form determined by the agency."

LEGISLATIVE INTENT SERVICE (800) 666-1917



Jeffrey P. Ruch  
445-3451  
8/1/88:ago



ASSEMBLY DAILY FILE  
UNFINISHED BUSINESS—Continued

CONCURRENCE IN SENATE AMENDMENTS—Continued

A.B. No. 3265—Cortese.

An act relating to public records.

1988

June 30—Read third time, passed, and to Assembly. (Ayes 37.  
Noes 0.)

June 30—In Assembly. Concurrence in Senate amendments  
pending.

Aug. 1—Retains place by unanimous consent.

Legislative Counsel's Digest

AB 3265 as amended in Senate June 15, 1988  
(Pursuant to Joint Rule 26.5)

AB 3265, as it passed the Assembly, provided that computer software developed or maintained by a state or local agency is not itself a public record under the California Public Records Act and authorized the agency to sell, lease, or license the software for commercial or noncommercial use.

The Senate amendments do all of the following:

(1) Delete computer software maintained by a state or local agency from the provisions of the bill.

(2) Revise the definition of computer software.

(3) Provide that the bill shall not be construed to create an implied warranty on the part of the State of California or any local agency for defects in any computer software.

(4) Provide that nothing in the bill is intended to limit any copy-right protections.

Vote: majority. Substantial substantive change: yes.

