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May 21, 2024

The Honorable Catherine Blakespear
Chair, Senate Elections and Constitutional Amendments Committee
1020 N Street, Room 533
Sacramento, CA 95814

**Re: AB 2249 (Pellerin): Elections: retention of election records.
As Amended 3/21/2024 – SUPPORT
Set to be heard in the Senate Elections and Constitutional Amendments
Committee – June 4, 2024**

Dear Senator Blakespear,

On behalf of the California State Association of Counties, representing all 58 counties in California, I write in support of Assembly Bill (AB) 2249 by Assembly Member Pellerin. This measure would provide needed clarification to laws dictating the retention of election records, protect local governments from abuses of the California Public Records Act (CPRA), and improve election security.

AB 2249 would accomplish these commendable goals by clarifying existing laws regarding the retention of election records. Existing law already establishes that certain election materials must be sealed during their retention period and, often, destroyed upon the conclusion of that period. AB 2249 would clearly establish that certain election materials – including audit logs of adjudicated ballots, tabulator tapes, and digital ballot images – are protected under existing statutes that require elections officials to seal election materials until the conclusion of their record retention period.

The need for this bill was made clear due to litigation brought against the Nevada County Registrar of Voters due to a CPRA request seeking vast records related to the November 2020 presidential general election and the 2021 gubernatorial recall. Because state law did not clearly protect certain records from disclosure by requiring them to be sealed and, ultimately, destroyed, a court found that the county was required to produce the records – after the long and expensive process of redacting confidential information from the records.

The California Public Records Act serves as a vital tool for the public to hold their governments and elected leaders accountable. California’s public agencies take their responsibilities under the CPRA seriously, devoting substantial resources to responding thoroughly and promptly to public records requests.

Public agencies at all levels of government have reported a significant increase in the quantity and breadth of CPRA requests over the past several years. A variety of public agencies reported a 73% increase in the volume of CPRA requests over the past five years. A vast majority of those agencies reported receiving CPRA requests that required an inordinate amount of staff time, with more than 90% reporting CPRA requests that diverted local resources away from local programs and services.

These requests can be costly and time-consuming for local agencies, as they can require significant staff time to discover, review, and redact records, often requiring the specific subject matter experts on an issue to dedicate substantial time outside of their core responsibilities to ensure the agency fully responds to a CPRA request. Counties have reported single CPRA requests seeking decades of 911 call transcripts or decades of correspondence from local officials. One small, rural county reported a single requestor who has submitted hundreds of CPRA requests over the past few years, including a single request that required the county to review over 621,000 records. The county estimates that producing records in response to just a portion of the requests would cost the county over \$1.8 million and require a minimum of 34 employees working around the clock for a year to collect and redact the records.

Furthermore, due to the modernization of how public sector work is conducted, there has been a significant increase in disclosable records (e.g., emails, text messages, inter-office direct chat messaging platforms, etc.) created by routine government work. In response, there has been a proportionate increase in the complexity and sophistication of the work necessary to respond to CPRA requests due to the staff time spent searching for records and redacting material that is exempt or prohibited from disclosure (e.g., confidential attorney-client correspondence, social security numbers, criminal history, trade secrets, medical records, etc.).

The heightened use of the CPRA— and the subsequent heightened impacts to governments — has occurred over the same period that saw local governments lose revenue sources that absorbed some of the cost pressures of CPRA requests.

In 2014, California voters approved Proposition 42, which, among other provisions, amended the California constitution to discontinue the requirement that the State reimburse local governments for the cost of complying with CPRA laws or any subsequent CPRA laws enacted by the Legislature. Prior to Proposition 42, costs for local governments to comply with the CPRA were a reimbursable state mandate for which local governments could file annual claims with the State Controller's Office.

In 2020, the California Supreme Court ruled that local agencies cannot charge for staff time and technical costs necessary to review, redact, and release public records in response to CPRA requests, allowing fees to be used only for limited circumstances — including, for example, \$0.10 per page for physical copies, the cost of physical hardware used to transmit records, or the cost of data extraction. Agencies are not allowed to seek reimbursement for the significant costs that can be incurred for the time spent by legal counsel in reviewing and explaining the legality of a claim, exemptions, or redactions

applicable to the request – or the staff time spent redacting private information from voluminous records requests.

It is for these reasons that CSAC supports AB 2249 and respectfully requests your AYE vote. Should you have any questions regarding our position, please do not hesitate to contact me at elawyer@counties.org.

Sincerely,



Eric Lawyer
Legislative Advocate

cc: The Honorable Gail Pellerin, California State Assembly
Members, Senate Election and Constitutional Amendments Committee
Scott B. Matsumoto, Principal Consultant, Senate Elections and Constitutional Amendments
Committee
Cory Botts, Consultant, Senate Republican Caucus