

AMENDED IN SENATE MAY 28, 2009

AMENDED IN SENATE MAY 20, 2009

AMENDED IN SENATE MAY 5, 2009

AMENDED IN SENATE APRIL 27, 2009

SENATE BILL

No. 218

Introduced by Senator Yee

**(Coauthors: Senators ~~DeSaulnier and Runner~~ Calderon, DeSaulnier,
and Runner)**

(Coauthors: Assembly Members Beall, DeVore, Furutani, Portantino,
and Smyth)

February 23, 2009

An act to add Section 92034 to the Education Code, ~~and to amend~~
Section 6252 of, *and to add Section 6254.30 to*, the Government Code,
relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

SB 218, as amended, Yee. Public records: state agency: nonprofit
entity.

The California Public Records Act requires state and local agencies
to make their records available for public inspection and to make copies
available upon request and payment of a fee unless they are exempt
from disclosure. The act defines the terms "local agency" and "state
agency" for purposes of the act.

This bill would revise the definition of the term "local agency" to
additionally include auxiliary organizations established for the purpose
of providing support services and specialized programs for the general
benefit of a community college, or a nonprofit entity that operates certain
campus facilities, as specified, at a community college.

This bill would revise the definition of the term “state agency” to additionally include any entity in which an official of the University of California or the California State University participates as a director as part of his or her official duties, any entity that operates a commercial service for either of those entities, or any entity that has as its purpose to promote the campuses of either institution. The bill would include any entity whose governing instrument provides that it is to receive gifts, property, and funds to be used for the benefit of either institution, and has any of its directors, governors, or trustees either appointed or nominated by the respective institutions. The bill would also include any entity that has any of its directors, governors, or trustees appointed, nominated, or subject to approval by the regents or trustees and whose purpose is to promote the regents or the trustees, or to receive gifts, property, and funds on behalf of the regents or trustees.

The bill would also include in the definition of “state agency” any entity that is designated as an auxiliary organization by the regents or the trustees, and also any student body organization established for the purpose of providing certain essential activities at a California State University under the supervision of university officials.

The bill would exempt from disclosure under the California Public Records Act the names of individuals who donate to specified entities if those individuals request anonymity. However, the bill would provide that this exemption does not apply if a donor, in a quid pro quo arrangement, receives anything that has more than a nominal value in exchange for the donation.

This bill would also provide that it is the intent of the Legislature to reject the court’s interpretation of state law regarding the application of the act to auxiliary organizations, such as the CSU Fresno Association, at issue in *California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810.

~~This bill would state the intent of the Legislature that the bill not affect or restrict the ability of persons or entities to make gifts to a state or local agency on condition of anonymity.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 92034 is added to the Education Code,
- 2 to read:

92034. Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code applies to the following entities:

(a) An entity in which an official of the University of California participates as a director as part of his or her official duties.

(b) An entity that operates a commercial service for the benefit of a campus of the University of California on a campus or other property of the University of California.

(c) An entity whose governing instrument provides in substance both of the following:

(1) That its purpose is to promote or assist any campus of the University of California, or to receive gifts, property, and funds to be used for the benefit of that campus or any person or organization having an official relationship therewith.

(2) That any of its directors, governors, or trustees are either appointed or nominated by, or subject to, ~~the approval of~~ *to the approval of*, an official of any campus of the University of California, or serve, ex officio, from the membership of the student body or the faculty or the administrative staff of a campus.

(d) Any entity whose governing instrument provides in substance both of the following:

(1) That its purpose is to promote or assist the Regents of the University of California, or to receive gifts, property, and funds to be used for the benefit of the Regents of the University of California, or any person or organization having an official relationship therewith.

(2) That any of its directors, governors, or trustees are either appointed or nominated by, or subject to, the approval of the Regents or an official of the University of California, or serve, ex officio, from the membership of the regents or the administrative staff of the University of California.

(e) An entity that is designated by the regents as an auxiliary organization of the University of California.

SEC. 2. Section 6252 of the Government Code is amended to read:

6252. As used in this chapter:

(a) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; an entity organized pursuant to

1 Section 72670 of the Education Code or a nonprofit entity that
2 operates a campus facility, including, but not limited to, a
3 bookstore, sports complex, arena, theater, student center, parking
4 program, or other similar activity at a community college; other
5 local public agency; or entities that are legislative bodies of a local
6 agency pursuant to subdivisions (c) and (d) of Section 54952.

7 (b) “Member of the public” means any person, except a member,
8 agent, officer, or employee of a federal, state, or local agency
9 acting within the scope of his or her membership, agency, office,
10 or employment.

11 (c) “Person” includes any natural person, corporation,
12 partnership, limited liability company, firm, or association.

13 (d) “Public agency” means any state or local agency.

14 (e) “Public records” includes any writing containing information
15 relating to the conduct of the public’s business prepared, owned,
16 used, or retained by any state or local agency regardless of physical
17 form or characteristics. “Public records” in the custody of, or
18 maintained by, the Governor’s office means any writing prepared
19 on or after January 6, 1975.

20 (f) “State agency” means every state office, officer, department,
21 division, bureau, board, and commission or other state body or
22 agency, an organization operating pursuant to Section 89300,
23 89901, or 92034 of the Education Code, or a nonprofit entity that
24 operates a campus facility, including, but not limited to, a
25 bookstore, sports complex, arena, theater, student center, parking
26 program, or other similar activity at a California public
27 postsecondary education institution, except those agencies provided
28 for in Article IV (except Section 20 thereof) or Article VI of the
29 California Constitution.

30 (g) “Writing” means any handwriting, typewriting, printing,
31 photostating, photographing, photocopying, transmitting by
32 electronic mail or facsimile, and every other means of recording
33 upon any tangible thing any form of communication or
34 representation, including letters, words, pictures, sounds, or
35 symbols, or combinations thereof, and any record thereby created,
36 regardless of the manner in which the record has been stored.

37 *SEC. 3. Section 6254.30 is added to the Government Code, to*
38 *read:*

39 *6254.30. Nothing in this chapter shall be construed to require*
40 *disclosure of the names of individuals who donate to an entity*

1 *described in Section 72670, 89300, 89901, or 92034 of the*
2 *Education Code or to a nonprofit entity described in subdivision*
3 *(f) of Section 6252 of this code, if those individuals request*
4 *anonymity. This exemption does not apply if a donor, in a quid*
5 *pro quo arrangement, receives anything that has more than a*
6 *nominal value in exchange for the donation.*

7 ~~SEC. 3.~~

8 SEC. 4. It is the intent of the Legislature in enacting this act
9 to construe and clarify the meaning and effect of existing law and
10 to reject the court's interpretation of state law regarding the
11 application of the California Public Records Act (Chapter 3.5
12 (commencing with Section 6250) of Division 7 of Title 1 of the
13 Government Code) to auxiliary organizations, such as the CSU
14 Fresno Association, at issue in California State University, Fresno
15 Assn., Inc. v. Superior Court (2001) 90 Cal.App.4th 810.

16 ~~SEC. 4. It is the intent of the Legislature that nothing in this~~
17 ~~act affects or restricts any present or existing ability of persons or~~
18 ~~entities to make gifts to a state or local agency on the condition of~~
19 ~~anonymity.~~

20 SEC. 5. *The Legislature finds and declares that Section 3 of*
21 *this act imposes a limitation on the public's right of access to*
22 *writings of public officials and agencies within the meaning of*
23 *Section 3 of Article I of the California Constitution. Pursuant to*
24 *that constitutional provision, the Legislature makes the following*
25 *finding to demonstrate the interest protected by this limitation and*
26 *the need for protecting that interest: The Legislature finds and*
27 *declares that in order to protect the privacy of individuals who*
28 *donate to specified entities and request anonymity, it is necessary*
29 *to exempt those individuals' names from disclosure.*