

Senate Bill No. 218

Passed the Senate September 8, 2009

Secretary of the Senate

Passed the Assembly September 3, 2009

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 72670, 72670.5, and 89901 of, and 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, Yee. Public records: state agency: auxiliary organizations.

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 those records 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 specified auxiliary organizations established for the purpose of providing support services and specialized programs for the general benefit of a community college.

This bill would revise the definition of the term “state agency” to additionally include specified auxiliary organizations and other specified entities.

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. The bill would also provide that it is the intent of the Legislature that specified organizations be included in the definition of “state agency” solely for the purposes of the California Public Records Act.

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

SECTION 1. Section 72670 of the Education Code is amended to read:

72670. The governing board of a community college district may establish auxiliary organizations for the purpose of providing supportive services and specialized programs for the general benefit of its college or colleges. As used in this article, “auxiliary organization” may include, but is not limited to, the following entities:

(a) Any entity in which any official of a community college district participates as a director as part of his or her official position.

(b) Any entity formed or operating pursuant to Article 4 (commencing with Section 76060) of Chapter 1 of Part 47.

(c) Any entity that operates a commercial service for the benefit of a community college or district on a campus or other property of the district.

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

(1) Its purpose is to promote or assist a community college or district, or to receive gifts, property, and funds to be used for the benefit of the community college or district or any person or organization having an official relationship therewith.

(2) Any of its directors, governors, or trustees are either appointed or nominated by, or subject to, the approval of the governing board of the district, an official of the district, or selected, ex officio, from the membership of the student body or the faculty or the governing board or the administrative staff of the district.

(e) Any entity that is designated as an auxiliary organization by the district governing board.

(f) Nothing in this section shall require an entity described in this section to disclose information that is exempt from disclosure pursuant to Section 99040, Section 3426.1 of the Civil Code, Section 1060 of the Evidence Code, or subdivision (k) of Section 6254 of the Government Code.

SEC. 2. Section 72670.5 of the Education Code is amended to read:

72670.5. (a) The Board of Governors of the California Community Colleges may establish auxiliary organizations for the purpose of providing supportive services and specialized programs for the general benefit of the mission of the California Community Colleges.

(b) As used in this article:

(1) “Auxiliary organization” may include, but is not limited to, the following entities:

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

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

(ii) That any of its directors, governors, or trustees are either appointed or nominated by, or subject to, the approval of the Board of Governors of the California Community Colleges or an official of the California Community Colleges, or selected, ex officio, from the membership of the Board of Governors or the administrative staff of the California Community Colleges.

(B) Any entity which, exclusive of the foregoing subdivisions of this section, is designated as an auxiliary organization by the Board of Governors of the California Community Colleges.

(2) “District governing board” includes the Board of Governors of the California Community Colleges, unless the context requires otherwise.

(c) Any agreement between the Board of Governors of the California Community Colleges and an auxiliary organization established pursuant to this section shall provide for full reimbursement from the auxiliary organization to the Board of Governors of the California Community Colleges for any services performed by the employees of the board under the direction of, or on behalf of, the auxiliary organization.

(d) Nothing in this section shall require an entity described in this section to disclose information that is exempt from disclosure pursuant to Section 99040, Section 3426.1 of the Civil Code, Section 1060 of the Evidence Code, or subdivision (k) of Section 6254 of the Government Code.

SEC. 3. Section 89901 of the Education Code is amended to read:

89901. As used in this article, the term “auxiliary organization” includes the following entities:

(a) Any entity in which any official of the California State University participates as a director as part of his or her official position.

(b) Any entity formed or operating pursuant to Article 1 (commencing with Section 89300) of Chapter 3.

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

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

(1) That its purpose is to promote or assist any campus of the California State University, or to receive gifts, property, and funds to be used for the benefit of such 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 an official of any campus of the California State University, or selected, ex officio, from the membership of the student body or the faculty or the administrative staff of campus.

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

(1) That its purpose is to promote or assist the trustees of the California State University, or to receive gifts, property, and funds to be used for the benefit of the trustees of the California State University 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 trustees or an official of the California State University, or selected, ex officio, from the membership of the trustees or the administrative staff of the California State University.

(f) Any entity which, exclusive of the foregoing subdivisions of this section, is designated as an auxiliary organization by the trustees.

(g) Nothing in this section shall require an entity described in this section to disclose information that is exempt from disclosure

pursuant to Section 99040, Section 3426.1 of the Civil Code, Section 1060 of the Evidence Code, or subdivision (k) of Section 6254 of the Government Code.

SEC. 4. Section 92034 is added to the Education Code, to read:

92034. As used in this article, the term “auxiliary organization” includes 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, 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.

(f) Nothing in this section shall require an entity described in this section to disclose information that is exempt from disclosure pursuant to Section 99040, Section 3426.1 of the Civil Code,

Section 1060 of the Evidence Code, or subdivision (k) of Section 6254 of the Government Code.

SEC. 5. 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 described in subdivision (b), (d), or (e) of Section 72670 of the Education Code; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

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

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

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

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

(f) “State agency” means all of the following:

(1) (A) Every state office, officer, department, division, bureau, board, and commission or other state body or agency.

(B) An organization described in subdivision (b), (d), (e), or (f) of Section 89901 of the Education Code.

(C) An organization described in subdivision (c), (d), or (e) of Section 92034 of the Education Code.

(D) An organization described in paragraph (1) of subdivision (b) of Section 72670.5 of the Education Code.

(2) “State agency” does not include those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(g) “Writing” means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording

upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

SEC. 6. Section 6254.30 is added to the Government Code, to read:

6254.30. Nothing in this chapter shall be construed to require disclosure of the names of individuals who donate to an entity described in paragraph (1) of subdivision (b) of Section 72670.5, Section 72670, 89901, or 92034 of the Education Code, if those individuals request anonymity. 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.

SEC. 7. It is the intent of the Legislature in enacting this act to construe and clarify the meaning and effect of existing law and to reject the court's interpretation of state law regarding the application of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) 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.

SEC. 8. It is the intent of the Legislature in enacting this act to clarify that an organization described in paragraph (1) of subdivision (b) of Section 72670.5, Section 89901, or Section 92034 of the Education Code be included in the definition of "state agency" solely for the purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

SEC. 9. The Legislature finds and declares that Section 6 of this act imposes a limitation on the public's right of access to writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following finding to demonstrate the interest protected by this limitation and the need for protecting that interest: The Legislature finds and declares that in order to protect the privacy of individuals who donate to specified entities and request anonymity, it is necessary to exempt those individuals' names from disclosure.

Approved _____, 2009

Governor