

AMENDED IN ASSEMBLY SEPTEMBER 2, 2009

AMENDED IN ASSEMBLY AUGUST 26, 2009

AMENDED IN ASSEMBLY AUGUST 17, 2009

AMENDED IN ASSEMBLY JULY 14, 2009

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AMENDED IN SENATE APRIL 27, 2009

SENATE BILL

No. 218

Introduced by Senator Yee

(Coauthors: Senators Calderon, DeSaulnier, Dutton, and Runner)

(Coauthors: Assembly Members Beall, DeVore, Furutani, Nielsen,
Portantino, Silva, Smyth, Torrico, and Tran)

February 23, 2009

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, as amended, 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.*

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 72670 of the Education Code is amended
- 2 to read:
- 3 72670. The governing board of a community college district
- 4 may establish auxiliary organizations for the purpose of providing
- 5 supportive services and specialized programs for the general benefit
- 6 of its college or colleges. As used in this article, “auxiliary
- 7 organization” may include, but is not limited to, the following
- 8 entities:
- 9 (a) Any entity in which any official of a community college
- 10 district participates as a director as part of his or her official
- 11 position.

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

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

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

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

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

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

20 (f) Nothing in this section shall require an entity described in
21 this section to disclose information that is exempt from disclosure
22 pursuant to Section 99040, Section 3426.1 of the Civil Code,
23 Section 1060 of the Evidence Code, or subdivision (k) of Section
24 6254 of the Government Code.

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

27 72670.5. (a) The Board of Governors of the California
28 Community Colleges may establish auxiliary organizations for the
29 purpose of providing supportive services and specialized programs
30 for the general benefit of the mission of the California Community
31 Colleges.

32 (b) As used in this article:

33 (1) "Auxiliary organization" may include, but is not limited to,
34 the following entities:

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

37 (i) That its purpose is to promote or assist the Board of
38 Governors of the California Community Colleges, or to receive
39 gifts, property, and funds to be used for the benefit of the Board

1 of Governors of the California Community Colleges or any person
2 or organization having an official relationship therewith.

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

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

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

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

22 (d) Nothing in this section shall require an entity described in
23 this section to disclose information that is exempt from disclosure
24 pursuant to Section 99040, Section ~~3246.1~~ 3426.1 of the Civil
25 Code, Section 1060 of the Evidence Code, or subdivision (k) of
26 Section 6254 of the Government Code.

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

29 89901. As used in this article, the term “auxiliary organization”
30 includes the following entities:

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

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

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

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

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

5 (2) That any of its directors, governors, or trustees are either
6 appointed or nominated by, or subject to, the approval of an official
7 of any campus of the California State University, or selected, ex
8 officio, from the membership of the student body or the faculty or
9 the administrative staff of campus.

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

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

17 (2) That any of its directors, governors, or trustees are either
18 appointed or nominated by, or subject to, the approval of the
19 trustees or an official of the California State University, or selected,
20 ex officio, from the membership of the trustees or the
21 administrative staff of the California State University.

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

25 (g) Nothing in this section shall require an entity described in
26 this section to disclose information that is exempt from disclosure
27 pursuant to Section 99040, Section 3426.1 of the Civil Code,
28 Section 1060 of the Evidence Code, or subdivision (k) of Section
29 6254 of the Government Code.

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

31 92034. As used in this article, the term “auxiliary organization”
32 includes the following entities:

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

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

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

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

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

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

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

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

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

24 (f) Nothing in this section shall require an entity described in
25 this section to disclose information that is exempt from disclosure
26 pursuant to Section 99040, Section 3426.1 of the Civil Code,
27 Section 1060 of the Evidence Code, or subdivision (k) of Section
28 6254 of the Government Code.

29 SEC. 5. Section 6252 of the Government Code is amended to
30 read:

31 6252. As used in this chapter:

32 (a) “Local agency” includes a county; city, whether general law
33 or chartered; city and county; school district; municipal
34 corporation; district; political subdivision; or any board,
35 commission or agency thereof; an entity described in subdivision
36 (b), (d), or (e) of Section 72670 of the Education Code; other local
37 public agency; or entities that are legislative bodies of a local
38 agency pursuant to subdivisions (c) and (d) of Section 54952.

39 (b) “Member of the public” means any person, except a member,
40 agent, officer, or employee of a federal, state, or local agency

1 acting within the scope of his or her membership, agency, office,
2 or employment.

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

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

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

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

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

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

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

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

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

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

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

33 6254.30. Nothing in this chapter shall be construed to require
34 disclosure of the names of individuals who donate to an entity
35 described in paragraph (1) of subdivision (b) of Section 72670.5,
36 Section 72670, 89901, or 92034 of the Education Code, if those
37 individuals request anonymity. This exemption does not apply if
38 a donor, in a quid pro quo arrangement, receives anything that has
39 more than a nominal value in exchange for the donation.

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

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

16 ~~SEC. 8.~~

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