

AMENDED IN ASSEMBLY JUNE 3, 2010

AMENDED IN SENATE DECEMBER 15, 2009

SENATE BILL

No. 330

Introduced by Senator Yee

(Coauthors: Senators Calderon, DeSaulnier, and Dutton)

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

February 25, 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 330, 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 entities.~~

~~This bill would require specified entities to comply with the act but would not require these entities to disclose information obtained in the~~

process of soliciting potential donors that has actual or potential independent economic value because it is not generally known to the public or because the individuals can obtain economic value from its disclosure or use.

This bill would specify that it is not the intent of the Legislature to designate specified organizations as state agencies by subjecting these organizations to the requirements of the act.

~~The bill would exempt from disclosure under the California Public Records Act act the names of persons who volunteer services or donate to specified entities if those persons request anonymity. However, the bill would provide that this exemption does not apply if a volunteer or donor, in a quid pro quo arrangement, receives anything that has a value of \$500 or greater in exchange for the services or donation meets specified conditions.~~

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

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

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

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

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

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

18 *(f) An entity described in subdivision (b), (d), or (e) shall comply*
19 *with Chapter 3.5 (commencing with Section 6250) of Division 7*
20 *of Title 1 of the Government Code.*

21 *(g) Nothing in Chapter 3.5 (commencing with Section 6250) of*
22 *Division 7 of Title 1 of the Government Code shall require an*
23 *entity described in this section to disclose information obtained*
24 *in the process of soliciting potential donors that has actual or*
25 *potential independent economic value because it is not generally*
26 *known to the public or because individuals can obtain economic*
27 *value from its disclosure or use.*

28 ~~(f)~~

29 (h) Nothing in this section shall require an entity described in
30 this section to disclose information that is exempt from disclosure
31 pursuant to Section 99040, Section 3426.1 of the Civil Code,
32 Section 1060 of the Evidence Code, or subdivision (k) of Section
33 6254 of the Government Code.

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

36 72670.5. (a) The Board of Governors of the California
37 Community Colleges may establish auxiliary organizations for the
38 purpose of providing supportive services and specialized programs
39 for the general benefit of the mission of the California Community
40 Colleges.

1 (b) As used in this article:

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

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

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

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

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

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

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

30 *(d) An entity described in paragraph (1) of subdivision (b) shall*
31 *comply with Chapter 3.5 (commencing with Section 6250) of*
32 *Division 7 of Title 1 of the Government Code.*

33 *(e) Nothing in Chapter 3.5 (commencing with Section 6250) of*
34 *Division 7 of Title 1 of the Government Code shall require an*
35 *entity described in this section to disclose information obtained*
36 *in the process of soliciting potential donors that has actual or*
37 *potential independent economic value because it is not generally*
38 *known to the public or because individuals can obtain economic*
39 *value from its disclosure or use.*

1 (f) *It is not the intent of the Legislature in enacting subdivision*
2 (d) *to designate an organization described in paragraph (1) of*
3 subdivision (b) *as a state agency.*

4 ~~(d)~~

5 (g) Nothing in this section shall require an entity described in
6 this section to disclose information that is exempt from disclosure
7 pursuant to Section 99040, Section 3426.1 of the Civil Code,
8 Section 1060 of the Evidence Code, or subdivision (k) of Section
9 6254 of the Government Code.

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

12 89901. As used in this article, the term “auxiliary organization”
13 includes the following entities:

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

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

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

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

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

28 (2) That any of its directors, governors, or trustees are either
29 appointed or nominated by, or subject to, the approval of an official
30 of any campus of the California State University, or selected, ex
31 officio, from the membership of the student body or the faculty or
32 the administrative staff of campus.

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

35 (1) That its purpose is to promote or assist the trustees of the
36 California State University, or to receive gifts, property, and funds
37 to be used for the benefit of the trustees of the California State
38 University or any person or organization having an official
39 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 that, exclusive of the foregoing subdivisions of this section, is designated as an auxiliary organization by the trustees.

(g) An entity described in subdivision (b), (d), (e), or (f) shall comply with Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(h) Nothing in Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code shall require an entity described in this section to disclose information obtained in the process of soliciting potential donors that has actual or potential independent economic value because it is not generally known to the public or because individuals can obtain economic value from its disclosure or use.

(i) It is not the intent of the Legislature in enacting subdivision (g) to designate an organization described in subdivision (b), (d), (e), or (f) as a state agency.

~~(g)~~

(j) 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

1 to be used for the benefit of that campus or any person or
2 organization having an official relationship therewith.

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

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

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

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

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

22 *(f) An entity described in subdivision (c), (d), or (e) shall comply*
23 *with Chapter 3.5 (commencing with Section 6250) of Division 7*
24 *of Title 1 of the Government Code.*

25 *(g) Nothing in Chapter 3.5 (commencing with Section 6250) of*
26 *Division 7 of Title 1 of the Government Code shall require an*
27 *entity described in this section to disclose information obtained*
28 *in the process of soliciting potential donors that has actual or*
29 *potential independent economic value because it is not generally*
30 *known to the public or because individuals can obtain economic*
31 *value from its disclosure or use.*

32 *(h) It is not the intent of the Legislature in enacting subdivision*
33 *(f) to designate an organization described in subdivision (c), (d),*
34 *or (e) as a state agency.*

35 ~~(f)~~

36 (i) Nothing in this section shall require an entity described in
37 this section to disclose information that is exempt from disclosure
38 pursuant to Section 99040, Section 3426.1 of the Civil Code,
39 Section 1060 of the Evidence Code, or subdivision (k) of Section
40 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~~

1 symbols, or combinations thereof, and any record thereby created,
2 regardless of the manner in which the record has been stored.

3 ~~SEC. 6.~~

4 SEC. 5. Section 6254.30 is added to the Government Code, to
5 read:

6 6254.30. (a) Nothing in this chapter shall be construed to
7 require disclosure of the names of a person who volunteers his or
8 her services or donates to an entity described in paragraph (1) of
9 subdivision (b) of Section 72670.5, Section 72670, 89901, or 92034
10 of the Education Code, if that person requests anonymity. ~~This~~
11 ~~exemption~~

12 (b) Subdivision (a) does not apply if a volunteer or donor, in a
13 quid pro quo arrangement, receives anything that has a value of
14 five hundred dollars (\$500) or greater in exchange for the services
15 or donation.

16 (c) Subdivision (a) does not apply if a volunteer or donor is a
17 member of the governing board of an entity described in paragraph
18 (1) of subdivision (b) of Section 72670.5 of, or Section 72670,
19 89901, or 92034 of, the Education Code.

20 (d) Subdivision (a) does not apply if a volunteer or donor
21 engages in direct communication for the purpose of influencing
22 the administrative or academic action within the California
23 Community Colleges, the California State University, or the
24 University of California.

25 ~~SEC. 7.~~

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

34 ~~SEC. 8.~~

35 SEC. 7. It is the intent of the Legislature in enacting this act to
36 clarify that an organization described in paragraph (1) of
37 subdivision (b) of Section 72670.5, Section 89901, or Section
38 92034 of the Education Code be included in the definition of "state
39 agency" solely for the purposes of the California Public Records

1 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
2 of Title 1 of the Government Code).

3 ~~SEC. 9.~~

4 *SEC. 8.* The Legislature finds and declares that Section 6 of
5 this act imposes a limitation on the public's right of access to
6 writings of public officials and agencies within the meaning of
7 Section 3 of Article I of the California Constitution. Pursuant to
8 that constitutional provision, the Legislature makes the following
9 finding to demonstrate the interest protected by this limitation and
10 the need for protecting that interest: The Legislature finds and
11 declares that in order to protect the privacy of individuals who
12 donate to specified entities and request anonymity, it is necessary
13 to exempt those individuals' names from disclosure.