

**ACADEMIC SENATE
OF
THE CALIFORNIA STATE UNIVERSITY**

AS-2894-09/FGA
May 7-8, 2009

**Support of SB 218 (Yee, D-San Francisco) Amendment to
California Public Records Act**

- RESOLVED: That the Academic Senate of the California State University (ASCSU) support, if amended, SB 218 (Yee, D-San Francisco), Amendments to the California Public Records Act (CPRA), which amends the California Public Records Act to include auxiliary organizations that receive public funds or perform a governmental function on behalf of the California Community Colleges (CCC), the California State University (CSU) or the University of California (UC); and be it further
- RESOLVED: That the requested amendment would explicitly protect the donor records of those who request anonymity; and be it further
- RESOLVED: This resolution be sent to the Chancellor, Board of Trustees, campus presidents, campus senates, the California Faculty Association, Senator Leland Yee, and other members of the Senate Judiciary Committee.

RATIONALE: In 1999, the Fresno Bee was denied information requested of California State University Fresno under the CPRA, concerning the identity of individuals and companies that purchased luxury suites at the Save Mart Center Arena which opened in 2001. The suites were obtained in exchange for gifts to the university's foundation. The suites were awarded for a specific number of years under licensing agreements between donors and the nonprofit corporate association running the Center. In denying the request, the association and foundation argued that they are not state agencies as defined by the CPRA, and are therefore not subject to its provisions. A trial court ordered the entities to disclose the information, but the 4th District California Appellate Court overturned the action on appeal.

In its opinion, the appeals court argued that the CPRA was not written broadly enough to include either the nonprofit corporate association or the foundation in the definition of a state agency. The court pointed out, however, that their conclusion seemed to be in direct conflict with the intent of the CPRA, to "safeguard the accountability of government to the public." The court also pointed out the disconnect between the narrow defined applicability of the CPRA and its broader intent, to safeguard the public. The court ultimately stated that in many ways the association can be characterized as a state controlled corporation that should be subject to the CPRA, but that rewriting the statute was a legislative responsibility.

SB 218 responds to the court's assertion that rewriting the statute is a legislative responsibility by amending the CPRA to include auxiliary organizations that receive public funds or perform a governmental function on behalf of the California Community Colleges, the California State University, or the University of California. SB 218 will promote accountability and transparency in public institutions of higher education in California. The bill is co-sponsored by the California Faculty Association and the

California Newspaper Publishers Association. It will be heard in the Senate Judiciary Committee on May 12, 2009.

Sources:

SB 218

March 27, 2009 Letter to The Honorable Leland Yee from California Newspaper Publishers Association

“Legislation will bring greater transparency, protect whistleblowers, reign executive compensation,” Press release, Office of Senator Leland Yee

E.J. Schultz, “Fresno State case leads to push to add open records,” Sacramento Bee Online, Tuesday, March 3, 2009

California State University, Fresno Assn., Inc. v. Superior Court (2001) 90 Cal. App. 4th 810.

Approved – May 7-8, 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)

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

February 23, 2009

An act to add ~~Sections 71052, 89049, and Section 92034~~ to the Education Code, and to amend Section 6252 of 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 term "state agency" for purposes of the act.

This bill would revise the definition of the term "state agency" to additionally include ~~any entity, including, but not limited to, a nonprofit corporation, that receives public funds or performs a governmental function on behalf of the California Community Colleges, the California State University, or the University of California~~ *an organization operating pursuant to specific provisions of the Education Code, or an entity that operates a campus facility, including, but not limited to, a bookstore, sports complex, arena, theater, student center, parking*

program, or other similar activity at a California public postsecondary education institution.

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 ~~bodies~~ *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.*

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 71052 is added to the Education Code,~~
2 ~~to read:~~

3 ~~71052. Chapter 3.5 (commencing with Section 6250) of~~
4 ~~Division 7 of Title 1 of the Government Code applies to any entity,~~
5 ~~including, but not limited to, a nonprofit corporation, that receives~~
6 ~~public funds or performs a governmental function on behalf of the~~
7 ~~California Community Colleges.~~

8 ~~SEC. 2. Section 89049 is added to the Education Code, to read:~~

9 ~~89049. Chapter 3.5 (commencing with Section 6250) of~~
10 ~~Division 7 of Title 1 of the Government Code applies to any entity,~~
11 ~~including, but not limited to, a nonprofit corporation, that receives~~
12 ~~public funds or performs a governmental function on behalf of the~~
13 ~~California State University.~~

14 ~~SEC. 3:~~

15 ~~SECTION 1. Section 92034 is added to the Education Code,~~
16 ~~to read:~~

17 ~~92034. Chapter 3.5 (commencing with Section 6250) of~~
18 ~~Division 7 of Title 1 of the Government Code applies to any entity,~~
19 ~~including, but not limited to, a nonprofit corporation, that receives~~
20 ~~public funds or performs a governmental function on behalf of the~~
21 ~~University of California: whose purpose is to promote or assist~~
22 ~~the Regents of the University of California, or to receive gifts,~~
23 ~~property, and funds to be used for the benefit of the regents, or~~
24 ~~any person or organization having an official relationship with~~
25 ~~the regents.~~

26 ~~SEC. 4:~~

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

1 6252. As used in this chapter:

2 (a) “Local agency” includes a county; city, whether general law
3 or chartered; city and county; school district; municipal
4 corporation; district; political subdivision; or any board,
5 commission or agency thereof; other local public agency; or entities
6 that are legislative bodies of a local agency pursuant to subdivisions
7 (c) and (d) of Section 54952.

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

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

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

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

21 (f) “State agency” means every state office, officer, department,
22 division, bureau, board, and commission or other state body or
23 agency, ~~or an entity subject to Section 71052, 89049, or 92034 of~~
24 ~~the Education Code~~ *an organization operating pursuant to Section*
25 *72670, 89305, 89901, or 92034 of the Education Code, or an entity*
26 *that operates a campus facility, including, but not limited to, a*
27 *bookstore, sports complex, arena, theater, student center, parking*
28 *program, or other similar activity at a California public*
29 *postsecondary education institution, except those agencies provided*
30 *for in Article IV (except Section 20 thereof) or Article VI of the*
31 *California Constitution.*

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

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