

File No. 100240

Committee Item No. 1

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight Date April 8, 2010

Board of Supervisors Meeting Date _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
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| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
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| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
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OTHER

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Senate Bill No. 33D</u> |
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Completed by: Alisa Somera Date April 2, 2010

Completed by: _____ Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file and the online version.

1 [Supporting Senate Bill 330 Regarding University of California]

2
3 **Resolution supporting Senate Bill 330 for increased transparency and accountability in**
4 **auxiliary organizations and foundations in the University of California and California**
5 **State University systems.**

6
7 WHEREAS, The University of California and California State University systems have
8 been able to evade the requirements of the California Public Records Act (CPRA) by shifting
9 university responsibilities to foundations and auxiliary organizations; and

10 WHEREAS, The University of California and California State University systems are
11 required to comply with the California Public Records Act (CPRA), in order to ensure
12 transparency and accountability; and

13 WHEREAS, Instances of misconduct and misuse of funds have been discovered at
14 CSUs within foundations and auxiliary organizations; and

15 WHEREAS, Local community college auxiliaries are already subject to the CPRA,
16 which led to discovery and accountability in instances of abuse and waste; and

17 WHEREAS, The California State Senate has recently passed Senate Bill 330 (SB330)
18 to include UC and CSU foundations and auxiliary organizations under CPRA requirements;
19 now, therefore, be it

20 **RESOLVED**, That the Board of Supervisors of San Francisco endorses and supports
21 SB330 in support of increased accountability and transparency in UC and CSU foundations
22 and auxiliary organizations by making such organizations subject to the requirements of the
23 California Public Records Act.

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 Section 487 of the Penal Code, relating to grand theft.~~ *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. ~~Grand theft.~~ *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.

The bill would exempt from disclosure under the California Public Records 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.

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.

~~Existing law establishes the offense of grand theft.~~

~~This bill would make technical, nonsubstantive changes to these provisions:~~

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.

14 (c) Any entity ~~which~~ *that* operates a commercial service for the
15 benefit of a community college or district on a campus or other
16 property of the district.

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

19 (1) Its purpose is to promote or assist a community college or
20 district, or to receive gifts, ~~property property~~, and funds to be used

1 for the benefit of the community college or district or any person
2 or organization having an official relationship therewith.

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

9 (e) Any entity—~~which~~ *that* is designated as an auxiliary
10 organization by the district governing board.

11 (f) *Nothing in this section shall require an entity described in*
12 *this section to disclose information that is exempt from disclosure*
13 *pursuant to Section 99040, Section 3426.1 of the Civil Code,*
14 *Section 1060 of the Evidence Code, or subdivision (k) of Section*
15 *6254 of the Government Code.*

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

18 72670.5. (a) The Board of Governors of the California
19 Community Colleges may establish auxiliary organizations for the
20 purpose of providing supportive services and specialized programs
21 for the general benefit of the mission of the California Community
22 Colleges.

23 (b) As used in this article:

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

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

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

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

39 (B) Any entity—~~which~~ *that*, exclusive of the foregoing
40 subdivisions of this section, is designated as an auxiliary

1 organization by the Board of Governors of the California
2 Community Colleges.

3 (2) "District governing board" includes the Board of Governors
4 of the California Community Colleges, unless the context requires
5 otherwise.

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

13 (d) *Nothing in this section shall require an entity described in*
14 *this section to disclose information that is exempt from disclosure*
15 *pursuant to Section 99040, Section 3426.1 of the Civil Code,*
16 *Section 1060 of the Evidence Code, or subdivision (k) of Section*
17 *6254 of the Government Code.*

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

20 89901. As used in this article, the term "auxiliary organization"
21 includes the following entities:

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

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

27 (c) Any entity ~~which~~ *that* operates a commercial service for the
28 benefit of a campus of the California State University on a campus
29 or other property of the California State University.

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

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

36 (2) That any of its directors, governors, or trustees are either
37 appointed or nominated by, or subject to, the approval of an official
38 of any campus of the California State University, or selected, *ex*
39 *officio*, from the membership of the student body or the faculty or
40 the administrative staff of campus.

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

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

8 (2) That any of its directors, governors, or trustees are either
9 appointed or nominated by, or subject to, the approval of the
10 trustees or an official of the California State University, or selected,
11 ex officio, from the membership of the trustees or the
12 administrative staff of the California State University.

13 (f) Any entity—~~which~~ *that*, exclusive of the foregoing
14 subdivisions of this section, is designated as an auxiliary
15 organization by the trustees.

16 (g) *Nothing in this section shall require an entity described in
17 this section to disclose information that is exempt from disclosure
18 pursuant to Section 99040, Section 3426.1 of the Civil Code,
19 Section 1060 of the Evidence Code, or subdivision (k) of Section
20 6254 of the Government Code.*

21 *SEC. 4. Section 92034 is added to the Education Code, to read:
22 92034. As used in this article, the term "auxiliary
23 organization" includes the following entities:*

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

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

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

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

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

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

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

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

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

15 (f) Nothing in this section shall require an entity described in
16 this section to disclose information that is exempt from disclosure
17 pursuant to Section 99040, Section 3426.1 of the Civil Code,
18 Section 1060 of the Evidence Code, or subdivision (k) of Section
19 6254 of the Government Code.

20 SEC. 5. Section 6252 of the Government Code is amended to
21 read:

22 6252. As used in this chapter:

23 (a) "Local agency" includes a county; city, whether general law
24 or chartered; city and county; school district; municipal
25 corporation; district; political subdivision; or any board,
26 commission or agency thereof; *an entity described in subdivision*
27 *(b), (d), or (e) of Section 72670 of the Education Code*; other local
28 public agency; or entities that are legislative bodies of a local
29 agency pursuant to subdivisions (c) and (d) of Section 54952.

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

34 (c) "Person" includes any natural person, corporation,
35 partnership, limited liability company, firm, or association.

36 (d) "Public agency" means any state or local agency.

37 (e) "Public records" includes any writing containing information
38 relating to the conduct of the public's business prepared, owned,
39 used, or retained by any state or local agency regardless of physical
40 form or characteristics. "Public records" in the custody of, or

1 maintained by, the Governor's office means any writing prepared
2 on or after January 6, 1975.

3 (f) "State agency" means all of the following:

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

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

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

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

12 (⊕)

13 (2) ~~"State agency" means every state office, officer, department,~~
14 ~~division, bureau, board, and commission or other state body or~~
15 ~~agency, except does not include~~ those agencies provided for in
16 Article IV (except Section 20 thereof) or Article VI of the
17 California Constitution.

18 (g) "Writing" means any handwriting, typewriting, printing,
19 ~~photostating, photostating,~~ photographing, photocopying,
20 transmitting by electronic mail or facsimile, and every other means
21 of recording upon any tangible thing any form of communication
22 or representation, including letters, words, pictures, sounds, or
23 symbols, or combinations thereof, and any record thereby created,
24 regardless of the manner in which the record has been stored.

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

27 6254.30. Nothing in this chapter shall be construed to require
28 disclosure of the names of a person who volunteers his or her
29 services or donates to an entity described in paragraph (1) of
30 subdivision (b) of Section 72670.5, Section 72670, 89901, or 92034
31 of the Education Code, if that person requests anonymity. This
32 exemption does not apply if a volunteer or donor, in a quid pro
33 quo arrangement, receives anything that has a value of five
34 hundred dollars (\$500) or greater in exchange for the services or
35 donation.

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

1 Government Code) to auxiliary organizations, such as the CSU
2 Fresno Association, at issue in California State University, Fresno
3 Assn., Inc. v. Superior Court (2001) 90 Cal.App.4th 810.

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

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

21 SECTION 1. ~~Section 487 of the Penal Code is amended to~~
22 ~~read:~~

23 ~~487. Grand theft is theft committed in any of the following~~
24 ~~cases:~~

25 ~~(a) When the money, labor, or real or personal property taken~~
26 ~~is of a value exceeding four hundred dollars (\$400), except as~~
27 ~~provided in subdivision (b):~~

28 ~~(b) Notwithstanding subdivision (a), grand theft is committed~~
29 ~~in each of the following cases:~~

30 ~~(1) (A) When domestic fowls, avocados, olives, citrus or~~
31 ~~deciduous fruits, other fruits, vegetables, nuts, artichokes, or other~~
32 ~~farm crops are taken of a value exceeding one hundred dollars~~
33 ~~(\$100):~~

34 ~~(B) For the purposes of establishing that the value of avocados~~
35 ~~or citrus fruit under this paragraph exceeds one hundred dollars~~
36 ~~(\$100), that value may be shown by the presentation of credible~~
37 ~~evidence that establishes that on the day of the theft avocados or~~
38 ~~citrus fruit of the same variety and weight exceeded one hundred~~
39 ~~dollars (\$100) in wholesale value.~~

- 1 ~~(2) When fish, shellfish, mollusks, crustaceans, kelp, algae, or~~
- 2 ~~other aquacultural products are taken from a commercial or~~
- 3 ~~research operation which is producing that product, of a value~~
- 4 ~~exceeding one hundred dollars (\$100).~~
- 5 ~~(3) Where the money, labor, or real or personal property is taken~~
- 6 ~~by a servant, agent, or employee from his or her principal or~~
- 7 ~~employer and aggregates four hundred dollars (\$400) or more in~~
- 8 ~~any 12 consecutive month period.~~
- 9 ~~(c) When the property is taken from the person of another.~~
- 10 ~~(d) When the property taken is any of the following:~~
- 11 ~~(1) An automobile, horse, mare, gelding, any bovine animal;~~
- 12 ~~any caprine animal, mule, jack, jenny, sheep, lamb, hog, sow, boar,~~
- 13 ~~gilt, barrow, or pig.~~
- 14 ~~(2) A firearm.~~
- 15 ~~(e) This section shall become operative on January 1, 1997.~~