

Senate Bill No. 8

CHAPTER 247

An act to add Article 7 (commencing with Section 72690) to Chapter 6 of Part 45 of Division 7 of, to add Article 1.5 (commencing with Section 89913) to Chapter 7 of Part 55 of Division 8 of, and to add Chapter 14 (commencing with Section 92950) to Part 57 of Division 9 of, Title 3 of, the Education Code, relating to public records.

[Approved by Governor September 6, 2011. Filed with
Secretary of State September 6, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

SB 8, Yee. Public records: auxiliary organizations and UC campus foundations.

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.

Existing law establishes the segments of the public postsecondary education system in the state, including the University of California administered by the Regents of the University of California, the California State University administered by the Trustees of the California State University, and the California Community Colleges administered by the Board of Governors of the California Community Colleges.

This bill would require records maintained by an auxiliary organization of the governing board of a community college district, the Board of Governors of the California Community Colleges, and California State University, as defined, or a University of California (UC) campus foundation, as defined, to be available to the public to inspect or copy at all times during the office hours of the organization or foundation, as specified. The bill would require an auxiliary organization and a UC campus foundation to follow specified requirements when fulfilling or denying a request for a record. The bill would prohibit specified records maintained by an auxiliary organization or UC campus foundation from being subject to disclosure. The bill would prohibit an auxiliary organization from disclosing trade secrets, as defined, and would require this information to be redacted from the organization's records before disclosure. The bill would provide specified judicial relief to persons seeking disclosure of records from an auxiliary organization or a UC campus foundation pursuant to this bill. The bill would require a disclosure of a record, which is exempt from disclosure, by an auxiliary organization or a UC campus foundation to constitute a waiver of the exemptions provided by this bill with regard to that record, except as specified. The bill would provide that a contract entered into after the

effective date of this bill, which would prevent the disclosure of information required to be disclosed pursuant to this bill, is void and unenforceable. The bill would provide that its provisions do not apply to any records subject to a request made pursuant to the California Public Records Act.

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

SECTION 1. Article 7 (commencing with Section 72690) is added to Chapter 6 of Part 45 of Division 7 of Title 3 of the Education Code, to read:

Article 7. The Richard McKee Transparency Act of 2011

72690. The Legislature finds and declares all of the following:

(a) Access to information concerning the conduct of the people's business is a necessary and fundamental right of every person in this state.

(b) The auxiliary organizations of a governing board of a community college district and of the Board of Governors of the California Community Colleges promote and assist the colleges by engaging in activities that are essential and integral to the mission and purpose of the California Community Colleges.

(c) The auxiliary organizations of a governing board of a community college district and of the Board of Governors of the California Community Colleges are legally separate from the California Community Colleges.

(d) Access to records used, owned, or maintained by these auxiliary organizations must be balanced by the need to protect the individual privacy rights of donors and volunteers, and to protect an auxiliary organization's fiduciary interests.

72691. For purposes of this article, the following terms have the following meanings:

(a) "Auxiliary organization" means those entities defined in Sections 72670 and 72670.5.

(b) "Identifiable 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, but not limited to, 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.

72692. (a) Records maintained by an auxiliary organization shall be available to the public to inspect or copy at all times during the office hours of the auxiliary organization, except as hereafter provided. The records subject to inspection or copying by the public pursuant to this section shall include any identifiable writing containing information relating to the conduct of the auxiliary organization that is prepared, owned, used, or retained by an auxiliary organization. Any reasonably segregable portion

of a record shall be promptly available for inspection and copying after redacting those portions exempt from disclosure by law.

(b) Upon a request for a copy of a record that reasonably describes an identifiable record, an auxiliary organization shall make the record promptly available within a reasonable time to any person upon payment of fees covering only the direct cost of duplication, except with respect to records maintained by an auxiliary organization exempt from disclosure by law. Nothing in this article shall be construed to permit an auxiliary organization to delay or obstruct the inspection or copying of public records.

(c) If a member of the public requests to inspect a public record or obtain a copy of a record held by an auxiliary organization, the organization shall assist the person to make a focused and effective request that reasonably describes an identifiable record or records.

72693. (a) Upon a written request for a copy or inspection of records, an auxiliary organization shall determine, within 10 calendar days from the receipt of the request, whether the request, in whole or in part, seeks copies of disclosable records maintained by the auxiliary organization and shall notify the requester in writing without undue delay of the determination and the reasons therefor.

(b) (1) In unusual circumstances, the time limit prescribed in this section may be extended by a written notice by the head of the auxiliary organization, or his or her designee, to the person making the request that sets forth the reasons for the extension and the date on which a determination is expected to be sent. That notice shall not specify a date that would result in an extension of more than 14 days. When the auxiliary organization sends the determination, and if the auxiliary organization determines that the request seeks disclosable public records, the auxiliary organization shall state the estimated date and time when the records will be made available.

(2) As used in this section, “unusual circumstances” means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(A) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(B) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(C) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having a substantial subject matter interest therein.

(D) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(c) An auxiliary organization shall justify withholding a record by demonstrating that the record is exempt from disclosure by law, or that, on the facts of the particular request, the public interest served by not disclosing

the record clearly outweighs the public interest served by disclosure of the record.

(d) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing and shall set forth the names and titles or positions of each person responsible for the denial.

(e) This article shall not limit access to a public record on the basis of the purpose for which the record is being requested, if the record is otherwise subject to disclosure.

72694. (a) Unless otherwise prohibited by law, an auxiliary organization that has information that constitutes an identifiable record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that record available in an electronic format when requested by any person and, when applicable, shall comply with both of the following:

(1) An auxiliary organization shall make an electronic record available in the electronic format in which it holds the information.

(2) An auxiliary organization shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the auxiliary organization to create copies for its own use or for provision to other entities or persons. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record if either of the following applies:

(1) In order to comply with the provisions of subdivision (a), an auxiliary organization would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.

(c) If a request is for a record in a nonelectronic format, and the record is also available in an electronic format, an auxiliary organization may inform the requester that the record is available in an electronic format.

(d) Nothing in this section shall be construed to do any of the following:

(1) Require an auxiliary organization to reconstruct a record in an electronic format if the auxiliary organization no longer has the record available in an electronic format.

(2) Permit an auxiliary organization to make a record available only in an electronic format.

(3) Require an auxiliary organization to release an electronic record in the electronic form in which it is held by the auxiliary organization if its release would jeopardize or compromise the security or integrity of the original record, or of any proprietary software with which it is maintained.

(4) Permit public access to records held by an auxiliary organization to which access is otherwise restricted by law.

72695. Nothing in this article shall require an auxiliary organization to disclose information that is exempt from disclosure pursuant to the exemptions set forth under Sections 6254 to 6255, inclusive, of the Government Code.

72696. (a) Notwithstanding any other law, the following records maintained by an auxiliary organization shall not be subject to disclosure:

(1) Information that would disclose the identity of a donor, prospective donor, or volunteer.

(2) Personal financial information, estate planning information, and gift planning information of a donor, prospective donor, or volunteer.

(3) Personal information related to a donor's private trusts or a donor's private annuities administered by an auxiliary organization.

(4) Information related to fundraising plans, fundraising research, and solicitation strategies to the extent that these activities are not already protected under Section 99040, Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code, Section 1060 of the Evidence Code, or subdivision (k) of Section 6254 of the Government Code.

(5) The identity of students and alumni to the extent that this information is already protected under state and federal statutes applicable to the California Community Colleges. This paragraph shall not apply to a part-time or full-time employee of the auxiliary organization, or to a student who participates in a legislative body of a student body organization that operates on a campus of a California Community College.

(b) Subdivision (a) shall not be construed to exempt from disclosure records that contain information regarding any of the following:

(1) The amount and date of a donation.

(2) Any donor-designated use or purpose of a donation.

(3) Any other donor-imposed restrictions on the use of a donation.

(4) (A) The identity of a donor who, in any fiscal year, makes a gift or gifts, in a quid pro quo arrangement, where either the value of the benefit received is in excess of two thousand five hundred dollars (\$2,500) or the benefit would be impermissible under state or federal law. In these circumstances, records pertaining to the gift or gifts maintained by an auxiliary organization that would otherwise be exempt from disclosure under subdivision (a) shall be disclosed.

(B) Annually, on January 1, the monetary threshold set forth in subparagraph (A) shall be adjusted upward or downward to reflect the percentage change in the Consumer Price Index, as calculated by the United States Bureau of Labor Statistics, rounded off to the nearest one thousand dollars (\$1,000).

(5) Self-dealing transactions, including, but not limited to, loans of money or property, or material financial interests of or between auxiliary officers or directors and an auxiliary organization, as set forth in Sections 5233 and 5236 of the Corporations Code. In these circumstances, records pertaining to the self-dealing transactions maintained by an auxiliary organization that would otherwise be exempt from disclosure under subdivision (a) shall be disclosed.

(6) Any instance in which a volunteer or donor of a gift is awarded, within five years of the date of the service or gift, a contract from the university or auxiliary organization that was not subject to competitive bidding. In these circumstances, records pertaining to the service or gift maintained by an auxiliary organization that would otherwise be exempt from disclosure under paragraph (1) of subdivision (a) shall be disclosed.

72696.5. (a) Notwithstanding any provision of law, trade secrets, as defined in Section 3426.1 of the Civil Code, shall not be subject to disclosure. This information shall be redacted from auxiliary organization records before disclosure.

(b) For purposes of this section, “trade secrets” means information, including a formula, pattern, compilation, program, device, method, technique, or process, that does both of the following:

(1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use.

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

72697. Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any record or class of records maintained by an auxiliary organization under this article. The times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time.

72698. (a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain records maintained by an auxiliary organization are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the record or show cause why he or she should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties, and any oral argument and additional evidence as the court may allow.

(b) If the court finds that an auxiliary organization official’s decision to refuse disclosure is not justified under this article, he or she shall order the official to make the record public. If the judge determines that the official was justified in refusing to make the record public, he or she shall return the item to the official without disclosing its content with an order supporting the decision refusing disclosure.

(c) An order of the court, either directing disclosure by an auxiliary organization or supporting the decision of the auxiliary organization official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of any order pursuant

to this section, a party shall, in order to obtain review of the order, file a petition within 20 days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney's fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and reasonable attorney's fees shall be paid by the auxiliary organization of which the official is a member or employee and shall not become a personal liability of the auxiliary organization official. If the court finds that the plaintiff's case is clearly frivolous, the court shall award court costs and reasonable attorney's fees to the auxiliary organization.

72699. (a) Notwithstanding any other provision of law, and except as provided for in subdivision (c), whenever an auxiliary organization discloses a record it maintains that is otherwise exempt from this article, this disclosure shall constitute a waiver of the exemptions specified in this article.

(b) For purposes of this section, "auxiliary organization" includes a member, agent, volunteer, or officer of the auxiliary organization acting within the scope of his or her affiliation with the auxiliary.

(c) Subdivision (a) shall not apply to the following disclosures:

(1) Disclosures made to a donor or prospective donor with regard to that donor's donation or prospective donation to an auxiliary organization.

(2) Disclosures made to a volunteer or prospective volunteer with respect to that volunteer's services being provided to the auxiliary organization.

(3) Disclosures made through other legal proceedings or as otherwise required by law.

(4) Disclosures within the scope of a disclosure required by law that limits disclosure of specified writings to certain purposes.

(5) Disclosures described in subdivision (a) of Section 72696 to an auditor conducting an audit.

(6) Disclosures described in subdivision (a) of Section 72696 to a bank or similar financial institution in the course of ordinary financial transactions, or in response to a request from the bank or other financial institution relating to the ordinary delivery of financial services.

72700. Any provision in a contract entered into after the effective date of this article between an auxiliary organization and another party that would prevent the disclosure of information required to be disclosed pursuant to this article is void and unenforceable, and such a provision shall not justify a failure to comply with the requirements of this article.

72701. This article shall not apply to any records subject to a request made pursuant to the California Public Records Act, as set forth in Chapter

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

SEC. 2. Article 1.5 (commencing with Section 89913) is added to Chapter 7 of Part 55 of Division 8 of Title 3 of the Education Code, to read:

Article 1.5. The Richard McKee Transparency Act of 2011

89913. The Legislature finds and declares all of the following:

(a) Access to information concerning the conduct of the people's business is a necessary and fundamental right of every person in this state.

(b) California State University auxiliary organizations promote and assist the Trustees of the California State University by engaging in activities that are essential and integral to the mission and purpose of the California State University.

(c) California State University auxiliary organizations are independently governed corporations that are legally separate from the California State University.

(d) Access to records used, owned, or maintained by auxiliary organizations must be balanced by the need to protect the individual privacy rights of donors and volunteers, and to protect an auxiliary organization's fiduciary interests.

89913.5. For purposes of this article, the following terms have the following meanings:

(a) "Auxiliary organization" means those entities defined in Section 89901.

(b) "Identifiable 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, but not limited to, 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.

89914. (a) Records maintained by an auxiliary organization shall be available to the public to inspect or copy at all times during the office hours of the auxiliary organization, except as hereafter provided. The records subject to inspection or copying by the public pursuant to this section shall include any identifiable writing containing information relating to the conduct of the auxiliary organization that is prepared, owned, used, or retained by an auxiliary organization. Any reasonably segregable portion of a record shall be promptly available for inspection and copying after redacting those portions exempt from disclosure by law.

(b) Upon a request for a copy of a record that reasonably describes an identifiable record, an auxiliary organization shall make the record promptly available within a reasonable time to any person upon payment of fees covering only the direct cost of duplication, except with respect to records maintained by an auxiliary organization exempt from disclosure by law.

Nothing in this article shall be construed to permit an auxiliary organization to delay or obstruct the inspection or copying of public records.

(c) If a member of the public requests to inspect a public record or obtain a copy of a record held by an auxiliary organization, the organization shall assist the person to make a focused and effective request that reasonably describes an identifiable record or records.

89914.5. (a) Upon a written request for a copy or inspection of records, an auxiliary organization shall determine, within 10 calendar days from the receipt of the request, whether the request, in whole or in part, seeks copies of disclosable records maintained by the auxiliary organization and shall notify the requester in writing without undue delay of the determination and the reasons therefor.

(b) (1) In unusual circumstances, the time limit prescribed in this section may be extended by a written notice by the head of the auxiliary organization, or his or her designee, to the person making the request that sets forth the reasons for the extension and the date on which a determination is expected to be sent. That notice shall not specify a date that would result in an extension of more than 14 days. When the auxiliary organization sends the determination, and if the auxiliary organization determines that the request seeks disclosable public records, the auxiliary organization shall state the estimated date and time when the records will be made available.

(2) As used in this section, “unusual circumstances” means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(A) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(B) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(C) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having a substantial subject matter interest therein.

(D) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(c) An auxiliary organization shall justify withholding a record by demonstrating that the record is exempt from disclosure by law, or that, on the facts of the particular request, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

(d) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing and shall set forth the names and titles or positions of each person responsible for the denial.

(e) This article shall not limit access to a public record on the basis of the purpose for which the record is being requested, if the record is otherwise subject to disclosure.

89915. (a) Unless otherwise prohibited by law, an auxiliary organization that has information that constitutes an identifiable record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that record available in an electronic format when requested by any person and, when applicable, shall comply with both of the following:

(1) An auxiliary organization shall make an electronic record available in the electronic format in which it holds the information.

(2) An auxiliary organization shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the auxiliary organization to create copies for its own use or for provision to other entities or persons. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record if either of the following applies:

(1) In order to comply with the provisions of subdivision (a), an auxiliary organization would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.

(c) If a request is for a record in a nonelectronic format, and the record is also available in an electronic format, an auxiliary organization may inform the requester that the record is available in an electronic format.

(d) Nothing in this section shall be construed to do any of the following:

(1) Require an auxiliary organization to reconstruct a record in an electronic format if the auxiliary organization no longer has the record available in an electronic format.

(2) Permit an auxiliary organization to make a record available only in an electronic format.

(3) Require an auxiliary organization to release an electronic record in the electronic form in which it is held by the auxiliary organization if its release would jeopardize or compromise the security or integrity of the original record, or of any proprietary software with which it is maintained.

(4) Permit public access to records held by an auxiliary organization to which access is otherwise restricted by law.

89915.5. Nothing in this article shall require an auxiliary organization to disclose information that is exempt from disclosure pursuant to the exemptions set forth under Sections 6254 to 6255, inclusive, of the Government Code.

89916. (a) Notwithstanding any other law, the following records maintained by an auxiliary organization shall not be subject to disclosure:

(1) Information that would disclose the identity of a donor, prospective donor, or volunteer.

(2) Personal financial information, estate planning information, and gift planning information of a donor, prospective donor, or volunteer.

(3) Personal information related to a donor's private trusts or a donor's private annuities administered by an auxiliary organization.

(4) Information related to fundraising plans, fundraising research, and solicitation strategies to the extent that these activities are not already protected under Section 99040, Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code, Section 1060 of the Evidence Code, or subdivision (k) of Section 6254 of the Government Code.

(5) The identity of students and alumni to the extent that this information is already protected under state and federal statutes applicable to the California State University. This paragraph shall not apply to a part-time or full-time employee of the auxiliary organization, or to a student who participates in a legislative body of a student body organization as defined in Section 89305.1.

(b) Subdivision (a) shall not be construed to exempt from disclosure records that contain information regarding any of the following:

(1) The amount and date of a donation.

(2) Any donor-designated use or purpose of a donation.

(3) Any other donor-imposed restrictions on the use of a donation.

(4) (A) The identity of a donor who, in any fiscal year, makes a gift or gifts, in a quid pro quo arrangement, where either the value of the benefit received is in excess of two thousand five hundred dollars (\$2,500) or the benefit would be impermissible under state or federal law. In these circumstances, records pertaining to the gift or gifts maintained by an auxiliary organization that would otherwise be exempt from disclosure under subdivision (a) shall be disclosed.

(B) Annually, on January 1, the monetary threshold set forth in subparagraph (A) shall be adjusted upward or downward to reflect the percentage change in the Consumer Price Index, as calculated by the United States Bureau of Labor Statistics, rounded off to the nearest one thousand dollars (\$1,000).

(5) Self-dealing transactions, including, but not limited to, loans of money or property, or material financial interests of or between auxiliary officers or directors and an auxiliary organization, as set forth in Sections 5233 and 5236 of the Corporations Code. In these circumstances, records pertaining to the self-dealing transactions maintained by an auxiliary organization that would otherwise be exempt from disclosure under subdivision (a) shall be disclosed.

(6) Any instance in which a volunteer or donor of a gift is awarded, within five years of the date of the service or gift, a contract from the university or auxiliary organization that was not subject to competitive bidding. In these circumstances, records pertaining to the service or gift maintained by an auxiliary organization that would otherwise be exempt from disclosure under paragraph (1) of subdivision (a) shall be disclosed.

89916.5. (a) Notwithstanding any provision of law, trade secrets, as defined in Section 3426.1 of the Civil Code, shall not be subject to disclosure. This information shall be redacted from auxiliary organization records before disclosure.

(b) For purposes of this section, “trade secrets” means information, including a formula, pattern, compilation, program, device, method, technique, or process, that does both of the following:

(1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use.

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

89917. Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any record or class of records maintained by an auxiliary organization under this article. The times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time.

89917.5. (a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain records maintained by an auxiliary organization are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the record or show cause why he or she should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties, and any oral argument and additional evidence as the court may allow.

(b) If the court finds that an auxiliary organization official’s decision to refuse disclosure is not justified under this article, he or she shall order the official to make the record public. If the judge determines that the official was justified in refusing to make the record public, he or she shall return the item to the official without disclosing its content with an order supporting the decision refusing disclosure.

(c) An order of the court, either directing disclosure by an auxiliary organization or supporting the decision of the auxiliary organization official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of any order pursuant to this section, a party shall, in order to obtain review of the order, file a petition within 20 days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the

petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney's fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and reasonable attorney's fees shall be paid by the auxiliary organization of which the official is a member or employee and shall not become a personal liability of the auxiliary organization official. If the court finds that the plaintiff's case is clearly frivolous, the court shall award court costs and reasonable attorney's fees to the auxiliary organization.

89918. (a) Notwithstanding any other provision of law, and except as provided for in subdivision (c), whenever an auxiliary organization discloses a record it maintains that is otherwise exempt from this article, this disclosure shall constitute a waiver of the exemptions specified in this article.

(b) For purposes of this section, "auxiliary organization" includes a member, agent, volunteer, or officer of the auxiliary organization acting within the scope of his or her affiliation with the auxiliary.

(c) Subdivision (a) shall not apply to the following disclosures:

(1) Disclosures made to a donor or prospective donor with regard to that donor's donation or prospective donation to an auxiliary organization.

(2) Disclosures made to a volunteer or prospective volunteer with respect to that volunteer's services being provided to the auxiliary organization.

(3) Disclosures made through other legal proceedings or as otherwise required by law.

(4) Disclosures within the scope of a disclosure required by law that limits disclosure of specified writings to certain purposes.

(5) Disclosures described in subdivision (a) of Section 89916 to an auditor conducting an audit.

(6) Disclosures described in subdivision (a) of Section 89916 to a bank or similar financial institution in the course of ordinary financial transactions, or in response to a request from the bank or other financial institution relating to the ordinary delivery of financial services.

89918.5. Any provision in a contract entered into after the effective date of this article between an auxiliary organization and another party that would prevent the disclosure of information required to be disclosed pursuant to this article is void and unenforceable, and such a provision shall not justify a failure to comply with the requirements of this article.

89919. This article shall not apply to any records subject to a request made pursuant to the California Public Records Act, as set forth in Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

SEC. 3. Chapter 14 (commencing with Section 92950) is added to Part 57 of Division 9 of Title 3 of the Education Code, to read:

CHAPTER 14. THE RICHARD MCKEE TRANSPARENCY ACT OF 2011

92950. The Legislature finds and declares all of the following:

(a) Mindful of the right of individuals to privacy, access to information concerning the conduct of the people's business is a necessary and fundamental right of every person in this state.

(b) University of California campus foundations are independently governed charitable nonprofit corporations that are legally separate from the University of California (UC), but provide important support to the individual campuses of the UC and the UC system as a whole.

(c) The release of information maintained by University of California campus foundations to the public must be balanced by the need to protect the individual privacy rights of donors and volunteers and to protect the fiduciary interests of these organizations.

92951. As used in this chapter, the following terms have the following meanings:

(a) "UC campus foundation" means the following corporations organized under the laws of the State of California: University of California, Berkeley Foundation, UC Davis Foundation, the University of California, Irvine Foundation, the UCLA Foundation, University of California, Merced Foundation, UC Riverside Foundation, U.C. San Diego Foundation, University of California, San Francisco Foundation, UC Santa Barbara Foundation, U.C. Santa Cruz Foundation, and any other foundation authorized by the Regents of the University of California.

(b) "Identifiable 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, but not limited to, 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.

92952. (a) Records maintained by a UC campus foundation shall be available to the public to inspect or copy at all times during the office hours of the foundation, except as hereafter provided. The records subject to inspection or copying by the public pursuant to this section shall include any identifiable writing containing information relating to the conduct of the UC campus foundation that is prepared, owned, used, or retained by a UC campus foundation. Any reasonably segregable portion of a record shall be promptly available for inspection and copying after redacting those portions exempt from disclosure by law.

(b) Upon a request for a copy of a record that reasonably describes an identifiable record, a UC campus foundation shall make the record available within a reasonable time to any person upon payment of fees covering only the direct cost of duplication, except with respect to records maintained by a UC campus foundation exempt from disclosure by law. Nothing in this chapter shall be construed to permit a UC campus foundation to delay or obstruct the inspection or copying of public records.

(c) If a member of the public requests to inspect a public record or obtain a copy of a record held by a UC campus foundation, the UC campus foundation shall assist the person to make a focused and effective request that reasonably describes an identifiable record or records.

92953. (a) Upon a written request for a copy or inspection of records, a UC campus foundation shall determine, within 10 calendar days from the receipt of such request, whether the request, in whole or in part, seeks copies of disclosable records maintained by the UC campus foundation and shall notify the requester in writing without undue delay of the determination and the reasons therefor.

(b) (1) In unusual circumstances, the time limit prescribed in this section may be extended by a written notice by the head of the UC campus foundation, or his or her designee, to the person making the request that sets forth the reasons for the extension and the date on which a determination is expected to be sent. That notice shall not specify a date that would result in an extension of more than 14 days. When the UC campus foundation sends the determination, and if the UC campus foundation determines that the request seeks disclosable public records, the UC campus foundation shall state the estimated date and time when the records will be made available.

(2) As used in this section, “unusual circumstances” means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(A) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(B) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(C) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having a substantial subject matter interest therein.

(D) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(c) A UC campus foundation shall justify withholding disclosure of a record by demonstrating that the record is exempt from disclosure by law, or that, on the facts of the particular request, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.

(d) A response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing and shall not set forth the names and titles or positions of each person responsible for the denial.

(e) This chapter shall not limit access to a public record on the basis of the purpose for which the record is being requested, if the record is otherwise subject to disclosure.

92954. (a) Unless otherwise prohibited by law, a UC campus foundation that has information that constitutes an identifiable record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that record available in an electronic format when requested by any person and, when applicable, shall comply with both of the following:

(1) A UC campus foundation shall make the electronic record available in the electronic format in which it holds the information.

(2) A UC campus foundation shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the UC campus foundation to create copies for its own use or for provision to other entities or persons. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record if either of the following applies:

(1) In order to comply with the provisions of subdivision (a), a UC campus foundation would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.

(c) If a request is for a record in a nonelectronic format, and the record is also available in an electronic format, a UC campus foundation may inform the requester that the record is available in an electronic format.

(d) Nothing in this section shall be construed to do any of the following:

(1) Require a UC campus foundation to reconstruct a record in an electronic format if the UC campus foundation no longer has the record available in an electronic format.

(2) Permit a UC campus foundation to make a record available only in an electronic format.

(3) Require a UC campus foundation to release an electronic record in the electronic form in which it is held by the UC campus foundation if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software with which it is maintained.

(4) Permit public access to records held by any UC campus foundation to which access is otherwise restricted by law.

92955. Nothing in this chapter shall require a UC campus foundation to disclose information that is exempt from disclosure pursuant to the specific exemptions set forth under Sections 6254 to 6255, inclusive, of the Government Code.

92956. (a) Notwithstanding any other law, the following records maintained by a UC campus foundation shall not be subject to disclosure:

(1) Information that would disclose the identity of a donor, prospective donor, or volunteer.

(2) Personal financial information, estate planning information, and gift planning information of a donor, prospective donor, or volunteer.

(3) Personal information related to any of a donor's private trusts or a donor's private annuities administered by a UC campus foundation.

(4) Information related to fundraising plans, fundraising research, and solicitation strategies to the extent that these activities are not already protected under Section 99040, Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code, Section 1060 of the Evidence Code, or subdivision (k) of Section 6254 of the Government Code.

(5) The identity of students and alumni to the extent that this information is already protected under state and federal statutes applicable to the University of California. This paragraph shall not apply to a part-time or full-time employee of the UC campus foundation, or to a student who participates in a legislative body of a student body organization on a University of California campus.

(b) Subdivision (a) shall not be construed to exempt from disclosure records that contain information regarding any of the following:

(1) The amount and date of a donation.

(2) Any donor-designated use or purpose of a donation.

(3) Any other donor-imposed restrictions on the use of a donation.

(4) (A) The identity of a donor who, in any fiscal year, makes a gift or gifts, in a quid pro quo arrangement, where either the value of the benefit received is in excess of two thousand five hundred dollars (\$2,500) or the benefit would be impermissible under state or federal law. In these circumstances, records pertaining to the gift or gifts maintained by a UC campus foundation that would otherwise be exempt from disclosure under subdivision (a) shall be disclosed.

(B) Annually, on January 1, the monetary threshold set forth in subparagraph (A) shall be adjusted upward or downward to reflect the percentage change in the Consumer Price Index, as calculated by the United States Bureau of Labor Statistics, rounded off to the nearest one thousand dollars (\$1,000).

(5) Self-dealing transactions, including, but not limited to, loans of money or property, or material financial interests of or between foundation officers or directors and a UC campus foundation, as set forth in Sections 5233 and 5236 of the Corporations Code. In these circumstances, records pertaining to the self-dealing transactions maintained by a UC campus foundation that would otherwise be exempt from disclosure under subdivision (a) shall be disclosed.

(6) Any instance in which a volunteer or donor of a gift is awarded, within five years of the date of the service or gift, a contract from the university or UC campus foundation that was not subject to competitive bidding. In these circumstances, records pertaining to the service or gift maintained by the UC campus foundation that would otherwise be exempt from disclosure under paragraph (1) of subdivision (a) shall be disclosed.

92957. Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any record or class of records maintained by a UC campus foundation under this chapter. The

times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time.

92958. (a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain records maintained by a UC campus foundation are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the record or show cause why he or she should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties, and any oral argument and additional evidence as the court may allow.

(b) If the court finds that a UC campus foundation official's decision to refuse disclosure is not justified under this chapter, he or she shall order the official to make the record public. If the judge determines that the official was justified in refusing to make the record public, he or she shall return the item to the official without disclosing its content with an order supporting the decision refusing disclosure.

(c) An order of the court, either directing disclosure by a UC campus foundation official or supporting the decision of the UC campus foundation official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of any order pursuant to this section, a party shall, in order to obtain review of the order, file a petition within 20 days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney's fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and reasonable attorney's fees shall be paid by the UC campus foundation of which the official is a member or employee and shall not become a personal liability of the UC campus foundation official. If the court finds that the plaintiff's case is clearly frivolous, the court shall award court costs and reasonable attorney's fees to the UC campus foundation.

92959. (a) Notwithstanding any other provisions of law, and except as provided for in subdivision (c), whenever a UC campus foundation discloses a record it maintains that is otherwise exempt from this chapter, this disclosure shall constitute a waiver of the exemptions specified in this chapter with regard to that record.

(b) For purposes of this section, “UC campus foundation” includes a member, agent, volunteer, or officer of the UC campus foundation acting within the scope of his or her affiliation with a UC campus foundation.

(c) Subdivision (a) shall not apply to the following disclosures:

(1) Disclosures made to a donor or prospective donor with regard to that donor’s donation or prospective donation to a UC campus foundation.

(2) Disclosures made to a volunteer or prospective volunteer with respect to that volunteer’s services being provided to a UC campus foundation.

(3) Disclosures made through other legal proceedings or as otherwise required by law.

(4) Disclosures within the scope of a disclosure required by law that limits disclosure of specified writings to certain purposes.

(5) Disclosures described in subdivision (a) of Section 92956 to an auditor conducting an audit.

(6) Disclosures described in subdivision (a) of Section 92956 to a bank or similar financial institution in the course of ordinary financial transactions, or in response to a request from the bank or other financial institution relating to the ordinary delivery of financial services.

92960. Any provision in a contract entered into after the effective date of this chapter between a UC campus foundation and another party that would prevent the disclosure of information required to be disclosed pursuant to this chapter is void and unenforceable, and such a provision shall not justify a failure to comply with the requirements of this chapter.

92961. This chapter shall not apply to records subject to any request made pursuant to the California Public Records Act, as set forth in Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.