Hearing Date: March 27, 2002
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ITEM 2

TEST CLAIM
FINAL STAFF ANALYSIS

Education Code Section 76300;
Statutes 1984xx, Chapter 1; Statutes 1984, Chapters 274 and 1401;
Statutes 1985, Chapters 920 and 1454; Statutes 1986, Chapters 46 and 394;
Statutes 1987, Chapter 1118; Statutes 1989, Chapter 136; Statutes 1991, Chapter 114; Statutes 1992, Chapter 703; Statutes 1993, Chapters 8, 66, 67, and 1124;
Statutes 1994, Chapters 153 and 422; Statutes 1995, Chapter 308;
Statutes 1996, Chapter 63; and Statutes 1999, Chapter 72;
California Code of Regulations, Title 5, Sections 58500 – 58508

Enrollment Fee Collection

Los Rios Community College District, Claimant

and

Education Code Section 76300
Statutes 1984xx, Chapter 1; Statutes 1984, Chapters 274 and 1401;
Statutes 1985, Chapters 920 and 1454; Statutes 1986, Chapters 46 and 394;
Statutes 1987, Chapter 1118; Statutes 1989, Chapter 136;
Statutes 1993, Chapters 8, 66, 67, and 1124; Statutes 1994, Chapters 153 and 422; Statutes 1995, Chapter 308; Statutes 1996, Chapter 63; and Statutes 1999, Chapter 72;
California Code of Regulations, Title 5, Sections 58600, 58601, 58610 – 58613, 58620, 58630; Board of Governors Fee Waiver Program Manual for 2000/2001

Enrollment Fee Waivers

Glendale Community College District, Claimant

Table of Contents

Exhibit C

Exhibit D

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California Code of Regulations, Title 5, Sections 58600, 58601, 58610 – 58613, 58620, 58630
Board of Governors Fee Waiver Program Manual for 2000/2001

Enrollment Fee Waivers

EXECUTIVE SUMMARY

Background

Claimant Los Rios Community College District (LRCCD), submitted the *Enrollment Fee Collection* test claim (99-TC-13) in June 2000 alleging a reimbursable state mandate for community college districts by requiring specific new activities and costs related to collecting enrollment fees. Claimant Glendale Community College District (GCCD) submitted the *Enrollment Fee Waivers* (00-TC-15) test claim in May 2001 alleging a reimbursable state mandate for community college districts by requiring specific new activities and costs related to granting fee waivers, Board of Governor's Grants (BOG grants) and financial assistance to students. In August 2002, the *Enrollment Fee Collection* (99-TC-13) and *Enrollment Fee Waiver* (00-TC-15) test claims were consolidated.

In its most recent comments on the draft staff analysis, DOF concurs that calculating and collecting the student enrollment fee for each student who is not exempt from the fee is a state-mandated activity within the scope of the test claim. DOF also concurs that two activities are not

reimbursable state-mandated activities: (1) determining the number of credit courses for each student subject to the enrollment fees, and (2) preparing and submitting reports regarding enrollment fees collected. DOF does not agree with the draft analysis finding of state-reimbursable mandated costs for the rest of the activities discussed in the analysis.

In its comments on the *Enrollment Fee Collection* (99-TC-13), the Community Colleges Chancellor's Office (CCC) concludes that the test claim statute was "clearly a higher level of service for community colleges." The CCC provides a bill analysis from the Legislative Analyst quoting its conclusion that the two percent revenue credit is an insufficient reimbursement for the locally mandated fee-collection program. The CCC did not comment on the *Enrollment Fee Waivers* (00-TC-15) test claim.

Conclusion

For reasons specified in the analysis, staff concludes that the test claim legislation imposes a partial reimbursable state-mandated program on community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

- Calculating and collecting the student enrollment fee for each student enrolled except for nonresidents, and except for special part-time students cited in section 76300, subdivision (f). (Ed. Code, § 76300, subds. (a) & (b); Cal. Code Regs., tit. 5, §§ 58501, 58502 & 58503.);
- Exempting or waiving student fees in accordance with the groups listed in Education Code section 76300, subdivisions (e), (g) and (h);
- Waiving fees for students who apply for and are eligible for Board of Governor's (BOG) fee waivers (Cal.Code Regs., tit. 5, §§ 58612, 58613 & 58620.);
- Reporting to the CCC the number of and amounts provided for BOG fee waivers. (Cal. Code Regs., tit. 5, § 58611.);
- (1) Documenting public benefits for recipients of Temporary Assistance to Needy Families, Supplemental Security Income/State Supplementary program (SSI/SSP), and General Assistance, or (2) Documenting those eligible for BOG fee waivers under income standards; and (3) for new directors/managers/ coordinators/officers in charge of day-to-day operations of the financial aid office, attending training offered by the Chancellor's Office within the first year of their appointment. (Cal. Community Colleges Chancellor's Office, Board of Governors Fee Waiver Program and Special Programs, 2000-2001 Program Manual, effective July 1, 2000 – June 30, 2001, Sections 4.2.2, 4.3.4 & 11.3);
- Adopting procedures that will document all financial assistance provided on behalf of students pursuant to chapter 9 of title 5 of the California Code of Regulations; and including in the procedures the rules for retention of support documentation which will enable an independent determination regarding accuracy of the district's certification of need for financial assistance. (Cal. Code Regs., tit. 5, § 58630, subd. (b).)

Staff also finds that all other test claim statutes, regulations, and executive orders (including the remainder of the BOG Fee Waiver Program Manual) not cited above do not impose reimbursable state-mandated activities within the meaning of article XIII B, section 6.

Recommendation

Staff recommends that the Commission adopt the staff analysis and approve the test claim for the activities listed above.

Should the Commission adopt staff's recommendation to approve this test claim, any offsets[1] would be identified as such in the parameters and guidelines.

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[1] California Code of Regulations, title 2, section 1183.1, subdivision (a), paragraphs (8) and (9).

STAFF ANALYSIS

Claimants

Los Rios Community College District (99-TC-13)
Glendale Community College District (00-TC-15)

Chronology

6/22/00	Claimant LRCCD files *Enrollment Fee Collection* test claim (99-TC-13) with the Commission
8/2/00	DOF files request for extension to submit comments (99-TC-13)
8/4/00	The CCC files comments on the test claim with the Commission (99-TC-13)
9/1/00	DOF files request for extension to submit comments (99-TC-13)
10/13/00	DOF files comments on the test claim with the Commission (99-TC-13)
11/9/00	Claimant LRCCD files response to DOF and CCC comments (99-TC-13).
6/4/01	Claimant GCCD files *Enrollment Fee Waivers* test claim (00-TC-15) with the Commission
7/6/01	DOF requests an extension of time to file comments (00-TC-15)
8/8/01	DOF requests an extension of time to file comments (00-TC-15)
9/25/01	DOF files comments on the test claim (00-TC-15) with the Commission
11/12/01	Claimant GCCD files response to DOF comments (00-TC-15)
7/5/02	Commission issues draft staff analysis for *Enrollment Fee Collection* (99-TC-13)
7/9/02	LRCCD claimant's representative faxes a statement that claimant will not respond to the draft staff analysis (99-TC-13)
7/24/02	DOF requests extension of time to submit comments on the draft staff analysis (99-TC-13)
7/25/02	Commission approves DOF's extension to comment on the draft staff analysis (99-TC-13)
8/30/02	DOF submits comments on the draft staff analysis for *Enrollment Fee Collection* (99-TC-13)
8/30/02	Commission issues notice of consolidation of test claims *Enrollment Fee Collection* (99-TC-13) and *Enrollment Fee Waivers* (00-TC-15)
1/8/03	Commission issues new draft staff analysis for *Enrollment Fee Collection* (99-TC-13) and *Enrollment Fee Waivers* (00-TC-15)
1/17/03	Claimant submits comments on the draft staff analysis for *Enrollment Fee Collection* (99-TC-13) and *Enrollment Fee Waivers* (00-TC-15)
1/29/03	DOF requests extension of time to submit comments on the draft staff analysis
1/31/03	Commission approves time extension for DOF to submit comments on the draft staff analysis

2/25/03 DOF submits comments on the draft staff analysis for *Enrollment Fee Collection* (99-TC-13) and *Enrollment Fee Waivers* (00-TC-15)

3/14/03 Commission issues final staff analysis for *Enrollment Fee Collection* (99-TC-13) and *Enrollment Fee Waivers* (00-TC-15)

Background

There are currently 72 community college districts governing 108 community colleges in California, serving over 2.9 million students.[2]

Claimant Los Rios Community College District (LRCCD) filed the *Enrollment Fee Collection* test claim (99-TC-13) on June 22, 2000. Originally enacted in 1984 and amended throughout the 1980s and 1990s, the original test claim legislation and regulations[3] authorize and require community colleges to implement enrollment fees and adopt regulations for their collection. Although the amount of the enrollment fee has been amended various times, the two percent of the fee retained by the community colleges[4] has remained constant.

Claimant Glendale Community College District (GCCD) filed the *Enrollment Fee Waivers* (00-TC-15) test claim in May 2001 in which claimant pled fee-waiver statutes and regulations[5] that specify the groups of students for which fees are waived or exempted, and for whom Board of Governors Grants (BOG grants) are available. A BOG grant is an instrument used by a community college district to process financial assistance to a low-income student.[6] In 1993, the Legislature altered the BOG grant program, changing it from a fee-offset grant program to a fee-waiver program[7] (hereafter called BOG fee waivers). The regulations governing the program were left intact, and are part of this test claim.[8] Unless indicated otherwise, any reference to a BOG grant in this analysis should be understood to apply to a BOG fee waiver.

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[2] California Community College Chancellor's Office website <http://www.cccco.edu> [as of Jan. 7, 2003].

[3] Education Code section 76300. Statutes 1984xx, chapter 1; Statutes 1984, chapters 274 and 1401; Statutes 1985, chapters 920 and 1454; Statutes 1986, chapters 46 and 394; Statutes 1987, chapter 1118; Statutes 1989, chapter 136; Statutes 1991, chapter 114; Statutes 1992, chapter 703; Statutes 1993, chapters 8, 66, 67, and 1124; Statutes 1994, chapters 153 and 422; Statutes 1995, chapter 308; Statutes 1996, chapter 63; and Statutes 1999, chapter 72. California Code of Regulations, title 5, sections 58500 – 58508.

[4] Education Code Section 76300, subdivision (c). This is called a "revenue credit" by the Community College Chancellor's Office.

[5] Education Code section 76300; California Code of Regulations, title 5, Sections 58600, 58601, 58610 – 58613, 58620, 58630, Executive Orders of the California Community Colleges Chancellor's Office.

[6] California Code of Regulations, title 5, section 58601.

[7] Statutes 1993, chapter 1124 (Assem. Bill No. 1561).

[8] California Code of Regulations, title 5, sections 58600 to 58630.

In August 2002, the *Enrollment Fee Collection* (99-TC-13) and *Enrollment Fee Waiver* (00-TC-15) test claims were consolidated.[9]

Claimant's Contentions

Claimant contends that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514.

In the *Enrollment Fee Collection* (99-TC-13) test claim, claimant requests reimbursement for the following activities:

> (1) determining the number of credit courses for each student subject to the student enrollment fees;
>
> (2) calculating and collecting student enrollment fees for each nonexempt student enrolled, and providing a waiver of student enrollment fees for exempt students;
>
> (3) calculating, collecting, waiving or refunding student enrollment fees due to subsequent timely program changes or withdrawal from school;
>
> (4) entering the student enrollment fee collection and waiver information into the district cashier system and data processing and accounting systems;
>
> (5) processing all agency billings for students whose student enrollment fees are waived;
>
> (6) preparing and submitting reports on student enrollment fees collected and waived as required by the Board of Governors and other state agencies. Claimant states that failure to implement this mandate would reduce the total district revenue by up to ten percent pursuant to Education Code section 76300, subdivision (d).

In the *Enrollment Fee Waivers* (00-TC-15) test claim, claimant seeks reimbursement for:

> (1) determining and classifying students eligible for Board of Governors grants ("BOG grants") according to the eligibility criteria;
>
> (2) determining at the time of enrollment whether fees should be waived because the student is a recipient of benefits under the Aid to Families with Dependent Children (AFDC)[10] program or the Supplemental Security Income/State Supplementary program (SSI/SSP) or a beneficiary under a general assistance program;

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[9] California Code of Regulations, title 2, section 1183.06.

[10] On August 22, 1996, President Clinton signed into law H.R. 3734 --The Personal Responsibility and Work Opportunity Reconciliation Act of 1996. This federal legislation eliminated the AFDC program and replaced it with the Temporary Assistance for Needy Families (TANF) program. This federal welfare reform offered states flexibility to redesign their programs, and subjected states to financial penalties for failing to meet work participation and other requirements. In response, California created the California Work Opportunity and Responsibility to Kids (CalWORKs) program—(Stats. 1997, ch. 270; Assem. Bill No. 1542, Ducheny, Ashburn, Thompson, and Maddy). The AFDC and TANF programs are both referenced in the test claim legislation, and are used interchangeably in this analysis.

(3) determining at the time of enrollment whether fees should be waived for a student due to demonstration of financial need in accordance with federal methodology for determining expected family contribution of students seeking financial aid;

(4) determining at the time of enrollment whether fees should be waived for a student because he or she is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in active service to the state;

(5) entering the enrollment fee waiver information into the district cashier system and data processing and accounting systems, and processing all agency billings for students whose fees are waived;

(6) separately documenting and accounting for the funds allocated for collection of enrollment fees and financial assistance in order to enable an independent determination regarding the accuracy of the District's certification of need for financial assistance;

(7) preparing and submitting reports regarding the number and amounts of the enrollment fees waived as required by the Board of Governors and other state agencies.

Claimant contends that state funds allocated pursuant to Education Code section 76300, subdivision (i), currently calculated at .91 per credit unit waived, are not sufficient to fund the mandate.[11]

In its January 17, 2002 comments on the draft staff analysis, claimants stated general agreement with the analysis, except for the exclusion of the costs associated with collecting enrollment fees from nonresident students, which is discussed below.

Department of Finance's Contentions

DOF submitted separate comments on the *Enrollment Fee Collection* (99-TC-13) and *Enrollment Fee Waivers* (00-TC-15) test claims, and commented on the draft staff analysis on *Enrollment Fee Collection,* all of which are discussed in detail below.

In its most recent (2/25/03) comments on the draft staff analysis of *Enrollment Fee Collection* (99-TC-13) and the *Enrollment Fee Waivers* (00-TC-15) test claims, DOF concurs that calculating and collecting the student enrollment fee for each student who is not exempt from the fee is a state-mandated activity within the scope of the test claim. DOF also concurs that two activities are not state reimbursable mandated activities: (1) determining the number of credit courses for each student subject to the enrollment fees, and (2) preparing and submitting reports regarding enrollment fees collected. DOF disagrees with the remainder of the conclusions in the draft staff analysis, which is discussed in more detail below.

Community Colleges Chancellor's Office Contentions

In its comments on the *Enrollment Fee Collection* (99-TC-13), the CCC concludes that the test claim statute was "clearly a higher level of service for community colleges." The CCC provides

[11] Declaration of Carrie Bray, Director of Accounting Services, Los Rios Community College District, June 22, 2000 (exhibit A).

(1) a bill analysis from the Legislative Analyst that concludes the two percent revenue credit is an insufficient reimbursement for the locally mandated fee-collection program, and (2) a letter from its president to the author of the fee legislation (exhibit C).

The CCC stresses that although the amount of the enrollment fee has varied, the two percent revenue credit for community colleges has remained constant. Finally, the CCC states that, for fiscal year 1998-99, the claimant LRCCD collected $6.98 million in fees pursuant to Education Code section 76300, of which two percent, or $139,610 was a revenue credit. Statewide, enrollment fees totaled over $164 million, of which the two percent revenue credit totaled $3.28 million.

The CCC did not provide comments on *Enrollment Fee Waivers* (00-TC-15).

Discussion

In order for the test claim legislation to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514, the statutory language must mandate a new program or create an increased or higher level of service over the former required level of service. "Mandates" as used in article XIII B, section 6, is defined to mean "orders" or "commands."[12] The California Supreme Court has defined "program" subject to article XIII B, section 6 of the California Constitution as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.[13] To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.[14] Finally, the new program or increased level of service must impose "costs mandated by the state."[15]

This test claim presents the following issues:

- Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose a new program or higher level of service on community college districts within the meaning of article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

These issues are addressed as follows.

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[12] *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 174.

[13] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[14] *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

[15] Government Code section 17514.

Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program," which is defined as a program that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.[16] Only one of these findings is necessary to trigger article XIII B, section 6.[17]

The test claim legislation concerns collecting community college enrollment fees and determining eligibility for fee waivers and financial aid. Collecting enrollment fees and providing waivers and financial aid is a peculiarly governmental function administered by community college districts as part of their mission to provide educational services to the students. Moreover, the test claim legislation imposes unique fee collection, fee waiver, refund eligibility determination, reporting and accounting requirements on community college districts that do not apply generally to all residents or entities in the state. Therefore, staff finds that community college enrollment fees, fee waivers, and BOG grants constitute a "program" within the meaning of article XIII B, section 6 of the California Constitution.

Issue 2: Does the test claim legislation impose a new program or higher level of service on community college districts within the meaning of article XIII B, section 6 of the California Constitution?

Article XIII B, section 6 of the California Constitution states, "whenever the Legislature or any state agency *mandates* a new program or higher level of service on any local government, the state shall provide a subvention of funds." (Emphasis added.) This provision was specifically intended to prevent the state from forcing programs on local government that require them to spend their tax revenues.[18] To implement article XIII B, section 6, the Legislature enacted Government Code section 17500 et seq. Government Code section 17514 defines "costs mandated by the state" as "any increased costs which a local agency or school district is *required* to incur . . . as a result of any statute. . . .which *mandates* a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution." (Emphasis added.) "Mandates" as used in article XIII B, section 6 has been defined to mean "orders" or "commands."[19] If the test claim legislation does not mandate the school district to perform a task, then compliance is within the discretion of the school district and a state-mandated program does not exist. The state has no duty under article XIII B, section 6 to reimburse the school district for costs of programs or services incurred as a result of the exercise of local discretion or choice.[20]

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[16] *County of Los Angeles, supra,* 43 Cal.3d 46, 56.

[17] *Carmel Valley Fire Protection Dist.,* (1987), 190 Cal.App.3d 521, 537.

[18] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Los Angeles, supra,* 43 Cal.3d 46, 56; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-1284.

[19] *Long Beach Unified School District, supra,* 225 Cal.App.3d 155, 174.

[20] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783.

To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.[21]

Collection of enrollment fees: Education Code section 76300 governs collection of enrollment fees as follows:[22]

- Subdivision (a) requires the governing board of each community college district to charge each student a fee.
- Subdivision (b) sets the fee at $12 per unit per semester for 1998-99, and $11 per unit per semester effective fall 1999-2000,[23] and requires the chancellor to proportionally adjust the fee for term lengths based on a quarter system.
- Subdivision (c) requires the chancellor, for computing apportionments to districts, to subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging the fee.
- Subdivision (d) requires the chancellor to reduce apportionments by up to 10 percent to any district that does not collect the fee.
- Subdivision (f) authorizes the governing board of a community college district to exempt special part-time students admitted pursuant to section 76001 from the enrollment fee.

Under preexisting law, community colleges were authorized but not required to impose various student fees for the following: physical education courses using nondistrict facilities,[24] health services,[25] parking services,[26] transportation services,[27] program changes,[28] and late applications.[29]

As stated above, subdivision (f) authorizes but does not require the governing board of a community college district to exempt special part-time students admitted pursuant to Education Code section 76001 from the enrollment fee. This refers to students who attend a community college while in high school. Staff finds that admitting these students and exempting their fees

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[21] *Lucia Mar Unified School Dist. v. Honig, supra,* 44 Cal.3d 830, 835.

[22] Waivers and exemptions pursuant to subdivisions (e), (g) and (h) will be discussed below.

[23] Statutes 1999, chapter 72 lowered the school year 1999-2000 fees from $12 to $11. Because chapter 72 became effective July 6, 1999 to be applied in fall 1999, it does not affect claimant's reimbursement period.

[24] Former Education Code section 72245 (exhibit D) and current Education Code section 76395.

[25] Former Education Code section 72246 (exhibit D) and current Education Code section 76355.

[26] Former Education Code section 72247 (exhibit D) and current Education Code section 76360.

[27] Former Education Code section 72248 (exhibit D) and current Education Code section 76361.

[28] Former Education Code sections 72250 – 72250.5 (exhibit D) and current California Code of Regulations, title 5, section 58507.

[29] Former Education Code section 72251 (exhibit D).

are discretionary activities, so collecting fees from them is not a new program or higher level of service within the meaning of article XIII B, section 6.

Additionally, prior to the test claim statute, there was no requirement to collect enrollment fees except for tuition from nonresident students.[30] Therefore, because it is not a new activity, staff finds that collecting fees from nonresident students is not a new program or higher level of service.

Claimant commented that although tuition fees were collected from nonresident students prior to 1975, that activity is not legally or factually relevant to the additional administrative procedures required to collect enrollment fees. Claimant points out there are no facts in the record that the fee collection procedures occur at the same time or location, are performed by the same staff members, or result in the same subsequent administrative burden (e.g., fees adjusted based on changes to class loads, student withdrawal, etc.). Therefore, according to claimant, the better conclusion of law would be that, to the extent that procedures for the collection of enrollment fees from nonresident students is different and exceeds the administrative tasks required to collect tuition fees from nonresident students, it is a new activity and a higher level of service.

In analyzing a test claim, staff identifies all the new activities or higher levels of service within the test claim legislation. If an activity in the test claim legislation appears to be the same or substantially the same as a pre-1975 activity, it does not qualify as a new program or higher level of service.[31] There is no evidence in the record that collecting tuition fees from nonresident students prior to 1975 is different from collecting enrollment fees from nonresident students after 1975. Therefore, without evidence to the contrary, staff's conclusion remains the same regarding nonresident student tuition.

In sum, staff finds that collecting enrollment fees constitutes a new program or higher level of service within the meaning of article XIII B, section 6 for all students except for nonresidents, and except for special part-time students (pursuant to Ed. Code, § 76300, subd. (f)).

Refunds for program changes: California Code of Regulations, title 5, sections 58500 through 58508,[32] also pertain to community college student fees. Section 58500 defines the enrollment fee, section 58501 states the semester, quarter or fractional unit fee, section 58501.1 discusses the differential enrollment fee, section 58502 states the enrollment fee shall be charged at the time of enrollment, and section 58503 requires students to be charged for variable unit classes at the time of enrollment, based on the number of units in which the college enrolls the student. Section 58507 authorizes students to add or drop classes during the term pursuant to district policy, and requires the enrollment fee to be adjusted accordingly. Section 58508 governs refunds for program changes made during the first two weeks of instruction for a primary term-length course, or by the 10 percent point of the length of the course for a short-term course.

Prior law did not address enrollment fee refunds because there were no fees. Prior law did, however, require community colleges to impose a fee of $10 per course, not to exceed $20, for a

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[30] Education Code section 76140.

[31] Subdivision (c) of section 6 of Article XIII B states that the Legislature may, but need not provide subvention of funds for mandates enacted prior to January 1, 1975.

[32] California Code of Regulations, title 5, section 58509 was not pled by claimant. This analysis does not address section 58509.

student program change consisting of dropping one or more courses any time after two weeks from the commencement of instruction in any term. In 1987, this fee was made permissive and was not to exceed one dollar ($1) "for the actual pro rata cost for services relative to a program change consisting of adding or dropping one or more courses any time after two weeks from the commencement of instruction in any term."[33]

Staff finds that refunding enrollment fees is not a new program or higher level of service.

In disputing that program changes constitute a new program or higher level of service, DOF points out that section 58507 of the regulations authorizes, but does not require community colleges to allow students to add or drop classes during the term. Section 58507 states:

> A community college district may allow a student to add or drop classes during the term pursuant to district policy. The enrollment fee or differential enrollment fee shall be adjusted to reflect added or dropped courses as allowed by district policy.

The claimant argues that this regulation was adopted as a result of the establishment of enrollment fees, and the need to refund fees is a foreseeable consequence of collecting them. Claimant says it is properly an activity to be included in the cost mandated by the state subject to reimbursement.

Staff agrees with DOF that allowing a student to add or drop courses is not required. Allowing the program changes pursuant to section 58507 is an activity that is not required. The statute states that a "community college **may** allow a student to add or drop classes" (emphasis added). Use of the word "may" is permissive.[34] Thus, changing programs is an activity within the discretion of the community college district to allow. The court of appeal has concluded that discretionary actions of local agencies are not new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution.[35] In *City of Merced,* the court found that the exercise of eminent domain was discretionary and therefore not a cost which plaintiff was required or mandated to incur. The same is true in section 58507, which authorizes but does not require community colleges to allow program changes. Therefore, staff finds that section 58507 of title 5 of the California Code of Regulations is not a new program or higher level of service because the community college district is authorized but not required to allow a student to add or drop classes.

Section 58508 provides:

> (a) A community college district governing board shall refund upon request any enrollment fee paid by a student pursuant to Sections 58501 or 58501.1 for program changes made during the first two weeks of instruction for a primary term – length course, or by the 10 percent point of the length of the course for a short-term course.
>
> (b) A student shall be allowed at least two weeks from the final qualifying date of the program change specified in Subsection (a) to request an enrollment fee refund.

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[33] Former Education Code sections 72250 and 72250.5 (exhibit D). Both statutes excused the fee for changes initiated or required by the community college.

[34] Education Code section 75.

[35] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783.

(c) A community college district shall not refund any enrollment fee paid by a student for program changes made after the first two weeks of instruction for a primary term-length course, or after the 10 percent point of the length of the course for a short-term course, unless the program change is a result of action by the district to cancel or reschedule a class or to drop a student pursuant to section 55202 (g) where the student fails to meet a prerequisite.

(d) When refunding an enrollment fee pursuant to Subsection (a), a community college district may retain once each semester or quarter an amount not to exceed $10.00.

The refund requirement of section 58508 is triggered by the district's discretionary decision to allow program changes pursuant to section 58507. Therefore, staff finds that issuing refunds for program changes pursuant to sections 58507 and 58508 of title 5 of the California Code of Regulations is not a new program or higher level of service.

Fee exemptions and waivers: The fee exemption and waiver provisions of Education Code section 76300 provide as follows:

- Subdivision (e) exempts the enrollment fee for (1) students enrolled in noncredit courses designated by section 84757; (2) California State University (CSU) or University of California (UC) students enrolled in remedial classes provided on a CSU or UC campus for whom the district claims an attendance apportionment pursuant to an agreement between the district and the CSU or UC; (3) students enrolled in credit contract education courses under certain conditions.
- Subdivision (f) authorizes (but does not require) fee exemption for special part-time students admitted pursuant to Education Code section 76001.
- Subdivision (g) requires fees to be waived for recipients of Aid to Families with Dependent Children (AFDC) or SSI/SSP, or a general assistance program, or those who demonstrate financial need in accordance with federal methodology. The fee waiver is also required for students who demonstrate eligibility according to income standards established by the Board of Governors and section 58620 of title 5 of the California Code of Regulations.
- Subdivision (h) requires a fee waiver for dependents or unmarried surviving spouses of members of the California National Guard who die or become permanently disabled as a result of an event that occurred during active service of the state.
- Subdivision (i) states legislative intent to fund fee waivers for students who demonstrate eligibility pursuant to subdivisions (g) and (h), and requires the Board of Governors to allocate to districts two percent of the fees waived pursuant to those subdivisions. Subdivision (i) also requires the Board of Governors, from funds provided in the annual Budget Act, to allocate to districts $.91 per credit unit waived pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services.

Prior law did not require fee exemptions or waivers because there were no enrollment fees.

Staff finds that waiving or exempting fees for student applicants is a new program or higher level of service.

The DOF, in its 9/25/01 comments, notes that the determinations for fee waiver eligibility required by Education Code section 76300, subdivisions (g) and (h) are alternative methods for determining student eligibility for BOG fee waivers and not additional requirements. As students receive Board of Governors fee waivers without achieving any of the criteria listed above, by meeting income limits, an eligibility determination is not necessarily contingent on performance of any of these activities and they should not be considered higher levels of service. Furthermore, according to DOF the analysis of BOG grant determinations pursuant to California Code of Regulations, title 5, section 58620 focuses on every activity, requirement, and criteria for determining Board of Governors eligibility, so any costs identified with section 58620 would include these activities. Waiving fees pursuant to BOG fee waivers is discussed below.

In its 8/30/02 comments, DOF contends that waiving fees is not an "activity," but the preclusion of participation in the new program of collecting enrollment fees. DOF cites language in the Board of Governors Fee Waiver Program Manual for 2001/2002, stating that waivers are simply a transaction in which no money is received. DOF argues that upon proof of eligibility for a waiver, the community colleges neither provide anything to, nor collect anything from, the student. DOF concludes that since fee waivers prohibit colleges from participation in the new program of enrollment fees, for this particular test claim, providing fee waivers for exempt students is not a state-mandated activity. DOF admits that the fee waiver is granted "upon proof of eligibility."[36]

In its 2/25/03 comments, DOF states that section 76300, subdivision (e), specifies groups of students for which the fee requirement does not apply, which students are not required to have the fee waived as in subdivisions (g) and (h). Since these students[37] pay no enrollment fees, they have no need for waivers. DOF argues that since there is no waiver eligibility determination required, there is no mandated activity associated with section 76300, subdivision (e).

Staff disagrees. Each community college applies the same exemption or waiver provisions of section 76300 to waive or exempt the student fee.

DOF also states in its 2/25/03 comments that the burden of demonstrating fee waiver eligibility rests with the student, not the financial aid office. DOF quotes section 76300, subdivision (g), emphasizing the student's responsibility to demonstrate financial need and eligibility. There is nothing in section 76300, according to DOF, that requires the institution to establish the financial aid group to which the student belongs.

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[36] Education Code section 76300, subdivision (g) reads in pertinent part, "The governing board of a community college district also shall waive the fee requirements of this section for any student **who demonstrates eligibility** according to income standards established by the Board of Governors and contained in section 58620 of Title 5 of the California Code of Regulations." (Emphasis added.) Education Code section 76300, subdivision (i)(1) reads in pertinent part "It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student **who demonstrates eligibility** pursuant to subdivisions (g) and (h). (Emphasis added.)

[37] Students specified in section 76300, subdivision (e) are those (1) enrolled in noncredit courses designated by section 84757; (2) CSU or UC students in remedial classes for whom the district claims an attendance apportionment pursuant to an agreement between the district and CSU or UC; and (3) students enrolled in credit contract education courses under certain conditions.

Staff disagrees. As with fee exemptions above, a community college has no discretion to grant a fee waiver. If a student demonstrates eligibility pursuant to the test claim statute, he or she is entitled to the waiver. Payment of the fee or provision for its exemption or waiver is a transaction,[38] and as such, cannot be achieved unilaterally.

Community colleges must waive or exempt student fees required (not authorized) by section 76300, which lists the following groups, one of which a student must belong to in order qualify for the exemption or waiver.

(1) A student enrolled in noncredit courses designated by section 84757 (e.g., courses on parenting, English as a second language, those for immigrants eligible for educational services in citizenship, etc.);

(2) A CSU or UC student enrolled in remedial classes provided on a CSU or UC campus for whom the district claims an attendance apportionment pursuant to an agreement between the district and the CSU or UC;

(3) A student enrolled in credit contract education courses pursuant to section 78021, if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting and if the student is not included in the calculation of the district's average daily attendance;

(4) A recipient of benefits under the AFDC, SSI/SSP, or a general assistance program, or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid.

(5) A student who demonstrates eligibility according to income standards established by the Board of Governors and contained in section 58620 of title 5 of the California Code of Regulations (this section relates to BOG fee waivers, discussed below).

(6) A student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state (as defined), was killed, became permanently disabled, or died of a disability resulting from an event that occurred while in the active service of the state.

Staff finds that waiving or exempting fees for each student applicant in accordance with the groups listed in Education Code section 76300, subdivisions (e), (g) and (h), is a new program or higher level of service.

Eligibility for a Board of Governors fee waiver is included by reference[39] in Education Code section 76300, subdivision (g), which requires the governing board of a community college district to waive the fee requirements "for any student who demonstrates eligibility according to income standards established by the Board of Governors and contained in Section 58620 of the

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[38] Section 7.3 of the BOG Fee Manual states that "waivers are simply a transaction in which no money is received." One definition of transaction is "a communicative action or activity involving two parties or two things reciprocally affecting or influencing each other." (Webster's 3d New Internat. Dict. (1993) p. 2425.)

[39] California Code of Regulations, title 5, section 58620.

California Code of Regulations." Since claimant also pled section 58620 of title 5 of the California Code of Regulations, it is discussed separately below.

Board of Governors Grants

BOG grant regulations: California Code of Regulations, title 5, sections 58600 - 58630 govern the distribution of a BOG grant, which is "an instrument used by a community college district to process the financial assistance provided to a low-income student."[40] In 1993, the Legislature altered the BOG grants program,[41] changing it from a fee-offset grant program to a fee-waiver program. The regulations governing the program were left intact. Therefore, as stated above, references to BOG grants herein should be read to apply to BOG fee waivers.

Section 58611 requires community college districts to report to the CCC the number of and amounts provided for BOG grants. Section 58612 requires a district to provide BOG grants "to all students who are eligible and who apply for this assistance." This section also states a presumption of student eligibility for the remainder of the academic year until the beginning of the following fall term, and states that nothing in the chapter prohibits community college districts from establishing an application deadline for BOG grants. Section 58613 requires BOG grants to be made in the amount of enrollment fees calculated after program changes (pursuant to section 58507, discussed above). Section 58620 lists the eligibility criteria for a BOG grant, which is California residency and one of the criteria under the rubric of either (1) income standards;[42] (2) recipient of AFDC benefits described in Education Code section 76300, subdivision (g);[43] or (3) need-based financial aid eligibility.[44]

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[40] California Code of Regulations, title 5, section 58601.

[41] Statutes 1993, chapter 1124 (Assem. Bill No. 1561). Herein referred to as a BOG fee-waiver.

[42] The income standards are: (A) be single and independent student having no other dependents and whose total income in the prior year was equal to or less than 150% of the U.S. Department of Health and Human Services (HHS) Poverty Guidelines for a family of one. Or be a married, independent student having no dependents other than a spouse, whose total income of both student and spouse in the prior year was equal to or less than 150% of the HHS Poverty Guidelines for a family of two. (B) Be a student who is dependent in a family having a total income in the prior year equal to or less than 150% of the HHS Poverty Guidelines for a family of that size, not including the student's income, but including the student in the family size. (C) Provide documentation of taxable or untaxed income. (D) Be a student who is married or a single head of household in a family having a total income in the prior year equal to or less than 150% of the HHS Poverty Guidelines for a family of that size. (E) Be an independent student whose estimated family contribution as determined by federal methodology is equal to zero or a dependent student for whom the parent portion of the estimated family contribution as determined by federal methodology is equal to or less than zero. (F) For purposes of this subsection HHS Poverty guidelines used each year shall be the most recently published guidelines immediately preceding the academic year for which a fee waiver is requested.

[43] The benefits described in Education Code section 76300, subdivision (g) are for recipients of Aid to Families with Dependent Children, the general assistance program, or demonstration of financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. Subsection (2)

Prior law did not require community colleges to provide BOG grants to students.

In its 9/25/01 comments, DOF asserts that much of the infrastructure for determining whether a student is eligible to have fees waived already existed prior to 1975. For example, Education Code section 76355[45] requires the governing board of a community college district to adopt rules and regulations that either exempt low-income students from any health service fee or provide for the payment of the fee from other sources. Education Code section 69648 requires the community colleges to adopt rules and regulations to, among other activities, identify students who would be eligible for extended opportunity programs and services (EOPS) based on socioeconomic disadvantages. Both of these sections existed when enrollment fee waivers were implemented in 1984 and still exist. DOF argues that section 58620 of the California Code of Regulations merely clarifies the process for identifying low-income students and does not constitute a higher level of service.

Claimant rebuts DOF, arguing that the legislation enacting the health fee merely required adoption of rules and regulations that either exempt "low-income" students or provide for payment of fees from other sources. But the legislation provided no guidance or direction as to the method or means to determine whether a student was "low-income," and said nothing of the BOG grant factors of section 58620 of the California Code of Regulations. Claimant states that DOF's argument fails because there was no "infrastructure" to determine the specific requirements of section 58620 until 1987. Claimant also notes that the existence of "infrastructure," or lack thereof, is not one of the statutory exceptions set forth in Government Code section 17556, and therefore irrelevant.

Staff finds that waiving student fees for students who apply for and are eligible for BOG fee waivers is a new program or higher level of service.

DOF's argument of 9/25/01 is unconvincing. The health fee promulgated in Education Code section 76355, cited by DOF, is not mandatory. Subdivision (b) states that the governing board "may decide whether the fee shall be mandatory or optional." Since the health fee program is optional, the "infrastructure" for determining eligibility for it that DOF cites is also optional.

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also lists: (A) At the time of enrollment be a recipient of benefits under the Temporary Assistance to Needy Families (TANF) program. A dependent student whose parents(s) or guardian(s) are recipients of TANF shall be eligible if the TANF program grant includes a grant for the student or if the TANF grant is the sole source of income for the parent or guardian. (B) At the time of enrollment, be a recipient of benefits under the Supplemental Security Income (SSI) program. A dependent student whose parent(s) or guardian(s) are recipients of SSI shall be eligible if the SSI program grant is the sole source of income for the parent or guardian(s). (C) At the time of enrollment be a recipient of benefits under the General Assistance program. (D) Provide documentation that the student if [sic] a recipient of benefits under one of the programs identified in Education Code section 76300(g) and (h) at the time of enrollment. Documentation sufficient to meet the requirements of this subdivision shall provide official evidence of these benefits.

[44] Need-Based Financial Aid Eligibility means any student who has been determined financially eligible for federal and/or state needed [sic] based financial aid.

[45] Former Education Code section 72246 (exhibit D).

More importantly, nothing in the record indicates that a BOG fee waiver determination, or even a substantially similar determination, must be made for waiver of the optional health fee pursuant to section 76355, or the student's "social or economic disadvantages" to determine eligibility for the extended opportunity program pursuant to section 69648.[46]

In its 2/25/03 comments, DOF states that with the passage of Assembly Bill No. 1561 (Stats. 1993, ch. 1124), the BOG grant program was replaced with the BOG fee-waiver program. Consequently, DOF argues that regulations pertaining to BOG grants are obsolete. Since the program no longer exists, DOF asserts that determining the eligibility for BOG grants is not a mandate. Alternatively, DOF argues that even if BOG grants were not obsolete, demonstrating eligibility is the responsibility of the student, not the institution.

Staff disagrees. The regulations pertaining to the BOG grants are not invalid. Regulations have a strong presumption of regularity.[47] Even though it was changed from a fee-offset grant program to a fee-waiver program by Statutes 1993, chapter 1124, the BOG fee program still exists. The BOG grant regulations, sections 58600 to 58630 of title 5 of the California Code of Regulations, cite to three statutes for their authority: Education Code sections 66700, 70901, and 72252. These statutes are still in effect, except that section 72252[48] has been amended and renumbered to section 76300.[49] With the authority for the regulations still in effect, the regulations are valid.[50]

As to DOF's contention that documenting eligibility is the responsibility of the student, not the institution, staff disagrees. As with fee waivers and exemptions discussed above, a community college has no discretion to grant a BOG fee waiver. A student requirement to demonstrate financial need triggers a duty on the part of the college to waive the fee. Awarding the BOG fee waiver is a transaction,[51] and as such, cannot be achieved unilaterally.

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[46] Eligibility for EOPs is stated in title 5, section 56220 of the California Code of Regulations, which were adopted in 1987. Eligibility criteria include California residency, less than 70 units of degree-credit completion, eligibility for a BOG grant pursuant to section 58620 (1) or (2), and be educationally disadvantaged as determined by the EOPS director or designee, who must consider specific factors.

[47] *Agricultural Labor Relations Board v. Superior Court* (1976) 16 Cal. 3d 392, 411.

[48] Section 76300 was enacted by Statutes 1995, chapter 308 due to the sunset of the prior section 76300. The community college fee statute has been at section 76300 since 1993 (Stats. 1993, ch. 8). Prior to that, it was in section 72252 since its enactment in 1984 (Stats. 1983-1984xx, ch. 1).

[49] A renumbered or restated statute is not a newly enacted provision. Education Code section 3 provides that "The provisions of this code, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments." See also *In re Martin's Estate* (1908) 153 Cal. 225, 229,which held: "Where there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the re-enactment takes effect at the same time."

[50] *Agricultural Labor Relations Board v. Superior Court, supra,* 16 Cal.3d 392, 401.

[51] *Ante,* footnote 38.

Therefore, staff finds that waiving fees for students who apply for and are eligible for BOG fee waivers is a new program or higher level of service.

Districts are required to report to the CCC the number of and amounts provided for BOG fee waivers.[52] Because this is a new requirement, staff also finds that this reporting is a new program or higher level of service. (Cal. Code Regs., tit. 5, § 58611).

District reporting and accountability: Claimant pled California Code of Regulations, title 5, section 58630. Subdivision (a) of this section requires districts to identify separately in district accounts dollars allocated for financial assistance. Subdivision (b) requires adoption of procedures to document all financial assistance provided on behalf of students pursuant to chapter 9 of title 5 of the California Code of Regulations. The procedures must include rules for retention of support documentation that will enable an independent determination regarding accuracy of the district's certification of need for financial assistance.

Prior to adoption of section 58630, there was no requirement for community colleges to account for financial assistance funds separately in district accounts.

In its 2/25/03 comments, DOF argues that these activities relate to the administration of the funding mechanism for the obsolete BOG grant program, which was replaced by the BOG fee-waiver program in 1993. Since a fee waiver does not involve exchange of funds, the activities are no longer required.

Staff agrees that identifying dollars for financial assistance in separate district accounts pursuant to subdivision (a) is not a new program or higher level of service due to the BOG grant program's conversion to a BOG fee-waiver program. Fee waivers do not require dollars to be identified in district accounts as BOG grants did.

As to the activities in section 58630, subdivision (b), staff disagrees. It is possible for colleges to comply with this subdivision by documenting financial assistance provided on behalf of students, including rules to retain support documentation that would enable an independent determination regarding accuracy of the district's certification of need for financial assistance.

Therefore, staff finds that the following activities constitute a new program or higher level of service pursuant to section 58630 of title 5 of the California Code of Regulations: adopting procedures that will document all financial assistance provided on behalf of students pursuant to chapter 9 of title 5 of the California Code of Regulations, and including in the authorized procedures rules for retention of support documentation which will enable an independent determination regarding accuracy of the district's certification of need for financial assistance.

BOG grant executive orders: Claimant alleges that the *Board of Governors Fee Waiver Program and Special Programs, 2000-2001 Program Manual* ("BOG Fee Manual")[53] is a state mandate. The BOG Fee Manual is issued by the CCC to assist community college financial aid

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[52] This regulation states this pertains to BOG grants, but it would apply to BOG fee waivers now.

[53] California Community Colleges Chancellor's Office, Board of Governors Fee Waiver Program and Special Programs, 2000-2001 Program Manual, effective July 1, 2000 – June 30, 2001.

staff,[54] and includes requirements for financial aid office staff. It contains interpretations of the student financial aid sections of title 5 of the California Code of Regulations, and requires community college financial aid offices to perform documentation and training activities. Because the CCC enforces the title 5 regulations, the CCC's interpretation of the title 5 regulations is entitled to some consideration.[55] Therefore, staff finds that the BOG Fee Manual constitutes an executive order within the meaning of Government Code section 17516 to the extent that it contains requirements issued by a state agency.

In its 2/25/03 comments, DOF disagreed that the BOG Fee Manual is an executive order within the meaning of Government Code section 17516. According to DOF:

> ...we assert that a Chancellor's Office Manual, self-described as "sub-regulatory guidance," is not an executive order. ...the Chancellor's Office ... legal staff has verbally indicated that they do not believe that non-compliance with the BOGFW manual would result in any punitive action. This would be consistent with exiting law (Ed. Code, §§ 70901 and 70901.5). As written in these sections, the BOGFW manual developed and distributed by the Chancellor's Office, is a technical assistance document, not a source of new mandates. Chancellor's Office staff indicates the BOGFW manual was not authorized nor adopted by the Board of Governor's.

Staff disagrees. Regarding opinions of the CCC, the Commission is not bound to rely on the legal opinions of the administering agency about what is or is not an executive order or regulation.[56] More importantly, Government Code section 17516 defines an executive order as "...any order, plan, requirement, rule, or regulation issued by ... any agency, department, board, or commission of state government." Because the BOG Fee Manual contains requirements, and is issued by the CCC (a state agency), staff finds that it qualifies as an executive order within the meaning of section 17516.

The 2000-2001 BOG Fee Manual requires the following activities:

(1) Documenting public benefits for recipients of TANF, SSI/SSP, and General Assistance, (Section 4.2.2), or

(2) Documenting those eligible under income standards (Section 4.3.4); and

(3) Attending training offered by the Chancellor's Office within the first year of appointment for new directors/managers/ coordinators/officers in charge of day-to-day operations of the financial aid office (Section 11.3).

These are new requirements. Before the test claim legislation, there were no enrollment fees for which BOG fee waivers were needed.

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[54] A copy of the BOG Fee Manual and other forms are available at the California Community College Chancellor's Office website: <http://www.cccco.edu/divisions/ss/financial%20assistance/financial%5Fassistance.htm> [as of Jan. 7, 2003].

[55] *Yamaha Corporation of America v. State Board of Equalization* (1998) 19 Cal. 4th 1, 15.

[56] Cf. *California Advocates for Nursing Home Reform v. Diana M. Bonta* (February 24, 2003, A097107) __ Cal. Rptr. 2d ___ [03 D.A.R. 2011, 2011-2012] mod. March 12, 2003, 03 D.A.R. 2803.

DOF's 2/25/03 comments further state that should the manual be judged equivalent to a regulation, DOF disagrees with the magnitude of the mandated activities. According to DOF, documenting public benefits for recipients of TANF, SSI/SSP, and General Assistance, (Section 4.2.2), and documenting those eligible under income standards (Section 4.3.4) are the responsibility of the student and not the institution, and therefore are not mandates. As to the activity of attending training offered by the Chancellor's Office within the first year of appointment for new directors/managers/ coordinators/officers in charge of day-to-day operations of the financial aid office (Section 11.3), DOF states that only one person from each financial aid office would be required to attend training rather than all new directors, mangers, coordinators and officers.

Regarding the first two documentation activities, staff disagrees with DOF. Like the fee exemptions and waivers discussed above, a community college has no discretion whether or not to document the basis for the waiver or exemption. A student requirement to demonstrate eligibility triggers a duty on the part of the college to receive evidence of that eligibility. It is a transaction,[57] and as such, cannot be achieved unilaterally. As to the frequency of the training raised by DOF, should the Commission approve this claim, this issue would be resolved in the parameters and guidelines phase.

Staff finds therefore, pursuant to the BOG Fee Manual, the following are new programs or higher levels of service: (1) documenting public benefits for recipients of TANF, SSI/SSP, and General Assistance, or documenting those eligible under income standards; and (2) for new directors/managers/coordinators/officers in charge of day-to-day operations of the financial aid office, attending training offered by the Chancellor's Office within the first year of appointment. (Cal. Community Colleges Chancellor's Office, Board of Governors Fee Waiver Program and Special Programs, 2000-2001 Program Manual, effective July 1, 2000 – June 30, 2001, Sections 4.2.2, 4.3.4 and 11.3). Staff finds that the remainder of the BOG Fee Manual is not a new program or higher level of service.

In summary, staff concludes that the test claim legislation imposes new programs or higher levels of service on community college districts within the meaning of article XIII B, section 6 of the California Constitution for the following activities:

- Calculating and collecting the student enrollment fee for each student enrolled except for nonresidents, and except for special part-time students cited in section 76300, subdivision (f). (Ed. Code, § 76300, subds. (a) & (b); Cal. Code Regs., tit. 5, §§ 58501, 58502 & 58503.);
- Exempting or waiving student fees in accordance with the groups listed in Education Code section 76300, subdivisions (e), (g) and (h);
- Waiving fees for students who apply for and are eligible for BOG fee waivers (Cal.Code Regs., tit. 5, §§ 58612, 58613 & 58620.);
- Reporting to the CCC the number of and amounts provided for BOG fee waivers. (Cal. Code Regs., tit. 5, § 58611.);

[57] *Ante,* footnote 38.

- (1) Documenting public benefits for recipients of Temporary Assistance to Needy Families, SSI/SSP, and General Assistance, or (2) Documenting those eligible for BOG fee waivers under income standards; and (3) for new directors/managers/ coordinators/officers in charge of day-to-day operations of the financial aid office, attending training offered by the Chancellor's Office within the first year of their appointment. (Cal. Community Colleges Chancellor's Office, Board of Governors Fee Waiver Program and Special Programs, 2000-2001 Program Manual, effective July 1, 2000 – June 30, 2001, Sections 4.2.2, 4.3.4 & 11.3);
- Adopting procedures that will document all financial assistance provided on behalf of students pursuant to chapter 9 of title 5 of the California Code of Regulations; and including in the procedures the rules for retention of support documentation which will enable an independent determination regarding accuracy of the district's certification of need for financial assistance. (Cal. Code Regs., tit. 5, § 58630, subd. (b).)

Additional activities pled by claimant include: "entering the student enrollment fee collection and waiver information into the district cashier system and data processing and accounting systems," and "determination of credit courses." These activities do not appear in the test claim statute or regulations and therefore would be more appropriately discussed in the parameters and guidelines[58] should the Commission approve this test claim.

Issue 3: Do the test claim legislation and executive orders impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

In order for the activities listed above to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, two criteria must apply. First, the activities must impose costs mandated by the state.[59] Second, no statutory exceptions as listed in Government Code section 17556 can apply. Government Code section 17514 defines "costs mandated by the state" as follows:

> ...any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

Government Code section 17556, subdivision (d) precludes finding costs mandated by the state if after hearing, the Commission finds that the "local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

Government Code section 17556, subdivision (e) precludes findings costs mandated by the state if the test claim statute provides for offsetting savings which result in no net costs, or includes

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[58] Government Code section 17557; California Code of Regulations, title 2, section 1183.1.

[59] *Lucia Mar Unified School Dist., supra,* 44 Cal.3d 830, 835; Government Code section 17514.

additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund it.

Collection of enrollment fees (Ed. Code, § 76300, subds. (a) & (b); Cal. Code Regs., tit. 5, §§ 58501, 58502 & 58503.): In response to the *Enrollment Fee Collection* test claim, the DOF originally commented that it mostly agrees that the test claim statutes constitute a new program or higher level of service "because community college districts had not previously been required to collect enrollment fees from students." However, DOF concludes that reimbursement should be denied because the statutory scheme sets up a mechanism whereby community college districts are automatically provided with funding for their costs of administering the program.[60] Since collection of enrollment fees is entwined with the entire admission process, DOF argues it would be extremely difficult or impossible to accurately isolate the tasks involved with collecting enrollment fees. DOF submits that the Legislature has validly determined that two percent of the revenue from fees is adequate to compensate community college districts for administering the test claim statutes.

In its response, claimant first quotes the CCC's comments, which like the test claim, note that colleges are compensated in the amount of two percent of the enrollment fees collected for the cost of collecting the enrollment fee. Claimant cites the legislative history provided by the CCC that quoted the Legislative Analyst's conclusion that the two percent revenue credit was an insufficient reimbursement. Claimant goes on to quote the applicable provisions of Government Code section 17556, subdivisions (d) and (e), as follows:

> The Commission shall not find costs mandated by the state, as defined in section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the Commission finds that: [¶]...[¶]
> (d) The local agency or school district has the **authority to levy** services charges, fees, or assessments **sufficient to pay** for the mandated program or increased level of service.
> (e) **The statute or executive order provides for offsetting savings** to local agencies or school districts **which result in no net costs** to the local agencies or school districts, or includes **additional revenue that was specifically intended to fund the costs** of the state mandate in an **amount sufficient** to fund the cost of the state mandate. (Emphasis added by claimant).

Claimant asserts these two Government Code subdivisions require the Commission to make findings of law and fact. Regarding subdivision (d), it can be determined that as a matter of law, neither the test claim statutes nor other laws provide the "authority to levy service charges, fees, or assessments" for the collection of enrollment fees. The "revenue credit" is not a service fee, charge, or assessment upon the consumer (student) of a service provided by the college district. Regarding subdivision (e), as a matter of law, the test claim statutes do not include "offsetting savings" which result in no net costs. A new program was added, and no other mandated program was removed by the statute. However, as a matter of law, the test claim statutes did include "additional revenue that was specifically intended to fund the costs of the mandate" in the form of the revenue credit. According to the claimant, this begs the question of fact of

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[60] Education Code, section 76300, subdivision (c) states that for purposes of computing apportionments to community college districts, the Chancellor shall subtract 98% of the revenues received by districts from enrollment fees from the total revenue owed to each district.

whether the additional revenue is "sufficient to fund the cost of the state mandate." The entire cost to implement the mandate will vary from district to district, so it cannot be determined as a matter of fact that the revenue credit is sufficient for any or all districts. The claimant notes the revenue credit can in the usual course of the mandate process be addressed by the annual claiming process whereby the claimants are required by law to report their cost of implementing the mandate from which they must deduct other reimbursement and funds, in this case, the two-percent revenue credit.

Regarding DOF's statement that the collection of enrollment fees is entwined with the entire admission process making it extremely difficult, if not impossible to accurately isolate the specific tasks involved with collecting enrollment fees, claimant notes this is without foundation, and is neither a statutory exception to reimbursement of costs mandated by the state, nor a practical argument. The parameters and guidelines determine which activities are reimbursable and the cost accounting methods to be used, and the claimants have the burden of complying with the parameters and guidelines, not the state. Also, enrollment fee collection involves a high volume of uniform transactions (collecting the fee) comprised of identifiable direct costs (staff time and forms to collect the fee). After several years of data are accumulated, claimant asserts that this mandate would be a candidate for a uniform cost allowance.

Staff finds the community colleges' revenue credit does not preclude reimbursement for the fee collection activities specified. Government Code section 17556, subdivision (d), by its express terms, only applies to "fees, or assessments **sufficient to pay** for the mandated program or increased level of service" (emphasis added). Likewise, subdivision (e) only applies to "revenue ...in an amount **sufficient to fund** the cost of the state mandate" (emphasis added). The record indicates that the revenue credit is insufficient to fund these activities.

The test claim statute reads in pertinent part as follows:

> **76300.** (a) The governing board of each community college district shall charge each student a fee pursuant to this section. [¶]...[¶]
> (c) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

Claimant submitted a declaration that it incurred about $677,640 (or $4.60 per student) in staffing and other costs in excess of the two percent of the enrollment fees retained during July 1998 to June 1999.[61] The assertion of insufficient fee authority is supported by the LAO's legislative history submitted by the CCC.[62] Thus, staff finds that Government Code section 17556, subdivision (d) does not preclude reimbursement because the record indicates that the fee is not sufficient to pay for the program.

Similarly, staff finds that Government Code section 17556, subdivision (e) does not preclude reimbursement because there is nothing in the record to indicate that offsetting savings or

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[61] Declaration of Carrie Bray, Director, Accounting Services, Los Rios Community College District, June 22, 2000 (exhibit A).

[62] Office of the Legislative Analyst, analysis of Assembly Bill No. 1 (1983-1984 2d Ex. Sess.) January 23, 1984, as submitted in the CCC comments (exhibit C).

additional revenue -- in this case the two percent revenue credit -- is sufficient to fund the mandate.[63]

Staff disagrees with DOF's assertion that the Legislature made a valid determination that two percent of the revenue from fees is adequate to compensate community college districts for administering the test claim statutes. DOF cites no authority for this proposition, nor is there statutory language in the test claim statute to support it.

Even if the Legislature had expressly determined the fee adequate, the determination would not prevent finding the existence of a mandate. Two cases have held legislative declarations unenforceable that attempt to limit the right to reimbursement. In *Carmel Valley Fire Protection District v. State of California,*[64] the court held that "Legislative disclaimers, findings and budget control language are no defense to reimbursement." The *Carmel Valley* court called such language "transparent attempts to do indirectly that which cannot lawfully be done directly."[65] Similarly, in *Long Beach Unified School District v. State of California,*[66] the Legislature deleted requested funding from an appropriations bill and enacted a finding that the executive order did not impose a state-mandated local program. The court held that "unsupported legislative disclaimers are insufficient to defeat reimbursement. ...[The district,] pursuant to Section 6, has a constitutional right to reimbursement of its costs in providing an increased service mandated by the state. The Legislature cannot limit a constitutional right."[67] If the Legislature could not prevent a mandate explicitly as the authorities indicate, it could not prevent one implicitly.

In its 8/30/02 comments on the draft staff analysis on the *Enrollment Fee Collection* test claim, DOF asserts that the community colleges have sufficient fee authority pursuant to Education Code section 70902, subdivision (b) (9), for enrollment fee collection. This statute covers fees of a governing board "as it is required to establish by law," or "as it is authorized to establish by law." The fees in existing law that fall within the authorization provided in section 70902, subdivision (b) (9) are for the following purposes: apprenticeship courses, health, parking and transportation, instructional materials, course auditing, student body center building and operations, fees for classes not eligible for state apportionments, and fees for physical education courses requiring use of nondistrict facilities.[68]

For fee authority pursuant to Education Code section 70902, subdivision (b) (9) to apply, it must be "required or authorized by law." There is nothing in the record to indicate the existence of any fee authority "required or authorized by law," for collecting enrollment fees other than that listed in Education Code section 76300. The record indicates this section 76300 authority is not "sufficient to pay for the mandated program" within the meaning of Government Code section

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[63] Should the Commission approve staff's recommendation, the two percent fee would be determined to be an offset in the parameters and guidelines per California Code of Regulations, title 2, section 1183.1, subdivision (a), paragraphs (8) and (9).

[64] *Carmel Valley, supra,* 190 Cal.App.3d at page 521.

[65] *Id.* at page 541.

[66] *Long Beach Unified, supra,* 225 Cal.App.3d 155.

[67] *Id.* at page 184.

[68] Education Code sections 76350 through 76395.

17556, subdivision (d). Therefore, staff finds that the fee authority in Education Code section 70902, subdivision (b) (9) does not preclude reimbursement under this test claim.

BOG fee waivers & fee exemptions (Ed. Code, § 76300, subds. (e), (g) & (h); Cal. Code Regs., tit. 5, §§ 58612, 58613 & 58620.): DOF argues that costs associated with BOG fee waivers should not be included in this claim because a statutory compensation mechanism currently exists for those costs. Education Code section 76300, subdivision (i), states legislative intent to provide sufficient funds for fee waivers for every student who demonstrates eligibility pursuant to subdivisions (g) and (h) (referring to students who receive TANF, SSI/SSP or other general assistance or dependents or surviving spouses of members of the California National Guard who are killed or permanently disabled in the line of duty). This section also requires the Community Colleges Board of Governors, from funds in the annual budget act, to allocate to community colleges two percent of the fees waived under subdivisions (g) and (h) of section 76300. Finally, this section requires the Board of Governors to allocate from funds in the annual budget act ninety-one cents ($0.91) per credit unit waived pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived.

Thus, DOF argues that costs associated with fee waivers should not be included in the test claim.

In its 9/25/01 comments on the *Enrollment Fee Waivers* test claim (00-TC-15), DOF argued that funding is provided to cover costs associated with determining eligibility for BOG fee waivers. DOF disputes the number of fee waiver determinations pled by claimant, estimating it to be roughly 36 percent of the number asserted by claimant. DOF also asserts that the average time to make a fee waiver is overstated by claimant, since students only need to demonstrate that they meet one of the seven criteria. DOF says it believes that the total cost of the BOG fee waiver determination is less than $70,000, and that the Glendale Community College District received $66,000 for Student Financial Aid Administration and $22,888 for Fee Waiver Administration, both allocated as authorized by Education Code section 76300, subdivision (i). DOF believes that eligibility determination is fully funded and not a reimbursable mandate.

In its 11/12/01 rebuttal to DOF's comments on *Enrollment Fee Waivers* (00-TC-15), claimant objects to DOF's comments as legally incompetent and in violation of California Code of Regulations, title 2, section 1183.02(d) because (1) they are not signed under penalty of perjury by an authorized representative that they are true and complete to the best of the representative's personal knowledge or information and belief, and (2) they are not supported by documentary evidence authenticated by declarations under penalty of perjury (Cal. Code Regs., tit. 2, § 1183.02 (c)(2).). Claimant argues that DOF's comments constitute hearsay.

Claimant also disputes DOF's assertion of revenue sufficient to fund any requirements for determining eligibility for BOG fee waivers or fee exemptions. Claimant asserts that Government Code section 17556, subdivision (e), indicates that test claim statutes must include the offsetting revenue in the same legislation, and that claimant already identified the offsetting revenue in the test claim as 7 percent of the fees waived from July 1, 1999 through July 4, 2000 and at ninety-one cents ($0.91) per credit unit waived thereafter pursuant to Education Code section 76300, subdivision (i)(2). Claimant asserts that the cost to implement the mandate will vary from district to district so it cannot be determined if this identified revenue is sufficient for any or all of them.

Staff finds that Education Code section 76300, subdivision (i), does not preclude finding a mandate for waiving fees pursuant to BOG fee waivers. Claimant's assertion in the record indicates that legislative allocations are not sufficient to pay for the waivers under the fee collection program. In sum, staff finds that neither Government Code section 17556, subdivisions (d) and (e), nor the statute's reimbursement mechanism, precludes reimbursement for costs associated with BOG fee waivers or fee exemptions. Should the Commission approve this test claim, revenue as a result of Education Code section 76300, subdivision (i), or any other source, would be determined as offsetting revenue in the parameters and guidelines.[69]

District reporting and accountability (Cal. Code Regs., tit. 5, § 58630.): In its 9/25/01 comments, DOF argues that the reporting and accounting activities do not constitute reimbursable mandates because claimant seeks reimbursement to document and account for funds allocated for collection of enrollment fees, but section 58630 only refers to identification and documentation of financial assistance, not enrollment fee collection. Therefore, any attempt to claim reimbursement for the accounting and documentation of enrollment fees should be denied. DOF also asserts that this activity receives funding from both the two percent funds for fee waiver administration and the seven percent fund for Student Financial Aid Administration.

DOF is correct in observing that section 58630 only pertains to financial assistance. As to prior receipt of funding, Education Code section 76300, subdivision (i)(2) states, "From funds provided in the annual Budget Act, the Board of Governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to ninety-one cents ($0.91) per credit unit waived pursuant to subdivision (g) and (h) **for determination of financial need and delivery of student financial aid services**, on the basis of the number of students for whom fees are waived." (Emphasis added.) This funding would be considered as an offset in the parameters and guidelines for this test claim should the Commission adopt this analysis.

In summary, there is nothing in the record to indicate that the Legislature repealed other programs or appropriated sufficient funds for enrollment fee collection or BOG fee waivers or fee exemptions.

Conclusion

Based on the foregoing analysis, staff concludes that the test claim legislation imposes a partial reimbursable state-mandated program on community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

- Calculating and collecting the student enrollment fee for each student enrolled except for nonresidents, and except for special part-time students cited in section 76300, subdivision (f). (Ed. Code, § 76300, subds. (a) & (b); Cal. Code Regs., tit. 5, §§ 58501, 58502 & 58503.);
- Exempting or waiving student fees in accordance with the groups listed in Education Code section 76300, subdivisions (e), (g) and (h);
- Waiving fees for students who apply for and are eligible for BOG fee waivers (Cal.Code Regs., tit. 5, §§ 58612, 58613 & 58620.);

[69] California Code of Regulations, title 2, section 1183.1, subdivision (a), paragraphs (8) and (9).

- Reporting to the CCC the number of and amounts provided for BOG fee waivers. (Cal. Code Regs., tit. 5, § 58611.);
- (1) Documenting public benefits for recipients of Temporary Assistance to Needy Families, SSI/SSP, and General Assistance, or (2) Documenting those eligible for BOG fee waivers under income standards; and (3) for new directors/managers/ coordinators/officers in charge of day-to-day operations of the financial aid office, attending training offered by the Chancellor's Office within the first year of their appointment. (Cal. Community Colleges Chancellor's Office, Board of Governors Fee Waiver Program and Special Programs, 2000-2001 Program Manual, effective July 1, 2000 – June 30, 2001, Sections 4.2.2, 4.3.4 & 11.3);
- Adopting procedures that will document all financial assistance provided on behalf of students pursuant to chapter 9 of title 5 of the California Code of Regulations; and including in the procedures the rules for retention of support documentation which will enable an independent determination regarding accuracy of the district's certification of need for financial assistance. (Cal. Code Regs., tit. 5, § 58630, subd. (b).)

Staff also finds that all other test claim statutes, regulations, and executive orders (including the remainder of the BOG Fee Waiver Program Manual) not cited above do not impose reimbursable state-mandated activities within the meaning of article XIII B, section 6.

Recommendation

Staff recommends that the Commission adopt the staff analysis and approve the test claim for the activities listed above.

Should the Commission adopt staff's recommendation to approve this test claim, any offsets[70] would be identified as such in the parameters and guidelines.

[70] California Code of Regulations, title 2, section 1183.1, subdivision (a), paragraphs (8) and (9).

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EXHIBIT A

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

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JUN 28 2000

COMMISSION ON STATE MANDATES

TEST CLAIM FORM

Claim No. 99-TC-13

Local Agency or School District Submitting Claim

LOS RIOS COMMUNITY COLLEGE DISTRICT
1919 Spanos Court
Sacramento, CA 95825

Contact Person

Keith B. Petersen, President
SixTen and Associates

Telephone Number

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Address

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Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network
School Services of California
1121 L Street, Suite 1060
Sacramento, CA 95814

Voice: (916) 446-7517
Fax: (916) 446-2011

This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

Enrollment Fee Collection

Chapter 1, Statutes of 1984XX	Chapter 274, Statutes of 1984	Education Code Section 76300
Chapter 1401, Statutes of 1984	Chapter 920, Statutes of 1985	Title 5, California Code of Regulations
Chapter 1454, Statutes of 1985	Chapter 46, Statutes of 1986	Sections 58500 -58508
Chapter 394, Statutes of 1986	Chapter 1118, Statutes of 1987	
Chapter 136, Statutes of 1989	Chapter 114, Statutes of 1991	Chapter 703, Statutes of 1992
Chapter 8, Statutes of 1993	Chapter 66, Statutes of 1993	Chapter 67, Statutes of 1993
Chapter 1124, Statutes of 1993	Chapter 153, Statutes of 1994	Chapter 422, Statutes of 1994
Chapter 308, Statutes of 1995	Chapter 63, Statutes of 1996	Chapter 72, Statutes of 1999

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Louise Davatz, Executive Vice-Chancellor
Finance and Administration

Telephone No.

Voice: (916) 568-3021
FAX: (916) 568-3075

Signature of Authorized Representative

X

Date

June 22, 2000

PART I. AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government Code section 17551 (a) to ". . . hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." The Los Rios Community College District is a "school district" as defined in Government Code section 17519.[1]

PART II. LEGISLATIVE HISTORY OF THE CLAIM

This test claim alleges mandated costs subject to reimbursement by the state for community colleges to collect student enrollment fees. There was no requirement to perform these duties prior to 1984.

Chapter 1, Statutes of 1984, Second Extraordinary Session, Section 7, operative July 1, 1984, added Education Code section 72252[2] to require for the first time, at

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[1] Government Code Section 17519, as added by Chapter 1459/84:

"School district" means any school district, community college district, or county superintendent of schools.

[2] Education Code section 72252, as added by Chapter 1/84/7, Second Extraordinary Session, approved January 26, 1984, operative July 1, 1984.

(a) Commencing with the semester, term, or quarter which begins after July 31, 1984, the governing board of each community college district shall charge each student a fee, pursuant to the provisions of this section.

(b) The fee prescribed by this section shall equal fifty dollars ($50) per semester for students enrolled in classes totaling six or more credit semester units, and five dollars ($5) per unit per semester for students enrolled in classes totaling less than

subdivision (a), that the community colleges collect a student enrollment fee, specified at subdivision (b) to be $50 per semester for the students enrolled in classes totaling six or more credit semester units, to be proportionally adjusted by the Chancellor for term lengths based upon a quarter system or other alternative system. Subdivision (c) allowed a revenue credit of 2% of the student enrollment fees collected or exempted for the cost of collecting or exempting the student enrollment fee. Subdivision (d) required the Chancellor to reduce apportionments by up to 10 percent to any district which does not collect the student enrollment fees. Subdivision (e) exempted students enrolled in

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six credit semester units.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system or other alternative system approved pursuant to Section 78002.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from reimbursements received for fees exempted pursuant to subdivision (f) shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district which does not collect the fees prescribed by this section.

(e) The fee requirement shall not apply to students enrolled in the noncredit courses designated by Section 84711.

(f) The fee requirements of this section shall not apply to a student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or the General Assistance Program.

(g) The board of governors shall adopt regulations implementing the provisions of this section as regulations in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of title 2 of the Government Code.

(h) This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

certain noncredit courses. Subdivision (f) exempted a student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or the General Assistance Program. Subdivision (g) required the board of governors to adopt regulations implementing the provisions of Section 72252. Subdivision (h) established a January 1, 1988, repealer unless a later enacted statute, chaptered before January 1, 1988, deletes or extended that date. Section 19 of Chapter 1, Statutes of 1984XX established a funding scheme for those students who could not afford the student enrollment fees.[3]

Chapter 274, Statutes of 1984, operative July 2, 1984 as a matter of urgency, Section 3 amended Section 72252, as adopted by Chapter 1, Statutes of 1984XX, at subdivision (b) to require collection of student enrollment fees for summer sessions, intersessions, and other short-term courses. New subdivision (g) indicated that the financial aid application requirements would not to apply to students enrolling for less than six credit semester units. Previous subdivisions (g) and (h) were renumbered (h) and (i) respectively.

Chapter 1401, Statutes of 1984, Section 2, effective January 1, 1985, amended

[3] The funding scheme provided by Section 19, of Chapter 1, Statutes of 1984XX, became the subject matter of Education Code Section 72252.1, enacted pursuant to Chapter 1118, Statutes of 1987. Chapter 8, Statutes of 1993, repealed Section 72252.1, transferring its contents to new Section 76310, effective April 15, 1993. Section 76310 was repealed by Chapter 1124, Statutes of 1993, effective January 1994, and its language transferred to Section 76300, subdivision (i).

Section 72252, as amended by Chapter 274, Statutes of 1984, at subdivision (e) to exempt students attending community college courses at campus of the California State Universities or the University of California.

Two double-joined statutes, Chapter 920, Statutes of 1985, Section 1, and Chapter 1454, Statutes of 1985, Section 2, amended Section 72252 resulting in a discretionary exemption of "special part-time students admitted pursuant to Section 76001."

Chapter 46, Statutes of 1986, Section 1, and Chapter 394, Statutes of 1986, Section 2, amended subdivision (h) to allow financial aid funds to be awarded without the formal procedures required by Section 69500 and other sections.

Chapter 1118, Statutes of 1987, Section 7, amended subdivision (b) to change the student enrollment fees charged to $5 per unit, up to a maximum of $50 per semester. Subdivision (g) was amended to note that the AFDC and SSI exemptions established in Section 19 of Chapter 1/844, were now located in new Section 72252.1. The 1988 repealer was extended to January 1, 1992.

Chapter 136, Statutes of 1989, Section 3, added new subdivision (h) to eliminate the waiver of formal financial aid application, and added language exempting the family members of certain California National Guard members. Former subdivisions (h), (i), and (j), were renumbered (i), (j), and (k), respectively.

The Board of Governors enacted or revised Title 5, California Code of Regulations Sections 58500 through 58508 effective March 4, 1991 to implement the

student enrollment fee collection procedures. The current language includes revisions through 1995. Section 58500 requires each district to charge each student a student enrollment fee for enrollment in credit courses pursuant to Education Code section 76300. Section 58501 specifies the semester, quarter, and fractional unit student enrollment fee amounts. Section 58501.1, pertained to a "differential enrollment fee" which is no longer collected. Section 58502 requires that the student enrollment fee be charged at the time of enrollment, with discretionary deferrals. Section 58503 allows for prorated fees for variable unit classes. Section 58504, repealed in 1993, related to short-term classes. Section 58505, repealed in 1993, related to multi-term classes. Section 58506, repealed in 1993, related to summer sessions and intersession classes. Section 58507 requires the student enrollment fee to be adjusted for schedule changes. Section 58508 provides very specific guidelines for the refund of student enrollment fees.

Chapter 114, Statutes of 1991, Section 4, amended subdivision (b) to impose a $1 surcharge, up to a maximum of $10.00 per semester for the 1991-92 school year. The repealer was updated to January 1, 1995.

Chapter 703, Statutes of 1992, Section 11, amended subdivision (b) to increase the student enrollment fee to $10 per semester unit.

Chapter 8, Statutes of 1993, Section 29, repealed Section 72252. Chapter 8/93, Section 34 added new Section 76300 which is substantially similar to previous section 72252. After amendments by Chapter 66, Statutes of 1993, Section 34, Chapter 67,

Statutes of 1993, Section 1, and Chapter 1124, Statutes of 1993, Section 1, the amount of the student enrollment fee charged was increased to $13 per semester. Subdivision (g) was expanded to include exemptions for the new Board of Governor's Grant (BOGG) students. Subdivision (i) was amended to include the Budget Act language previously located in other sections. The new language provided a 2% credit for the student enrollment fees waived for BOGG and National Guard exempt students. A further 7% credit was provided for the cost of the administrative process of making the financial aid determinations for the determination of financial need and delivery of student financial aid services on the basis of the number of students for whom student enrollment fees are waived. The repealer date was moved to July 1, 1995. (While the 2% credit is within the scope of this test claim, the 7% credit is not since this test claim is not claiming any cost for Board of Governor's Grant waiver or other financial aid determinations.)

Chapter 153, Statutes of 1994, Section 10, and Chapter 422, Statutes of 1994, Section 2, each enacted as urgency measures, resulted in a change to subdivision (c) to change the revenue reference from the property tax calculation to the total district revenue entitlement. Note that the July 1, 1995 repealer was not changed.

Section 76300 self-repealed on July 1, 1995, pursuant to Chapter 422, Statutes of 1994. Chapter 308, Statutes of 1995, Section 20,[4] operative August 3, 1995 as a

[4] Education Code section 76300, as added by 308/95/20

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(a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) The fee prescribed by this section shall be thirteen dollars ($13) per unit per semester.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and also shall proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84711.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. The governing board of a community college district also shall waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the

matter of urgency added a new Section 76300 which was substantially the same as the version repealed thirty-four days previous to the enactment of Chapter 308. Section 47 of Chapter 308/95[5] indicated that the new Section 76300 would apply to students enrolled on or after July 1, 1995 and the operative date of Chapter 308/75.

Chapter 63, Statutes of 1996, Section 1, added as new paragraph (3) at subdivision (e), contract education courses as a new class of exempted courses. The

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active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) and (h).

From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) and (h). From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 7 percent of the fee waivers provided pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992-93 fiscal year.

(j) The board of governors shall adopt regulations implementing this section.

[5] Chapter 308, Statutes of 1985, Section 47, an uncodified requirement.

The governing board of a community college district shall charge the fee described in Section 76300 of the Education Code, as added by this act, to a student enrolled in the community college district who registered or enrolled between July 1, 1995, and the date upon which this act becomes operative.

self-repealer was also eliminated.

Chapter 72, Statutes of 1999, Section 6,[6] changed the student enrollment fee

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[6] Education Codes section 76300, as amended by 72/99/6, effective July 6, 1999 as a matter of urgency

(a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) (1) The fee prescribed by this section shall be ~~thirteen~~ twelve dollars (~~$13~~ 12) per unit per semester, effective with the fall term of the 1998-99 academic year, and eleven dollars ($11) per unit per semester effective with the fall term of the 1999-2000 academic year.

(2) The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and also shall proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section ~~84711~~ 84757.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(3) Students enrolled in credit contract education courses pursuant to Section 78021, if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting and if these students are not included in the calculation of the average daily attendance of that district.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

structure to $12 per semester unit for the 1998-99 academic year and $11 for the 1999-2000 year.

(g) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. The governing board of a community college district also shall waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, ~~means~~ refers to a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) (1) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) and (h).

(2) From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) and (h). From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 7 percent of the fee waivers provided pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992-93 fiscal year.

(j) The board of governors shall adopt regulations implementing this section.

PART III. STATEMENT OF THE CLAIM

SECTION 1. REQUIREMENT FOR STATE REIMBURSEMENT

The statutes, Education Code sections, and Title 5 California Code of Regulations sections referenced in this test claim result in community college districts incurring costs mandated by the state, as defined in Government Code section 17514[7], by creating new state-mandated duties related to the uniquely governmental function of providing public education[8] to students and these statutes apply to public schools and do not apply generally to all residents and entities in the state.[9]

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[7] Government Code section 17514, as added by Chapter 1459/84:

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

[8] Education Code section 66700, as amended by Chapter 1372, Statutes of 1990:

The California Community Colleges are postsecondary schools and shall continue to be a part of the public school system of this state. The Board of Governors of the California Community Colleges shall prescribe minimum standards for the formation and operation of the California Community Colleges and exercise general supervision over the California Community Colleges.

[9] Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 275 Cal.Rptr. 449, 225 Cal.App.3d 155:

"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. v. State of California (1987) 190 Cal.App.3d at p. 537) Further, public

The new duties mandated by the state upon community colleges require state reimbursement of the direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, staff and student training, travel, and unfunded or unreimbursed BOGG or other student enrollment fee grants or awards, to implement the following activities:

A) Determine the number of credit courses for each student subject to the student enrollment fees.

B) Calculate and collect the student enrollment fee for each nonexempt student enrolled, and provide a waiver of student enrollment fees for exempt students.

C) Calculate, collect, waive, or refund student enrollment fees due to subsequent timely program changes or withdrawal from school.

D) Enter the student enrollment fee collection and waiver information into the district cashier system and data processing and accounting systems

E) Process all agency billings for students whose student enrollment fees are waived.

F) Prepare and submit reports regarding the student enrollment fees collected and waived as required by the Board of Governor's and other state agencies.

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education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

Failure to implement this mandate will result in the reduction of the total district revenue by up to ten percent pursuant to Education Code section 76300, subdivision (d).

SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

None of the Government Code Section 17556[10] statutory exceptions to a finding

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[10] Government Code section 17556 as last amended by Chapter 589/89:

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

of costs mandated by the state apply to this statute. Note that to the extent community college districts may have previously performed functions similar to those mandated by the referenced code sections, such effort did not establish a preexisting duty that would relieve the state of its constitutional requirement to later reimburse community college districts when these activities became mandated.[11]

SECTION 3. FUNDING FOR THE STATE MANDATE

To the extent that State funds are, and continue to be appropriated, allocated, or otherwise credited to the community college districts, pursuant to Education Code section 76300, subdivisions (c) and (i) (2), in the annual Budget Act, or from other state sources, for the purpose of reimbursing the two-percent of the student enrollment fees collected or waived, these amounts are a reduction to the total costs mandated by the state to implement Section 76300 and the relevant Title 5, California Code of Regulations sections.

Inasmuch as this test claim does not seek reimbursement for the administrative process of determining a student's eligibility for a Board of Governor's Grant or other delivery of student financial aid services, the seven-percent funding provided pursuant to Education Code section 76300, subdivision (i) (2), does not qualify to reduce the

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[11] Government Code section 17565:

If a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.

total costs mandated by the state alleged by this test claim.

PART IV. ADDITIONAL CLAIM REQUIREMENTS

The following elements of this claim are provided pursuant to Section 1183, Title 2, California Code of Regulations:

Exhibit 1: The Declaration of Carrie Bray, Director, Accounting Services, for Los Rios Community College District, that describes the requirements and estimated costs to perform the mandate.

Exhibit 2: Education Code sections and Title 5, California Code of Regulations sections cited.

Exhibit 3: Statutes cited:

Chapter 1, Statutes of 1984XX

Chapter 274, Statutes of 1984

Chapter 1401, Statutes of 1984

Chapter 920, Statutes of 1985

Chapter 1454, Statutes of 1985

Chapter 46, Statutes of 1986

Chapter 394, Statutes of 1986

Chapter 1118, Statutes of 1987

Chapter 136, Statutes of 1989

Chapter 114, Statutes of 1991

Chapter 703, Statutes of 1992

Chapter 8, Statutes of 1993

Chapter 66, Statutes of 1993

Chapter 67, Statutes of 1993

Chapter 1124, Statutes of 1993

Chapter 153, Statutes of 1994

Chapter 422, Statutes of 1994

Chapter 308, Statutes of 1995

Chapter 63, Statutes of 1996

Chapter 72, Statutes of 1999

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PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on June 21, 2000, at Sacramento, California, by:

Louise Davatz, Executive Vice-Chancellor, Finance and Administration
Los Rios Community College District
1919 Spanos Court
Sacramento, CA 95825
Voice: 916-568-3021
Fax: 916-568-3078

/

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PART VI. APPOINTMENT OF REPRESENTATIVE

Los Rios Community College District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.

Louise Davatz, Executive Vice-Chancellor
Finance and Administration
Los Rios Community College District

6/21/00
Date

/

/

72/99 Enrollment Fee Collection
Declaration of Carrie Bray, Director of Accounting Services
Los Rios Community College District Exhibit 1

DECLARATION OF CARRIE BRAY,

DIRECTOR OF ACCOUNTING SERVICES,

LOS RIOS COMMUNITY COLLEGE DISTRICT

COSM No. _____

TEST CLAIM OF LOS RIOS COMMUNITY COLLEGE DISTRICT

Chapter 1, Statutes of 1984XX
Chapter 274, Statutes of 1984
Chapter 1401, Statutes of 1984
Chapter 920, Statutes of 1985
Chapter 1454, Statutes of 1985
Chapter 46, Statutes of 1986
Chapter 394, Statutes of 1986
Chapter 1118, Statutes of 1987
Chapter 136, Statutes of 1989
Chapter 114, Statutes of 1991
Chapter 703, Statutes of 1992
Chapter 8, Statutes of 1993
Chapter 66, Statutes of 1993
Chapter 67, Statutes of 1993
Chapter 1124, Statutes of 1993
Chapter 153, Statutes of 1994
Chapter 422, Statutes of 1994
Chapter 308, Statutes of 1995
Chapter 63, Statutes of 1996
Chapter 72, Statutes of 1999

Title 5, California Code of Regulations, Sections 58500 - 58508
Education Code Section 76300
Enrollment Fee Collection

I, Carrie Bray, Director, Accounting Services, Los Rios Community College District, make the following declaration and statement:

In my capacity as Director of Accounting Services, I am responsible for implementing the requirements of Education Code section 76300, (former Section 72252) as added by Chapter 1, Statutes of 1984, Second Extraordinary Session and last amended by Chapter 72, Statutes of 1999, and supplemented by the above referenced sections of Title 5, California Code of Regulations, which requires the District to perform the following administrative tasks to, at the time the student is enrolled, charge an enrollment fee of $12 per unit, beginning the fall term of 1998-99, and $11 per unit, beginning the fall term of 1999-2000, and proportional or fractional amounts thereof for summer terms and shorter periods of instruction and variable unit classes:

ACTIVITIES REQUIRED TO IMPLEMENT THE MANDATE

A) Determine the number of credit courses for each student subject to the student enrollment fees.

B) Calculate and collect the student enrollment fee for each nonexempt student enrolled, and provide a waiver of student enrollment fees for exempt students.

C) Calculate, collect, waive, or refund student enrollment fees due to subsequent timely program changes or withdrawal from school.

D) Enter the student enrollment fee collection and waiver information into the district cashier system and data processing and accounting systems.

E) Process all agency billings for students whose student enrollment fees are waived.

F) Prepare and submit reports regarding the student enrollment fees collected and waived as required by the Board of Governor's and other state agencies.

ESTIMATED UNFUNDED COST TO IMPLEMENT THE MANDATE

It is estimated that the District incurred more than approximately $677,640 in staffing and other costs (or about $4.60 per student enrollment) for the period of July 1998 through June 1999, to implement these new duties mandated by the state in excess of the two-percent of the enrollment fees retained or credited to the District from the State pursuant to Education Code section 76300, subdivisions (c) and (i) (2), and related Budget Act appropriations, for the purpose of implementing this mandate, and for which it cannot otherwise obtain reimbursement.

Declaration of Carrie Bray, Director of Accounting Services
RE: Test Claim of Los Rios Community College District

CERTIFICATION

The foregoing facts are known to me personally and if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED, this 22nd th day of June 2000 in the City of Sacramento, California.

Carrie Bray, Director
Accounting Services
Los Rios Community College District

ATTACHMENT TO THE DECLARATION OF CARRIE BRAY,
DIRECTOR OF ACCOUNTING SERVICES,
TEST CLAIM OF LOS RIOS COMMUNITY COLLEGE DISTRICT

Education Code Section 76300
Enrollment Fee Collection and Exemptions

FOR FISCAL YEAR 1998-99

Total student enrollment was about 146,500
Total BOGG enrollment was about 41,400, or 28%

Cost of Enrollment Fee Collection

1. College Business Office Enrollment, Collections, Refunds, Account Posting

   $5.50 per student per semester x 146,500 enrollments = $805,750

Cost of Refunds and Schedule Adjustments

2. Processing student refunds: Audit and stuff for mailing 21,300 student refunds.

   Labor cost of 12 cents and postage of 32 cents per warrant mailed = $.54 refund

   21,300 refunds per year x $.54 = $11,500

   Total Costs $817,250

Funding Offsets

3. 2% of Enrollment Receipts = 2% of about $6,980,500 = $139,610

NET REIMBURSABLE COST: $817,250 - $139,610 = **$667,640**

AMOUNT PER ENROLLMENT: $667,640 divided by 146,500 = **$4.63**

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivision (f) shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement shall not apply to students enrolled in the noncredit courses designated by Section 84711, or to California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be defrayed pursuant to Section 72252.1 for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(h) Student financial aid funds appropriated for the purpose of assisting students to pay the fee required by this section may be awarded without regard to the requirements of Chapter 2 (commencing with Section 69500) of Part 42.

(i) The board of governors shall adopt regulations implementing this section as regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(j) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1992, deletes or extends that date.

(Added by Stats.1983–84, 2d Ex.Sess., c. 1, § 7, operative July 1, 1984. Amended by Stats.1984, c. 274, § 3, eff. July 3, 1984, operative July 3, 1984; Stats.1984, c. 1401, § 2; Stats.1985, c. 920, § 1; Stats.1985, c. 1454, § 1, operative July 1, 1986; Stats.1986, c. 46, § 1; Stats.1986, c. 394, § 2, eff. July 17, 1986; Stats.1987, c. 1118, § 7.)

Repeal

Section 72252 is repealed by force of its own terms on Jan. 1, 1992.

Historical Note

Section 1 of Stats.1983–84, 2d Ex.Sess., c. 1, provides:

"It is the intent of the Legislature that:

"(a) Community colleges remain a low-cost segment of public postsecondary education.

"(b) Financial assistance shall be provided for all low-income students attending community college upon the imposition of fees.

"(c) The costs assessed of students in the 1983–84 fiscal year for instructional materials pursuant to Section 78930 be eliminated and

funded directly in subsequent fiscal years from the revenues prescribed by this act.

"(d) The Legislature further recognizes and shares the Governor's intention that community college fees not be increased above the levels prescribed by this act.

"(e) For semesters, terms, and quarters which begin after January 1, 1988, the total fees and charges paid by students pursuant to Section 72252 of the Education Code, as added by Section 7 of this act, shall not exceed 5 percent of the total of state apportionments and local property tax revenues per unit of credit average daily attendance."

Section 17 of Stats.1983–84, 2d Ex.Sess., c. 1, provides:

"(a) It is the intent of the Legislature to ensure that the imposition of a mandatory fee does not impair access to, or the quality of, California community colleges. To achieve this purpose, the Chancellor of the California Community Colleges, in consultation with the California Postsecondary Education Commission, shall conduct a study of the impact of the mandatory fee upon California community colleges. The study shall determine the fee's impact upon all of the following:

"(1) Student enrollments.

"(2) Ethnic distribution of students.

"(3) Income distribution of students.

"(4) The distribution of full-time and part-time students.

"(5) Changes in the staffing requirements and costs of administration.

"(6) The availability of federal, state, and other sources of financial aid to community college districts.

"(7) The administration and distribution of the financial aid prescribed by this act by the chancellor's office and at the district level.

"The chancellor may collect from community college districts any data necessary to conduct the study.

"Based upon the study, the chancellor shall submit his or her findings and recommendations to the Joint Legislative Budget Committee and the California Postsecondary Education Commission in a progress report on or before January 1, 1987, and in a final report on or before July 1, 1987.

"(b) The chancellor shall conduct the study pursuant to subdivision (a) in consultation with an advisory committee appointed by the chancellor and composed of representatives from community college districts, the Department of Finance, and the Office of the Legislative Analyst. District representatives on the advisory committee may include students, faculty members, administrators, and governing board members.

"(c) The California Postsecondary Education Commission shall submit to the Legislature its written comments and recommendations regarding the progress report and the final report filed by the chancellor pursuant to subdivision (a).

"(d) The chancellor shall conduct a study on the level of noncredit courses, enrollments, and average daily attendance offered at the community colleges.

"The study shall include information on the following:

"(1) The number of students enrolled in noncredit courses offered at the community colleges pursuant to the categories specified in Section 84711 of the Education Code.

"(2) The impact a mandatory fee would have on student enrollments in the community colleges and on enrollments in adult education programs which offer similar courses in programs operated by school districts and in regional occupational centers and programs.

"The study shall be submitted to the legislative fiscal committees by no later than March 15, 1985."

Operative date of Stats.1984, c. 274, see Historical Note under § 32033.

Effect of amendment of section by two or more acts at the same session of the legislature, see Government Code § 9605.

Sections 3 and 4 of Stats.1985, c. 1454, provide:

"Sec. 3. Sections 1 and 2 of this act shall become operative on July 1, 1986, except as otherwise provided in Section 4.

"Sec. 4. Section 2 of this bill incorporates amendments to Section 72252 of the Education Code proposed by both this bill and AB 979 [vetoed Oct. 1, 1985]. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1986, (2) each bill amends Section 72252 of the Education Code, and (3) this bill is enacted after AB 979, in which case Section 72252 of the Education Code, as amended by Section 1 of AB 979, shall remain operative only until July 1, 1986, at which time Section 2 of this bill shall become operative, and Section 1 of this bill shall not become operative."

Effect of amendment of section by two or more acts at the same session of the legislature, see Government Code § 9605.

Former § 72252, enacted by Stats.1976, c. 1010, § 2, derived from Educ.C. § 25502.3, added by Stats.1965, c. 859, § 1, amended by Stats.1970, c. 102, § 449; Stats.1974, c. 989,

§ 14, relating to a program of studies on a quarter system or trisemester basis, was repealed by Stats.1981, c. 470, p. 1746, § 70; Stats.1981, c. 1000, p. 3862, § 1.

Cross References

Defraying of fee requirements for child or dependent of specified veteran, see § 72252.7.

Code of Regulations References

Student fees, see 5 Cal. Code of Regs. 58500 et seq.
Student financial aid, see 5 Cal. Code of Regs. 58600 et seq.

Library References

Colleges and Universities ⇐9.20.
WESTLAW Topic No. 81.
C.J.S. Colleges and Universities § 27.

§ 72252.1. Financial aid funds; allocation; administration and award of funds; reversion of excess; repeal

(a) It is the intent of the Legislature to provide adequate funding for the purpose of providing financial aid funds directly to low-income students who cannot pay the fee specified in subdivision (b) of Section 72252 and for the purpose of defraying fees pursuant to subdivision (g) of Section 72252, to be provided as follows:

Period	Amount
July 1, 1988, to June 30, 1989	15,000,000
July 1, 1989, to June 30, 1990	15,000,000
July 1, 1990, to June 30, 1991	15,000,000
July 1, 1991, to January 1, 1992	7,500,000

(b) It is the intent of the Legislature that all funds provided pursuant to subdivision (a) be allocated to community college districts. In prescribing the manner of allocation, the board shall endeavor to ensure that students with similar characteristics shall be treated similarly with respect to the provision of financial aid pursuant to this section, regardless of the community college they attend.

In allocating funds pursuant to this section, the board shall consider the number of students eligible for such assistance in the prior academic year and other factors that may have bearing on the amount of these funds required by each community college district.

The board may allocate up to 7 percent of the total amount of funds provided pursuant to subdivision (a) to community college districts for delivery of student financial aid services required as a result of this section. Funds so allocated to a district for delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1983–84 fiscal year, adjusted annually in accordance with the cost-of-living adjustment to the general apportionments.

The board shall be provided adequate resources through the annual Budget Act to support state administration of this financial aid program.

Repealed

§ 72247.3. Repealed by Stats.1993, c. 8 (A.B.46), § 29, eff. April 15, 1993

Historical and Statutory Notes

The repealed section, added by Stats.1990, c. 845 (A.B. 3920), § 1, amended by Stats.1991, c. 1091 (A.B.1487), § 26, related to parking fees for Pasadena community college district. See, now, § 76390.

§ 72248. Repealed by Stats.1990, c. 1372 (S.B.1854), § 324

Historical and Statutory Notes

Legislative findings in Stats.1990, c. 1372 (S.B.1854), regarding application of Education Code provisions to community colleges, and authority of community college districts under Const. Art. 9, § 14, see Historical and Statutory Notes under § 40.

See, now, § 72247.

§§ 72249, 72250. Repealed by Stats.1993, c. 8 (A.B.46), § 29, eff. April 15, 1993

Historical and Statutory Notes

Section 72249, added by Stats.1990, c. 1372 (S.B.1854), § 325, related to instructional *materials* provided by students. See, now, § 76365.

Section 72250, added by Stats.1992, c. 703 (S.B.766), § 10, related to fees for students with prior degrees. See, now, § 76330.

§ 72250.5. Repealed by Stats.1991, c. 114 (S.B.381), § 1, eff. July 15, 1991

§ 72251. Repealed by Stats.1991, c. 114 (S.B.381), § 2, eff. July 15, 1991

§§ 72252 to 72254. Repealed by Stats.1993, c. 8 (A.B.46), § 29, eff. April 15, 1993

Historical and Statutory Notes

Section 72252 was amended by Stats.1989, c. 136 § 3; Stats.1991, c. 114 (S.B.381), § 4; Stats.1992, c. 703 (S.B. 766), § 11. See, now, § 76300.

Section 72252.1 was amended by Stats.1989, c. 136, § 4; Stats.1991, c. 114 (S.B.381), § 3. See, now, § 76310.

Section 72252.3. See, now, § 76330.

Section 72252.7. See, now, § 76320.

Section 72253. See, now, § 76375.

Section 72253.3, added by Stats.1991, c. 1038 (S.B.9), § 4, derived from former § 72253.3, added by Stats.1990, c. 1372, § 326, related to student representation fee.

Section 72253.5, added by Stats.1990, c. 1372 (S.B.1854), § 327, derived from former § 78462, added by Stats.1976, c. 1010, § 2, amended by Stats.1977, c. 36, § 310; Stats. 1977, c. 915, § 12, related to adult noncredit course fees. See, now, § 76360.

Section 72253.7, added by Stats.1990, c. 1372 (S.B.1854), § 328, derived from former § 78462.5, added by Stats. 1983, c. 69, § 2, related to fees for classes offered by districts ineligible for state apportionments.

Annotations Under Repealed Sections

SECTION 72252

Historical and Statutory Notes

Section 5 of Stats.1989, c. 136, provides:

"No provision of this act shall apply to the University of California unless the Regents of the University of California, by resolution, makes that provision applicable."

Sections 5 and 6 of Stats.1991, c. 114 (S.B.381), provide:

"Sec. 5. Community college districts shall not include the surcharge imposed pursuant to paragraph (2) of subdivision (b) of Section 72252 when computing their budgets for the 1992–93 fiscal year.

"Sec. 6. Community college districts shall provide sufficient financial aid to ensure that no student is denied access during the 1991–92 academic year due to the imposition of the surcharge pursuant to paragraph (2) of subdivision (b) of Section 72252.

"The Chancellor of the Community Colleges shall provide to the Legislature and the Governor, by January 1, 1992, documentation that no student has been denied access because of the imposition of that surcharge."

Section 17 of Stats.1992, c. 703 (S.B.766), provides:

"(a) Section 72252 of the Education Code, as amended by Section 11 of this act, shall be operative beginning with the first regular academic semester, quarter or term commencing after January 1, 1993.

"(b) Notwithstanding any other provision of law, for that portion of the 1992–93 fiscal year preceding the operative date of Section 72252 of the Education Code as amended by Section 11 of this act, the governing board of each community college district shall charge each student a fee in the amount of six dollars ($6) per unit per semester."

advance of * * * compliance with a lawfully issued subpoena and, in the case of compliance with a court order, if lawfully possible within the requirements of the * * * order.

(Amended by Stats.1996, c. 879 (A.B.1721), § 4.)

§ 76245. Service of subpoena upon a community college employee; copy of record in lieu of personal appearance

The service of a lawfully issued subpoena or a court order upon a community college employee solely for the purpose of causing * * * the employee to produce a school record pertaining to any student may be complied with by that employee, in lieu of the personal appearance as a witness in the proceeding, by submitting to the court, or other agency * * * or person designated in the subpoena, at the time and place required by the subpoena or court order, a copy of that record, accompanied by an affidavit certifying that the copy is a true copy of the original record on file in the community college or community college office. The copy of the record shall be in the form of a photostat, microfilm, microcard, or miniature photograph or other photographic copy or reproduction, or an enlargement thereof.

(Amended by Stats.1995, c. 758 (A.B.446), § 95; Stats.1996, c. 879 (A.B.1721), § 5.)

Chapter 2

FEES

Chapter 2 was added by Stats.1993, c. 8 (A.B.46), § 84, eff. April 15, 1993.

Former Chapter 2 was repealed by Stats.1990, c. 1372 (S.B.1854), § 445.

Article 1

ENROLLMENT FEES AND FINANCIAL AID

Article 1 was added by Stats.1993, c. 8 (A.B.46), § 84.

§ 76300. Student fees; amount; adjustments; computation of apportionments; exemptions; waivers

(a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b)(1) The fee prescribed by this section shall be twelve dollars ($12) per unit per semester, effective with the fall term of the 1998–99 academic year, and eleven dollars ($11) per unit per semester effective with the fall term of the 1999–2000 academic year.

(2) The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and also shall proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84757.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(3) Students enrolled in credit contract education courses pursuant to Section 78021, if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting and if these students are not included in the calculation of the average daily attendance of that district.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. The governing board of a community college district also shall waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, * * *refers to a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i)(1) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) and (h).

(2) From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) and (h). From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 7 percent of the fee waivers provided pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992–93 fiscal year.

(j) The board of governors shall adopt regulations implementing this section.

(Added by Stats.1995, c. 308 (A.B.825), § 20, eff. Aug. 3, 1995. Amended by Stats.1996, c. 63 (A.B.3031), § 1; Stats.1999, c. 72 (A.B.1118), § 6, eff. July 6, 1999.)

Historical and Statutory Notes

1990 Legislation

Former § 76300 was repealed by Stats.1990, c. 1372 (S.B.1854), § 445. See, now, § 84500.

1994 Legislation

Former § 76300, added by Stats.1993, c. 8 (A.B.46), § 34, amended by Stats.1993, c. 66 (S.B.399), § 34; Stats.1993, c. 67 (S.B.1012), § 1; Stats.1993, c. 1124 (A.B.1561), § 1; Stats.1994, c. 153 (A.B.2480), § 10; and Stats.1994, c. 422 (A.B.2589), § 2, relating to imposition of student fees, was repealed by its own terms. See, now, this section.

1995 Legislation

Section 47 of Stats.1995, c. 308 (A.B.825), eff. Aug. 3, 1995, provides:

"The governing board of a community college district shall charge the fee described in Section 76300 of the Education Code, as added by this act, to a student enrolled in the community college district who registered or enrolled between July 1, 1995, and the date upon which this act becomes operative."

Derivation: Former § 76300, added by Stats.1993, c. 8, § 34, amended by Stats.1993, c. 66, § 34; Stats.1993, c. 67, § 1; Stats.1993, c. 1124, § 1; Stats.1994, c. 153, § 10; Stats.1994, c. 422, § 2.

Former § 72252, added by Stats.1983-84, 2d Ex.Sess., c. 1, § 7, amended by Stats.1984, c. 274, § 3; Stats.1984, c. 1401, § 2; Stats.1985, c. 920, § 1; Stats.1985, c. 1454, § 1; Stats.1986, c. 46, § 1; Stats.1986, c. 894, § 2; Stats.1987, c. 1118, § 7; Stats.1989, c. 135, § 3; Stats.1991, c. 114 (S.B.331), § 4; Stats.1992, c. 703 (S.B.766), § 11.

Code of Regulations References

Enrollment fee and differential enrollment fee, see 5 Cal. Code of Regs. § 58500 et seq.

Additions or changes indicated by underline; deletions by asterisks * * *

Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).

2. Editorial correction of HISTORY 1 (Register 95, No. 23).

§ 58316. Appropriation for Emergency Apportionment; Repayment Schedule.

(a) If the procedures pursuant to Sections 58310, 58312 and 58314 fail to stabilize the financial condition of the district before an emergency apportionment is necessary, the Chancellor may seek an appropriation for an emergency apportionment in an amount necessary to maintain the educational programs of the district as specified in the educational plan pursuant to Sections 58310 and 58312 and to preclude a negative ending balance.

(b) For each of three fiscal years, the Controller shall deduct from apportionments paid to a district pursuant to law, an amount not less than one third of the amount actually allocated to the district pursuant to this section, together with amounts representing interest at a rate based on the most current investment rate of the Pooled Money Investment Account as of the date of the disbursement of funds to the district.

For each of three fiscal years, the amount deducted by the Controller pursuant to this subdivision shall be reapportioned to the source of the funds allocated to the district pursuant to this section. Amounts so reapportioned to Section B of the State School Fund shall be apportioned by the Chancellor to districts to alleviate any deficits in state funding in the year in which the loan is made or during the period of repayment. Unless otherwise determined pursuant to subdivision (c), the three-year repayment period shall consist of three consecutive fiscal years commencing with the fiscal year following the year in which the emergency apportionment is made.

(c) Any district which has received an emergency apportionment pursuant to this section may request a revision of the repayment schedule. The request shall be submitted to the Chancellor, the Joint Legislative Audit Committee, the Joint Legislative Budget Committee, and the Director of Finance. The request shall be accompanied by appropriate justification for any deferral of repayment, including a revision to the plans adopted by the district's governing board as specified in this section, together with specified identification of the reasons that the actions were taken by the district to correct the financial problems.

The Chancellor shall consult with representatives of the Joint Legislative Audit Committee, the Joint Legislative Budget Committee, the Director of Finance, and representatives which the Chancellor may select from the chief executive officers and presidents of the other community colleges and districts throughout the state. After consulting with these representatives, the Chancellor may revise the repayment schedule, may forgive the interest payments otherwise compounded as a result of any deferral of payment, and may specify any conditions that he or she determines are necessary to assure the repayment of the emergency apportionment. The Chancellor shall report his or her actions to the Board of Governors, the Director of Finance, the Controller, and Joint Legislative Budget Committee. The Controller shall deduct amounts from the apportionment schedule in accordance with the revised repayment plan.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment of subsections (b) and (c) and repealer of subsection (d) filed 10-25-91; operative 11-24-91 (Register 92, No. 9).
3. Editorial correction of HISTORY 1 (Register 95, No. 23).

§ 58318. Requirement for Employee Indemnity Bond.

The governing board of every community college district shall require each employee of the district, whose duty it is to handle funds of the district, and may, in its discretion, require employees of the district, whose duty it is to handle property of the district, to be bonded under a suitable bond indemnifying the district against loss.

NOTE: Authority cited: Sections 66700 and 70901, Education Code. Reference: Section 70901, Education Code.

HISTORY

1. New section filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 23).

Subchapter 6. Student Fees

Article 1. Enrollment Fee and Differential Enrollment Fee

§ 58500. Definition.

Each district governing board shall charge each student a fee for enrolling in credit courses pursuant to the requirements of Education Code Sections 76300 or 76330 and the requirements of this article. The fee prescribed by Section 76300 shall be known as the enrollment fee, and the fee prescribed by Section 76330 shall be known as the differential enrollment fee.

NOTE: Authority cited: Sections 66700, 70901, 76300 and 76330, Education Code. Reference: Sections 76300 and 76330, Education Code.

HISTORY

1. New chapter 6 (article 1, sections 58500-58507, not consecutive) filed 8-13-84; effective upon filing pursuant to Government Code section 11346.2(d) (Register 84, No. 33).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Amendment of article heading, subsection (a), and NOTE, and repealer of subsection (b) filed 2-24-93; operative 3-26-93 (Register 93, No. 9).
4. Amendment deleting subsection designation filed 5-15-93; operative 6-4-93 (Register 93, No. 25).
5. Amendment of section and NOTE filed 5-25-94; operative 6-24-94. Submitted to OAL for printing only (Register 94, No. 22).
6. Editorial correction of HISTORY 2 (Register 95, No. 23).

§ 58501. Enrollment Fee.

(a) Semester: The enrollment fee charged of students enrolled in a regular semester shall be $13 per credit unit.

(b) Quarter: The enrollment fee charged of students enrolled in a regular quarter session shall be $9 per credit unit.

(c) Fractional Units: The enrollment fee charged for courses with fractional unit value shall be computed by multiplying the fraction times the applicable semester or quarter unit rate and rounding off to the nearest dollar.

NOTE: Authority cited: Sections 66700, 70901 and 76300, Education Code. Reference: Sections 76300 and 76330, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment of section heading, subsection (a)-(c), and NOTE, and repealer of subsection (d) filed 2-24-93; operative 3-26-93 (Register 93, No. 9).
3. Amendment of section and NOTE filed 5-25-94; operative 6-24-94. Submitted to OAL for printing only (Register 94, No. 22).
4. Editorial correction of HISTORY 1 (Register 95, No. 23).

§ 58501.1. Differential Enrollment Fee.

(a) Each district, pursuant to Education Code Section 76330, shall charge a differential enrollment fee of fifty dollars ($50) per semester unit to each student who has been awarded a baccalaureate or graduate degree from any public or private postsecondary educational institution approved to operate by the Council for Private Postsecondary and Vocational Education, accredited by an agency recognized by the United States Department of Education, or operated pursuant to other provisions specified in Section 94303 of the Education Code. For students enrolled in a regular quarter session, the fee shall be $33 per quarter unit.

(b) Fractional Units: The differential enrollment fee charged for courses with fractional unit value shall be computed as prescribed in subsection (c) of Section 58501.

(c) A student is exempted from paying the differential fee if he or she is:

(1) a dislocated worker: A dislocated worker as certified by a state agency in accordance with Subchapter III of the federal Job Training Partnership Act (29 U.S.C. Section 1651);

(2) a displaced homemaker;

(3) a recipient of benefits under the Aid to Families with Dependent Children Program, the Supplemental Security Income/State Supplementary Program, or a general assistance program;

(4) a nonresident student who has paid nonresident tuition;

(5) an enrollee in a course offered pursuant to a contract between the community college and a public or private entity if (A) the contract provides for the payment by the entity of all costs associated with the course and (B) full time equivalent student (FTES) enrollment in the course is not counted for the purpose of determining district or statewide apportionment;

(6) a student who demonstrates financial need in excess of the amount of the fee in accordance with Section 69500 of the Education Code or standards established by the Board of Governors in Section 58600 et seq.;

(7) an employee or volunteer of a public agency that provides police, fire protection, corrections, probation, emergency medical, or emergency medical dispatch services, for any approved course taken for the purpose of fulfilling a state-mandated training requirement, if the course cannot be made available at no charge on a noncredit basis, in accordance with Section 76330.1 of the Education Code;

(8) dependents of certain veterans listed in Section 32320 of the Education Code, effective July 1, 1994, who meet the eligibility requirements as defined in that section. Such students are also exempt from the enrollment fee specified in Section 58501 of this part.

(d) A student who is exempt from paying the differential fee shall be required to pay the enrollment fee prescribed in Section 58501 unless explicitly exempt from the requirement.

(e) A student who pays the differential fee is exempt from paying the enrollment fee prescribed in Section 58501.

NOTE: Authority cited: Sections 66700, 70901 and 76300, Education Code. Reference: Sections 32320, 76300, 76330 and 76330.1, Education Code.

HISTORY

1. New section filed 2-24-93; operative 3-26-93 (Register 93, No. 9).
2. Amendment of section and NOTE filed 5-25-94; operative 6-24-94. Submitted to OAL for printing only (Register 94, No. 22).
3. Editorial correction of subsection (a) (Register 94, No. 38).

§ 58502. Fee Charged at Enrollment.

The enrollment fee or differential enrollment fee shall be charged of a student at the time the student is enrolled in a class. The district governing board may establish a policy authorizing the collection of the fee to be deferred under conditions determined by the governing board.

NOTE: Authority cited: Sections 66700, 70901 and 76300, Education Code. Reference: Sections 76300 and 76330, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment of NOTE filed 2-24-93; operative 3-26-93 (Register 93, No. 9).
3. Amendment of NOTE filed 5-25-94; operative 6-24-94. Submitted to OAL for printing only (Register 94, No. 22).
4. Editorial correction of HISTORY 1 (Register 95, No. 23).

§ 58503. Variable Unit Classes.

A student shall be charged for a variable unit class at the time the student enrolls in the class. The enrollment fee or differential enrollment fee shall be based on the number of units in which the college enrolls the student. If the student later earns additional units, the student may add those units pursuant to the district's policy for adding classes. Any additional enrollment fee or differential enrollment fee shall then be charged of the student. No refund shall be made for units not earned by the student.

NOTE: Authority cited: Sections 66700, 70901 and 76300, Education Code. Reference: Sections 76300 and 76330, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment of section and NOTE filed 2-24-93; operative 3-26-93 (Register 93, No. 9).
3. Amendment of NOTE filed 5-25-94; operative 6-24-94. Submitted to OAL for printing only (Register 94, No. 22).
4. Editorial correction of HISTORY 1 (Register 95, No. 23).

§ 58504. Short-Term Classes.

NOTE: Authority cited: Sections 66700, 70901 and 72252, Education Code. Reference: Section 72252, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Repealer filed 2-24-93; operative 3-26-93 (Register 93, No. 9).
3. Editorial correction of HISTORY 1 (Register 95, No. 23).

§ 58505. Courses Extending Beyond One Term.

NOTE: Authority cited: Sections 66700, 70901 and 72252, Education Code. Reference: Section 72252, Education Code.

HISTORY

1. Amendment filed 3-3-86; effective thirtieth day thereafter (Register 86, No. 10).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Repealer filed 2-24-93; operative 3-26-93 (Register 93, No. 9).
4. Editorial correction of HISTORY 2 (Register 95, No. 23).

§ 58506. Summer Session or Intersession.

NOTE: Authority cited: Sections 66700, 70901 and 72252, Education Code. Reference: Section 72252, Education Code.

HISTORY

1. New section filed 6-12-85; effective thirtieth day thereafter (Register 85, No. 24).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Repealer filed 2-24-93; operative 3-26-93 (Register 93, No. 9).
4. Editorial correction of HISTORY 2 (Register 95, No. 23).

§ 58507. Program Changes.

A community college district may allow a student to add or drop classes during the term pursuant to district policy. The enrollment fee or differential enrollment fee shall be adjusted to reflect added or dropped courses as allowed by district policy.

NOTE: Authority cited: Sections 66700, 70901 and 76300, Education Code. Reference: Sections 76300 and 76330, Education Code.

HISTORY

1. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Amendment of section and NOTE filed 2-24-93; operative 3-26-93 (Register 93, No. 9).
3. Amendment of NOTE filed 5-25-94; operative 6-24-94. Submitted to OAL for printing only (Register 94, No. 22).
4. Editorial correction of HISTORY 1 (Register 95, No. 23).

§ 58508. Refunds.

(a) A community college district governing board shall refund upon request any enrollment fee or differential enrollment fee paid by a student pursuant to Sections 58501 or 58501.1 for program changes made during the first two weeks of instruction for a primary term-length course, or by the 10 percent point of the length of the course for a short-term course.

West's CALIFORNIA LEGISLATIVE SERVICE

STATUTES AND CODE AMENDMENTS 1983–1984 SECOND EXTRAORDINARY SESSION

(1983–1984 ENACTMENTS)

COMMUNITY COLLEGES—FINANCE—FEES

Assembly Bill No. 1

CHAPTER 1

An act to amend Sections 72247, 84700, 84701, 84702, and 84706 of, to amend and repeal Sections 32033, 72640, and 72641 of, to add and repeal Sections 72246.5 and 72252 of, and to repeal and add Sections 72245, 72246, 72250.5, 72251, 78930, 81458, and 82305.6 of, the Education Code, relating to community colleges, and making an appropriation therefor.

[Approved by Governor January 26, 1984. Filed with Secretary of State January 26, 1984.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1, Katz. Community colleges: fees: finance.

(1) This bill would declare the Legislature's intent pertaining to the fees imposed by this bill.

(2) Existing law authorizes the governing board of a community college district to charge various permissiv_ fees.

This bill would, until January 1, 1988, eliminate the authorization to impose a fee (1) upon a participating student when physical

education courses are required to use nondistrict facilities; (2) for filing an application for admission or readmission after the established deadline; (3) for participation in an instructionally-related field trip or excursion within the state; (4) for the cost of medical insurance required for students participating in a field trip or excursion; (5) for instructional materials; (6) for materials used to make articles in adult classes; (7) for health services; (8) for certain transportation to and from community colleges provided by the district; and (9) for adding courses more than 2 weeks after instruction begins. The bill would also exclude a community college district governing board from a provision regarding the selling of the eye protective devices required to be worn in courses involving activities likely to cause injury to the eyes until January 1, 1988.

This bill would impose a state-mandated local program by requiring any district which provided health services in the 1983–84 fiscal year for which it was authorized to charge a fee to maintain health services at the level provided during the 1983–84 fiscal year until January 1, 1988.

With regard to the fees authorized to be charged for parking services, this bill would specify that in no event shall the fees required for these services exceed the actual cost of providing the services. This bill would limit the use of the parking fees to parking services for vehicles and motor vehicles and for the reduction of costs to students and faculty of using public transportation to and from the college.

(3) This bill would impose a state-mandated local program by requiring the governing board of each community college district, commencing with the term which begins after July 31, 1984, to charge each student a fee equal to $50 per semester for students enrolled in classes totaling 6 or more credit semester units, and $5 per unit per semester for those enrolled in classes totaling less than 6 credit semester units, or the equivalent. This requirement would not apply to students enrolled in certain noncredit courses or to recipients of certain public assistance funds.

Ninety-eight percent of the fee proceeds, and of reimbursements received for exemption from the payment of fees by recipients of public assistance, would be deemed to be local property tax revenues for the purpose of computing apportionments.

This bill would require the Chancellor of the California Community Colleges to reduce by up to 10% the funds apportioned to any community college district which fails to collect tuition fees.

The fee requirement would not apply to semesters, terms, or quarters which begin after January 1, 1988.

(4) Existing law requires the chancellor to apportion state aid to community college districts according to a specified procedure.

This bill would make various changes in that procedure.

This bill would permit the chancellor to adjust allocations provided to districts for the period of July through January, as provided, upon the demonstrated need of any community college district for

increased allocation levels in any month which are based on district expenditure patterns and cash flow needs.

(5) Existing law prescribes the method for computation of the average daily attendance for apportionment purposes of a community college district.

If the total actual average daily attendance of a district declined in the 1984–85 fiscal year from the fully funded average daily attendance of the 1982–83 fiscal year, this bill would permit the district to increase its 1984–85 fiscal year average daily attendance up to the level of its 1982–83 fully funded average daily attendance, and would require the chancellor to adjust the 1984–85 base revenues by the appropriate incremental cost rate.

For the 1984–85 fiscal year and each fiscal year thereafter, this bill would also require an adjustment to a district's base revenues to be made, as specified, for the next year if a district's total actual average daily attendance for the current fiscal year is less than its base average daily attendance.

This bill would also prescribe other adjustments in the base revenue computation for the 1984–85 fiscal year to take into account the total amounts prescribed for certain equalization and cost-of-living adjustments.

(6) Under current law, increases in statewide average daily attendance are required to be based upon the rate of change of the state's adult population as determined by the Department of Finance.

This bill would prescribe the basis for, and various requirements relating to, the statewide adult population percentage change reported by the Department of Finance.

(7) This bill would require the chancellor, in consultation with the California Postsecondary Education Commission, to conduct a study of the impact of the mandatory tuition fee upon the California community colleges with regard to specified matters. The chancellor would be required to submit findings and recommendations based upon the study to the Joint Legislative Budget Committee and the California Postsecondary Education Commission in a progress report by January 1, 1987, and in a final report by July 1, 1987. The bill would require the commission to submit written comments and recommendations regarding the progress report and final report to the Legislature. This bill would appropriate $100,000 to the chancellor for the purpose of carrying out the study, and would require the chancellor to enter into an interagency agreement with the California Postsecondary Education Commission to reimburse the commission for the cost of carrying out its duties under these provisions. This bill would also require the chancellor to conduct a specified study regarding noncredit courses.

(8) This bill would appropriate $15,000,000 per year according to a specified schedule to the Board of Governors of the California Community Colleges for purposes of providing financial aid funds directly to low-income students who cannot afford to pay the fee required by this bill, and for purposes of reimbursing districts for the amount of fees lost due to the exemption from the fee requirement

provided to students receiving certain public assistance funds. The chancellor would be required to allocate these funds to community college districts, subject to certain conditions. Districts receiving an allocation of these funds would be required to utilize appropriate financial need criteria, including certain specified criteria. The bill would require the chancellor to submit a plan summarizing the allocations to be made to the California Postsecondary Education Commission, the Legislative Analyst, and the fiscal and educational policy committees of both houses of the Legislature by June 15, 1984. The commission would be required to review the plan and submit its recommendations to the fiscal and education policy committees of each house of the Legislature.

If the amount of funds appropriated by this bill for the above described financial aid and reimbursement exceeds the need for those funds, this bill would require the excess to revert to the General Fund. This bill would also require the Director of Finance to take any available administrative action to transfer the additional amount certified by the chancellor to be necessary for providing that financial aid and reimbursement, if the amounts needed for those purposes are greater than the amounts appropriated by this bill.

(9) Existing law provides for the Capital Outlay Fund for Public Higher Education and appropriates various amounts to that fund.

This bill would transfer $28,000,000 from the unencumbered balance of that fund to the General Fund.

(10) Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

This bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

(11) This bill would become operative on July 1, 1984, with the exception of items (8) and (9), above, which would become operative on the effective date of this bill.

Appropriation: yes.

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

SECTION 1. It is the intent of the Legislature that:

(a) Community colleges remain a low-cost segment of public postsecondary education.

(b) Financial assistance shall be provided for all low-income students attending community college upon the imposition of fees.

(c) The costs assessed of students in the 1983–84 fiscal year for instructional materials pursuant to Section 78930 be eliminated and funded directly in subsequent fiscal years from the revenues prescribed by this act.

(d) The Legislature further recognizes and shares the Governor's intention that community college fees not be increased above the levels prescribed by this act.

(e) For semesters, terms, and quarters which begin after January 1, 1988, the total fees and charges paid by students pursuant to Section 72252 of the Education Code, as added by Section 7 of this act, shall not exceed 5 percent of the total of state apportionments and local property tax revenues per unit of credit average daily attendance.

SEC. 2. Section 32033 of the Education Code is amended to read:

32033. The eye protective devices may be sold to the pupils and teachers ▽ at a price which shall not exceed the actual cost of the eye protective devices to the school or governing board.

This section shall not apply to the governing board of a community college district.

This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1988, deletes or extends that date. If that date is not deleted or extended, then, on and after January 1, 1988, pursuant to Section 9611 of the Government Code, Section 32033 of the Education Code, as added by Section 2 of Chapter 1010 of the Statutes of 1976, shall have the same force and effect as if this temporary provision had not been enacted.

SEC. 3. Section 72245 of the Education Code is repealed.

SEC. 3.5. Section 72245 is added to the Education Code, to read:

72245. The governing board of a community college district may impose a fee on a participating student for the additional expenses incurred when physical education courses are required to use nondistrict facilities.

This section shall become operative January 1, 1988.

SEC. 4. Section 72246 of the Education Code is repealed.

SEC. 4.5. Section 72246 is added to the Education Code, to read:

72246. (a) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than seven dollars and fifty cents ($7.50) for each semester, and five dollars ($5) for summer school, or five dollars ($5) for each quarter for health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health center or centers, authorized by Section 72244, or both.

(b) If pursuant to this section a fee is required, the governing board of a district shall decide the amount of the fee, if any, that a part-time student is required to pay. The governing board may decide whether the fee shall be mandatory or optional.

(c) The governing board of a district maintaining a community college shall adopt rules and regulations that either exempt low-income students from any fee required pursuant to subdivision (a) or provide for the payment of the fee from other sources.

(d) The governing board of a district maintaining a community college shall adopt rules and regulations that exempt from any fee

required pursuant to subdivision (a): (1) students who depend exclusively upon prayer for healing in accordance with the teachings of a bona fide religious sect, denomination, or organization; (2) students who are attending a community college under an approved apprenticeship training program.

(e) All fees collected pursuant to this section shall be deposited in the fund of the district designated by the California Community Colleges Budget and Accounting Manual. These fees shall be expended only for the purposes for which they were collected.

Authorized expenditures shall not include, among other things, athletic trainers' salaries, athletic insurance, medical supplies for athletics, physical examinations for intercollegiate athletics, ambulance services and the salaries of health professionals for athletic events, any deductible portion of accident claims filed for athletic team members, or any other expense that is not available to all students. No student shall be denied a service supported by student health fees on account of participation in athletic programs.

(f) This section shall become operative January 1, 1988.

SEC. 4.7. Section 72246.5 is added to the Education Code, to read:

72246.5. Any community college district which provided health services for which it was authorized to charge a fee pursuant to former Section 72246 in the 1983–84 fiscal year shall maintain health services at the level provided during the 1983–84 fiscal year in the 1984–85 fiscal year and each fiscal year thereafter. This maintenance of effort requirement shall apply to all community college districts which levied a health services fee in the 1983–84 fiscal year, regardless of the extent to which the health services fees collected offset the actual costs of providing health services at the 1983–84 fiscal year level.

This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

SEC. 5. Section 72247 of the Education Code is amended to read:

72247. The governing board of a community college district may require of students in attendance in grades 13 and 14 and employees of the district, the payment of a toll, in an amount not to exceed twenty dollars ($20) per semester or forty dollars ($40) per regular school year to be fixed by the board, for parking services.

Such toll shall only be required of students and employees using parking services.

All such tolls collected shall be deposited in the designated fund of the district in accordance with the California Community Colleges Budget and Accounting Manual and shall be expended only for parking services or for purposes of reducing the costs to students and faculty of the college of using public transportation to and from the college.

Tolls collected for use of parking services provided for by investment of student body funds under the authority of Section 76064 shall be deposited in a designated fund in accordance with the California Community Colleges Budget and Accounting Manual for repayment to the student organization.

"Parking services," as used in this section, means the purchase, construction, and operation and maintenance of parking facilities for vehicles and motor vehicles as defined by Sections 415 and 670 of the Vehicle Code, and the reduction of costs to students and faculty of using public transportation to and from the college.

In no event may the fee required pursuant to this section exceed the actual cost of providing parking services.

SEC. 5.5. Section 72250.5 of the Education Code is repealed.

SEC. 5.7. Section 72250.5 is added to the Education Code, to read:

72250.5. The governing board of a community college district may impose a fee, not to exceed one dollar ($1), for the actual pro rata cost for services relative to a program change consisting of adding one or more courses any time after two weeks from the commencement of instruction in any term. Such fee shall not be charged for changes initiated or required by the community college.

This section shall become operative January 1, 1988.

SEC. 6. Section 72251 of the Education Code is repealed.

SEC. 6.5. Section 72251 is added to the Education Code, to read:

72251. The governing board of any community college district may impose a late application fee of not to exceed two dollars ($2) for any application for admission or readmission which is filed after the date established by the governing board for the filing of applications for admission or readmission to the community college.

This section shall become operative January 1, 1988.

SEC. 7. Section 72252 is added to the Education Code, to read:

72252. (a) Commencing with the semester, term, or quarter which begins after July 31, 1984, the governing board of each community college district shall charge each student a fee, pursuant to the provisions of this section.

(b) The fee prescribed by this section shall equal fifty dollars ($50) per semester for students enrolled in classes totaling six or more credit semester units, and five dollars ($5) per unit per semester for students enrolled in classes totaling less than six credit semester units.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system or other alternative system approved pursuant to Section 78002.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from reimbursements received for fees exempted pursuant to subdivision (f) shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district which does not collect the fees prescribed by this section.

(e) The fee requirement shall not apply to students enrolled in the noncredit courses designated by Section 84711.

(f) The fee requirements of this section shall not apply to a student who, at the time of enrollment, is a recipient of benefits

under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary program, or the General Assistance Program.

(g) The board of governors shall adopt regulations implementing the provisions of this section as regulations in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(h) This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

SEC. 8. Section 72640 of the Education Code is amended to read:

72640. The governing board of a community college district may:

(a) Conduct field trips or excursions in connection with courses of instruction or school-related social, educational, cultural, athletic, or college band activities to and from places in the state, any other state, the District of Columbia, or a foreign country for students enrolled in a college. A field trip or excursion to and from a foreign country may be permitted to familiarize students with the language, history, geography, natural sciences, and other studies relative to the district's course of study for such pupils.

(b) Engage such instructors, supervisors, and other personnel as desire to contribute their services over and above the normal period for which they are employed by the district, if necessary, and provide equipment and supplies for such field trip or excursion.

(c) Transport by use of district equipment, contract to provide transportation, or arrange transportation by the use of other equipment, of students, instructors, supervisors or other personnel to and from places in the state, any other state, the District of Columbia, or a foreign country where such excursions and field trips are being conducted; provided that, when district equipment is used, the governing board shall secure liability insurance, and if travel is to and from a foreign country, such liability insurance shall be secured from a carrier licensed to transact insurance business in such foreign country.

(d) Provide supervision of students involved in field trips or excursions by certificated employees of the district.

No student shall be required to pay a fee to participate in an instructionally related field trip or excursion within the state.

No student shall be prevented from making the field trip or excursion because of lack of sufficient funds. To this end, the governing board shall coordinate efforts of community service groups to supply funds for students in need of them.

No group shall be authorized to take a field trip or excursion authorized by this section if any student who is a member of such an identifiable group will be excluded from participation in the field trip or excursion because of lack of sufficient funds.

No expenses of students participating in a field trip or excursion to any other state, the District of Columbia, or a foreign country authorized by this section shall be paid with district funds. Expenses of instructors, chaperons, and other personnel participating in a field

trip or excursion authorized by this section may be paid from district funds, and the district may pay from district funds all incidental expenses for the use of district equipment during a field trip or excursion authorized by this section.

The attendance or participation of a student in a field trip or excursion authorized by this section shall be considered attendance for the purpose of crediting attendance for apportionments from the State School Fund in the fiscal year. Credited attendance resulting from such field trip or excursion shall be limited to the amount of attendance which would have accrued had the students not been engaged in the field trip or excursion. No more contact hours shall be generated by a field trip or excursion than if the class were held on campus.

All persons making the field trip or excursion shall be deemed to have waived all claims against the district or the State of California for injury, accident, illness, or death occurring during or by reason of the field trip or excursion. All adults taking out-of-state field trips or excursions and all parents or guardians of students taking out-of-state field trips or excursions shall sign a statement waiving such claims.

This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1988, deletes or extends that date. If that date is not deleted or extended, then, on and after January 1, 1988, pursuant to Section 9611 of the Government Code, Section 72640 of the Education Code, as amended by Section 76 of Chapter 797 of the Statutes of 1979, shall have the same force and effect as if this temporary provision had not been enacted.

SEC. 9. Section 72641 of the Education Code is amended to read:

72641. The governing board of any community college district conducting excursions and field trips pursuant to this article shall provide, or make available, medical or hospital service, or both, through nonprofit membership corporations defraying the cost of medical service or hospital service, or both, or through group, blanket or individual policies of accident insurance from authorized insurer, for students of the district injured while participating in such excursions and field trips under the jurisdiction of, or sponsored or controlled by, the district or the authorities of any college of the district. The cost of the insurance or membership shall be paid ▽ from the funds of the district.

The insurance may be purchased from, or the membership may be taken in, only such companies or corporations as are authorized to do business in this state.

This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1988, deletes or extends that date. If that date is not deleted or extended, then, on and after January 1, 1988, pursuant to Section 9611 of the Government Code, Section 72641 of the Education Code, as added by Section 2 of Chapter 1010 of the Statutes of 1976, shall have the same force and effect as if this temporary provision had not been enacted.

SEC. 10. Section 78930 of the Education Code is repealed.

SEC. 10.5. Section 78930 is added to the Education Code, to read:

78930. (a) The governing board of a community college district may charge a reasonable fee for instructional materials provided to any student enrolled in its college or colleges. Fees for instructional materials shall be established so as to not exceed the actual cost to the district in providing such materials, and the materials themselves shall be tangible personal property which is owned or controlled by the student.

(b) "Instructional materials" means all material designed for use by students and their instructors as a learning resource and which help students to acquire facts, skills, or opinions or to develop cognitive processes. Instructional materials may be printed or nonprinted and may include textbooks and educational materials, but not tests. Educational materials are defined to mean any audiovisual or manipulative device including, but not limited to, films, tapes, flashcards, kits, phonograph records, study prints, graphs, charts, and multimedia systems.

(c) This section shall become operative January 1, 1988.

SEC. 11. Section 81458 of the Education Code is repealed.

SEC. 11.5. Section 81458 is added to the Education Code, to read:

81458. The governing board of a community college district may sell to persons enrolled in classes for adults maintained by the district such materials as may be necessary for the making of articles by such persons in such classes. The materials shall be sold at not less than the cost thereof to the district and any article made therefrom shall be the property of the person making it.

This section shall become operative January 1, 1988.

SEC. 12. Section 82305.6 of the Education Code is repealed.

SEC. 12.5. Section 82305.6 is added to the Education Code, to read:

82305.6. When the governing board of a community college district provides for the transportation of students to and from community colleges, the governing board of the district may require the parents and guardians of all or some of the students transported, to pay a portion of the cost of such transportation in an amount determined by the governing board. The amount determined by the board shall be no greater than that paid for transportation on a common carrier or municipally owned transit system by other students in the district who do not use the transportation provided by the district. The governing board shall exempt from such charges students of parents and guardians who are indigent as set forth in rules and regulations adopted by the board. No charge under this section shall be made for the transportation of handicapped students. Nothing in this section shall be construed to sanction, perpetuate, or promote the racial or ethnic segregation of students in the community colleges.

This section shall become operative January 1, 1988.

SEC. 13. Section 84700 of the Education Code is amended to read:

84700. For the 1983–84 fiscal year, and each fiscal year thereafter, the chancellor shall apportion state aid to community college districts according to the following procedure:

(a) The fiscal year revenues for each community college district shall be its base revenues as defined in Section 84701, plus or minus the average daily attendance adjustments based on incremental cost adjustments prescribed in Sections 84702 and 84702.5, plus the equalization adjustment specified in Section 84703, plus the inflation adjustment specified in Section 84704, plus the equalization adjustment specified in Section 84705.

(b) For each community college district, the chancellor shall subtract from the revenues determined pursuant to subdivision (a), the local property tax revenue specified by law for general operating support, exclusive of bond interest and redemption and including 98 percent of the fee revenues collected pursuant to Section 72252 and of reimbursements received for fees exempted pursuant to subdivision (f) of Section 72252, and motor vehicle license fees received pursuant to Section 11003.4 of the Revenue and Taxation Code, and timber yield tax revenue received pursuant to Section 38905 of the Revenue and Taxation Code. The remainder shall be the state general apportionment for each district.

(c) The chancellor shall adjust the amount determined pursuant to subdivision (b) to provide for prior year adjustments required pursuant to Section 84330.

(d) The chancellor may, upon the demonstrated need of any community college district for increased levels of allocations of state funds in any month based on district expenditure patterns and cash flow needs, adjust the allocations provided in subdivision (e), provided that the total of the allocations to be made between July 1 and February 1 shall not exceed 70 percent.▽

(e) Warrants shall be drawn on the State Treasury by the Controller in favor of the treasurer of each county for the allocations certified by the Chancellor of the California Community Colleges for the period of July through January in accordance with the following schedule, as may be adjusted by the chancellor in accordance with provisions of subdivision (d):

(1) 8 percent of district eligibility shall be allocated in July.

(2) 8 percent of district eligibility shall be allocated in August.

(3) 12 percent of district eligibility shall be allocated in September.

(4) 10 percent of district eligibility shall be allocated in October.

(5) 9 percent of district eligibility shall be allocated in November.

(6) 5 percent of district eligibility shall be allocated in December.

(7) 8 percent of district eligibility shall be allocated in January.

SEC. 14. Section 84701 of the Education Code is amended to read:

84701. (a) The base 1983–84 fiscal year revenues for each community college district shall be the revenue computed for the 1982–83 fiscal year pursuant to Article 3 (commencing with Section 84620) less the adjustments made pursuant to paragraphs (2), (3), and (4) of subdivision (b) of Section 84630.5 and the adjustments made pursuant to Provisions 4 and 11 of Item 6870-101-001 of the Budget Act of 1982.

(b) For the 1984–85 fiscal year the base revenues for each community college district shall be the sum of revenues computed for the 1983–84 fiscal year pursuant to subdivision (a) of Section

84701, and Sections 84703, 84704, and 84705 provided that for any district the sum of the amounts computed pursuant to Sections 84703 and 84705 shall not exceed the amount computed pursuant to Section 84704. For the 1985–86 fiscal year and each fiscal year thereafter, the base revenues for each community college district shall be the revenues received for the preceding fiscal year in accordance with Section 84700, plus any unfunded shortage in local revenues identified pursuant to the provisions of Section 84712.

(c) The base fiscal year average daily attendance for each community college district shall be the lesser of the average daily attendance of the preceding fiscal year computed pursuant to Section 84500 as adjusted by Section 84895, if applicable, or the level of average daily attendance which, pursuant to the Budget Act or any other act, received full funding, consistent with provisions of Section 84702.5, in the preceding fiscal year.

(d) The noncredit base revenues for each community college district shall be equal to the units of funded noncredit average daily attendance within the base fiscal year average daily attendance determined pursuant to subdivision (c), multiplied by one thousand one hundred dollars ($1,100) plus applicable inflation adjustments for preceding years subsequent to the 1982–83 fiscal year.

(e) The credit base revenues for each community college district shall be equal to the district's base revenues determined pursuant to subdivision (a) or (b) as appropriate, less the district's noncredit base revenue determined pursuant to subdivision (d).

(f) (1) Funded noncredit average daily attendance for a community college district, for a fiscal year, shall be the lesser of the actual number of noncredit average daily attendance generated for that year or the sum of the noncredit average daily attendance funded for the preceding fiscal year plus allowable increases in noncredit average daily attendance based on the percentage of increase allowance provided for the district through provisions of Section 84706.

(2) However, if the actual number of credit average daily attendance for the district is less than the sum of the number of credit average daily attendance funded for the preceding fiscal year plus allowable increases in credit average daily attendance based on the percentage of increase allowance provided in Section 84706, then the difference, represented in numbers of average daily attendance, shall be added to the number of funded noncredit average daily attendance determined pursuant to paragraph (1).

The number of funded noncredit average daily attendance so increased shall be greater than the sum of the number of noncredit average daily attendance funded for the preceding fiscal year plus allowable increases in noncredit average daily attendance based on the percentage of increase allowance provided for the district through provisions of Section 84706 but not greater than the actual number of noncredit average daily attendance generated.

(g) In establishing a district's funded credit and noncredit base average daily attendance for the 1983–84 fiscal year, the chancellor shall do both of the following:

(1) Calculate the ratios of total actual credit and noncredit average daily attendance generated to total actual average daily attendance generated in the 1982–83 fiscal year for the district.

(2) Apply the ratios calculated pursuant to paragraph (1) to the district's total average daily attendance for which the district received funding in the 1982–83 fiscal year.

(h) For fiscal year 1983–84, upon request of any district with credit and noncredit average daily attendance and which in the 1982–83 fiscal year generated a total average daily attendance exceeding 110 percent of its total funded average daily attendance, the chancellor may authorize an increase in the total base funded average daily attendance of the district by an amount not to exceed 5 percent of the district's 1982–83 fiscal year funded average daily attendance. The authorized adjustment shall be further limited by an amount of average daily attendance not greater than that average daily attendance for the district that exceeded 110 percent of the district's funded average daily attendance.

(i) For purposes of determining each district's revenues per unit of funded credit average daily attendance, each district's base revenues determined pursuant to subdivision (a) or (b) of this section shall be reduced by the amount of the adjustment in base revenues to be made in subsequent years for declining average daily attendance in that district pursuant to subdivision (b) of Section 84702 and by the amount of noncredit base revenues of that district determined pursuant to subdivision (d) of Section 84701.

SEC. 15. Section 84702 of the Education Code is amended to read:

84702. The base revenues for each community college district shall be adjusted for changes in average daily attendance, subject to the funded growth limitations in Section 84706, according to the following procedure:

(a) The chancellor shall determine the net increase or net decrease in the number of actual units of average daily attendance of the district between the preceding fiscal year and the current fiscal year.

(b) In the event that the total actual average daily attendance of any community college district for the 1983–84 fiscal year is less than the district's fully funded average daily attendance for the 1982–83 fiscal year, the district shall be allowed to increase its average daily attendance in the 1984–85 fiscal year up to, but not in excess of, the level of its 1982–83 fully funded average daily attendance. The chancellor shall determine the extent to which each of these districts has increased its average daily attendance pursuant to these provisions and shall adjust the base revenues for the 1984–85 fiscal year by the appropriate incremental cost rate specified in Section 84702.5 to the extent of the difference between the average daily attendance generated by the district in the 1984–85 fiscal year and the level of the district's 1982–83 fiscal year fully funded average daily attendance.

For the 1984–85 fiscal year and each fiscal year thereafter, in the event that the total actual average daily attendance for the current

fiscal year is less than the base average daily attendance, the chancellor shall adjust the base revenues for the community college district for the subsequent year by the appropriate incremental cost rates specified in Section 84702.5.

(c) Except as provided in subdivision (b) with regard to the 1984–85 fiscal year, in the event that the total actual average daily attendance for the current fiscal year is greater than the base average daily attendance, the chancellor shall adjust the base revenues for the community college district for the current year by the appropriate incremental cost rate specified in Section 84702.5.

SEC. 16. Section 84706 of the Education Code is amended to read:

84706. (a) For the purpose of this article, average daily attendance shall include only the attendance of state residents, except as provided in Section 78462, attending within the district. All attendance of all students shall be reported in accordance with instructions provided by the chancellor.

(b) Community college districts shall be allowed to increase their funded average daily attendance over the prior year as determined by the chancellor in accordance with the following procedures.

(1) For the 1983–84 fiscal year, districts may be allowed to increase their funded average daily attendance to the level funded in the 1981–82 fiscal year less the adjustments made pursuant to Provision 11 of Item 6870-101-001 of the Budget Act of 1982. Increases for each district provided by this paragraph shall be in addition to the increases provided by paragraphs (2) and (4) and shall be allowed only to the extent that increases in statewide average daily attendance provided by this section, exclusive of paragraph (4), does not exceed the rate of change of the adult population of the state as determined by the Department of Finance, or funds remain available statewide pursuant to paragraph (3).

(2) Increases in statewide average daily attendance shall be based on the rate of change of the adult population of the state as determined by the Department of Finance. The allocation of changes on a district-by-district basis shall be determined by the chancellor, based on such factors as the rate of change in the adult population, as determined by the Department of Finance, unemployment, refugee population, and adult participation in the district. The chancellor shall allocate at least 0.01 times the base average daily attendance of the district or 100 units of average daily attendance, whichever is greater, unless adjusted pursuant to paragraph (5) of this subdivision.

The statewide adult population percentage change reported by the Department of Finance shall be based on the resident adult population 18 years of age and older and shall be consistent with actual and projected adult population data reported for like purposes. The percentage change of the adult population of the community college districts shall be compatible with the changes reported for the statewide adult population and shall be determined within the geographic boundaries of the district which shall be consistent with the geographic boundaries used to determine the assessed valuation of property within the district.

The allocation of allowable increases in average daily attendance on a district-by-district basis shall not exceed a reasonable anticipated normal growth for any district, based on information that the chancellor may receive from the district.

(3) The level of funding available for increases in average daily attendance for each district, based on increases specified in paragraph (2), shall be the sum of the following:

(A) The percentage of allowable increase in average daily attendance specified in paragraph (2) times the level of funded noncredit average daily attendance of the preceding fiscal year times the incremental cost rate specified in subdivision (a) of Section 84702.5.

(B) The percentage of allowable increase in average daily attendance specified in paragraph (2) times the level of funded credit average daily attendance of the preceding fiscal year times the incremental cost rate specified in subdivision (b) of Section 84702.5.

(4) The chancellor shall allocate additional increases in average daily attendance for program growth in areas of statewide concern that are funded in the annual Budget Act or any other act of the Legislature, based on criteria adopted for those allocations.

(5) In the event of a deficit in funding for workload increases, all allowable increases in average daily attendance provided by this section shall be reduced proportionally.

(c) All increases in funded credited average daily attendance shall be accounted for in the following categories of the course classification system of the community colleges, as determined by the chancellor:

(1) Units of average daily attendance in courses that provide transfer credit to a baccalaureate-awarding institution.

(2) Units of average daily attendance in occupational education and vocational and technical programs and courses.

(3) Units of average daily attendance which prepare students for courses identified in paragraphs (1) and (2).

SEC. 17. (a) It is the intent of the Legislature to ensure that the imposition of a mandatory fee does not impair access to, or the quality of, California community colleges. To achieve this purpose, the Chancellor of the California Community Colleges, in consultation with the California Postsecondary Education Commission, shall conduct a study of the impact of the mandatory fee upon California community colleges. The study shall determine the fee's impact upon all of the following:

(1) Student enrollments.

(2) Ethnic distribution of students.

(3) Income distribution of students.

(4) The distribution of full-time and part-time students.

(5) Changes in the staffing requirements and costs of administration.

(6) The availability of federal, state, and other sources of financial aid to community college districts.

(7) The administration and distribution of the financial aid prescribed by this act by the chancellor's office and at the district level.

The chancellor may collect from community college districts any data necessary to conduct the study.

Based upon the study, the chancellor shall submit his or her findings and recommendations to the Joint Legislative Budget Committee and the California Postsecondary Education Commission in a progress report on or before January 1, 1987, and in a final report on or before July 1, 1987.

(b) The chancellor shall conduct the study pursuant to subdivision (a) in consultation with an advisory committee appointed by the chancellor and composed of representatives from community college districts, the Department of Finance, and the Office of the Legislative Analyst. District representatives on the advisory committee may include students, faculty members, administrators, and governing board members.

(c) The California Postsecondary Education Commission shall submit to the Legislature its written comments and recommendations regarding the progress report and the final report filed by the chancellor pursuant to subdivision (a).

(d) The chancellor shall conduct a study on the level of noncredit courses, enrollments, and average daily attendance offered at the community colleges.

The study shall include information on the following:

(1) The number of students enrolled in noncredit courses offered at the community colleges pursuant to the categories specified in Section 84711 of the Education Code.

(2) The impact a mandatory fee would have on student enrollments in the community colleges and on enrollments in adult education programs which offer similar courses in programs operated by school districts and in regional occupational centers and programs.

The study shall be submitted to the legislative fiscal committees by no later than March 15, 1985.

SEC. 18. Notwithstanding subdivision (b) of Section 84701 of the Education Code, for the 1985–86 fiscal year only, the base revenues for each community college district shall be the revenues received for the preceding fiscal year in accordance with Section 84700 of the Education Code plus any unfunded shortage in local revenues identified pursuant to the provisions of Section 84712 of the Education Code and any shortage in revenues computed pursuant to subdivision (e) of Section 84704 and Section 84705 of the Education Code.

SEC. 19. (a) There is hereby appropriated the following sums to the Board of Governors of the California Community Colleges for the purpose of providing financial aid funds directly to low-income students who cannot afford to pay the fee specified in Section 72252 of the Education Code, and for the purpose of reimbursing districts for the amount of fees lost due to the exemption provided to students pursuant to subdivision (f) of Section 72252:

Period	Amount
July 1, 1984 to June 30, 1985	$15,000,000
July 1, 1985 to June 30, 1986	15,000,000
July 1, 1986 to June 30, 1987	15,000,000
July 1, 1987 to January 1, 1988	7,500,000

(b) The chancellor shall allocate the funds appropriated by subdivision (a) to community college districts. In prescribing the manner of allocation, the chancellor shall endeavor to ensure that students with similar characteristics shall be treated similarly with respect to the provision of financial aid pursuant to this section, regardless of the community college they attend.

In allocating funds pursuant to this section, the chancellor shall consider the number of financial aid recipients in each district and the availability of federal and other state financial aid resources.

(c) Financial aid shall be provided pursuant to this section only to those students required to pay the fee specified in Section 72252 of the Education Code, and only in an amount equal to the fee actually charged the student pursuant to that section. In addition, the chancellor shall reimburse districts for the amount of fees lost due to the exemption provided to students pursuant to subdivision (f) of Section 72252.

(d) Districts which receive an allocation of funds pursuant to this section shall utilize appropriate financial need criteria for the distribution of the funds. These criteria may include, but are not limited to, nationally accepted needs analysis methodologies, evidence of need based upon the receipt of public assistance, or other reasonable methods.

(e) The chancellor shall submit a plan made pursuant to subdivision (b) to the California Postsecondary Education Commission, the Legislative Analyst, and to the fiscal and education policy committees of each house of the Legislature by June 15, 1984.

The California Postsecondary Education Commission shall review the plan and submit its recommendations to the fiscal and education policy committees of each house of the Legislature.

(f) If the amount appropriated pursuant to this section exceeds the need for financial aid to students who cannot afford to pay the fee charged pursuant to Section 72252, the excess shall revert to the General Fund.

(g) If the amount needed for financial aid to students who cannot afford to pay the fee charged pursuant to Section 72252 and to reimburse districts for the amount of fees lost due to the exemption provided to students pursuant to subdivision (f) of Section 72252 is greater than the amount appropriated by this section, the chancellor shall certify to the Department of Finance the amount of the additional funds which are required. Upon receipt of this certification, the Director of Finance shall take any administrative action available to him or her to transfer the additional funds, pursuant to the Budget Act or otherwise.

SEC. 20. There is hereby transferred from the unencumbered balance of the Capital Outlay Fund for Public Higher Education to

the General Fund the sum of twenty-eight million dollars ($28,000,000).

SEC. 21. There is hereby appropriated from the General Fund the sum of one hundred thousand dollars ($100,000) to the Chancellor of the California Community Colleges for the purpose of carrying out the study required by Section 17 of this act.

The chancellor shall enter into an interagency agreement with the California Postsecondary Education Commission to reimburse the commission for the cost of carrying out the duties imposed upon the commission by Section 17 of this act.

SEC. 22. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

SEC. 23. Sections 1 to 18, inclusive, and Sections 21 and 22 of this act shall become operative July 1, 1984. Sections 19 and 20 of this act shall become operative on the effective date of this act.

Appeals Fund.

(b) A party in a case on appeal to the Appeals Board who, in 1983 or 1984, has paid that portion of the transcript fee in excess of the fee specified in Section 69950 of the Government Code shall be refunded that excess by payment from the Alcoholic Beverage Control Appeals Fund, providing the Appeals Board has not issued a dismissal or other final decision in the case on appeal.

SEC. 4. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 5. For the purpose of Section 24310 of the Business and Professions Code, as added by Section 3 of this act, the sum of thirty-five thousand dollars ($35,000) is hereby appropriated from the Alcoholic Beverage Control Appeals Fund to the Alcoholic Beverage Control Appeals Board in augmentation of Item 2120-001-117 of the 1983 Budget Act (Chapter 324, Statutes of 1983), and the sum of forty-nine thousand three hundred dollars ($49,300) is hereby appropriated from the Alcoholic Beverage Control Appeals Fund to the Alcoholic Beverage Control Appeals Board in augmentation of Item 2120-001-117 of the 1984 Budget Act.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Since the Legislature has declared in Section 23001 of the Business and Professions Code that the subject matter of the Alcoholic Beverage Control Act involves, in the highest degree, the economic, social, and moral well-being and the safety of the state and all of its people, it is necessary that the appeals process involved in cases brought under the act be expeditious and, in order for the provisions of this act to become operative during the 1983–84 fiscal year, it is therefore necessary that this act take effect immediately.

CHAPTER 274

An act to to amend Sections 32033, 72247, 72252, 72640, 82305.6, 84700, 84701, 84704, 84705, and 84706 of, to amend and repeal Section 84362 of, and to repeal and add Section 82305.5 of, the Education Code, and to amend Sections 19 and 21 of Chapter 1 of the 1983–84 Second Extraordinary Session, relating to community colleges, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

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[Approved by Governor July 2, 1984. Filed with Secretary of State July 3, 1984.]

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

SECTION 1. Section 32033 of the Education Code, as amended by Chapter 1 of the 1983–84 Second Extraordinary Session, is amended to read:

32033. The eye protective devices may be sold to the pupils and teachers at a price which shall not exceed the actual cost of the eye protective devices to the school or governing board.

This section shall not apply to the governing board of a community college district; however, this section shall not be construed as prohibiting the governing board of a community college district from offering eye protective devices for sale to students and employees who voluntarily choose to purchase those devices from the district.

This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1988, deletes or extends that date. If that date is not deleted or extended, then, on and after January 1, 1988, pursuant to Section 9611 of the Government Code, Section 32033 of the Education Code, as added by Section 2 of Chapter 1010 of the Statutes of 1976, shall have the same force and effect as if this temporary provision had not been enacted.

SEC. 2. Section 72247 of the Education Code, as amended by Chapter 55 of the Statutes of 1984, is amended to read:

72247. (a) The governing board of a community college district may require of students in attendance in grades 13 and 14 and employees of the district, the payment of a fee, in an amount not to exceed twenty dollars ($20) per semester or forty dollars ($40) per regular school year to be fixed by the board, for parking services.

The fee shall only be required of students and employees using parking services.

(b) The governing board of a community college district may also require the payment of a fee, to be fixed by the governing board, for the use of parking services by persons other than students and employees.

(c) All parking fees collected shall be deposited in the designated fund of the district in accordance with the California Community Colleges Budget and Accounting Manual and shall be expended only for parking services or for purposes of reducing the costs to students and employees of the college of using public transportation to and from the college.

Fees collected for use of parking services provided for by investment of student body funds under the authority of Section 76064 shall be deposited in a designated fund in accordance with the California Community Colleges Budget and Accounting Manual for repayment to the student organization.

"Parking services," as used in this section, means the purchase, construction, and operation and maintenance of parking facilities for vehicles and motor vehicles as defined by Sections 415 and 670 of the Vehicle Code, and the reduction of costs to students and employees of using public transportation to and from the college.

In no event may the fee required pursuant to this section exceed the actual cost of providing parking services.

SEC. 3. Section 72252 of the Education Code, as added by Chapter 1 of the 1983–84 Second Extraordinary Session, is amended to read:

72252. (a) Commencing with the semester, term, or quarter which begins after July 31, 1984, the governing board of each community college district shall charge each student a fee, pursuant to the provisions of this section.

(b) The fee prescribed by this section shall equal fifty dollars ($50) per semester for students enrolled in classes totaling six or more credit semester units, and five dollars ($5) per unit per semester for students enrolled in classes totaling less than six credit semester units.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system or other alternative system approved pursuant to Section 78002, and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivision (f) shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district which does not collect the fees prescribed by this section.

(e) The fee requirement shall not apply to students enrolled in the noncredit courses designated by Section 84711.

(f) The fee requirements of this section shall be defrayed pursuant to Section 19 of Chapter 1 of the 1983–84 Second Extraordinary Session for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary program, or the General Assistance Program.

(g) The requirements of Section 69534 shall apply to financial aid applicants enrolling in six or more credit semester units, but shall not apply to financial aid applicants who seek aid only for the fees required by this section and who enroll for less than six credit semester units. The chancellor shall prescribe a financial aid application for students enrolling in less than six credit semester units.

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(h) The board of governors shall adopt regulations implementing the provisions of this section as regulations in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(i) This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

SEC. 4. Section 72640 of the Education Code, as amended by Chapter 1 of the 1983–84 Second Extraordinary Session, is amended to read:

72640. The governing board of a community college district may:

(a) Conduct field trips or excursions in connection with courses of instruction or school-related social, educational, cultural, athletic, or college band activities to and from places in the state, any other state, the District of Columbia, or a foreign country for students enrolled in a college. A field trip or excursion to and from a foreign country may be permitted to familiarize students with the language, history, geography, natural sciences, and other studies relative to the district's course of study for such pupils.

(b) Engage such instructors, supervisors, and other personnel as desire to contribute their services over and above the normal period for which they are employed by the district, if necessary, and provide equipment and supplies for such field trip or excursion.

(c) Transport by use of district equipment, contract to provide transportation, or arrange transportation by the use of other equipment, of students, instructors, supervisors or other personnel to and from places in the state, any other state, the District of Columbia, or a foreign country where such excursions and field trips are being conducted; provided that, when district equipment is used, the governing board shall secure liability insurance, and if travel is to and from a foreign country, such liability insurance shall be secured from a carrier licensed to transact insurance business in such foreign country.

(d) Provide supervision of students involved in field trips or excursions by certificated employees of the district.

No student shall be required to pay a fee to participate in an instructionally related field trip or excursion within the state.

No student shall be prevented from making the field trip or excursion because of lack of sufficient funds. To this end, the governing board shall coordinate efforts of community service groups to supply funds for students in need of them.

No group shall be authorized to take a field trip or excursion authorized by this section if any student who is a member of such an identifiable group will be excluded from participation in the field trip or excursion because of lack of sufficient funds.

No expenses of students participating in a field trip or excursion to any other state, the District of Columbia, or a foreign country authorized by this section shall be paid with district funds. Expenses of instructors, chaperons, and other personnel participating in a field

(b) Sections 8 and 15 of this act shall become operative on May 18, 1984, or on the effective date of this act, whichever is later.

SEC. 19. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify the law at the earliest possible time, and so facilitate the orderly administration of community colleges, it is necessary that this act take effect immediately.

CHAPTER 275

An act to add Section 1799.107 to the Health and Safety Code, relating to emergency services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 2, 1984. Filed with Secretary of State July 3, 1984.]

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

SECTION 1. Section 1799.107 is added to the Health and Safety Code, to read:

1799.107. (a) The Legislature finds and declares that a threat to the public health and safety exists whenever there is a need for emergency services and that public entities and emergency rescue personnel should be encouraged to provide emergency services. To that end, a qualified immunity from liability shall be provided for public entities and emergency rescue personnel providing emergency services.

(b) Except as provided in Article 1 (commencing with Section 17000) of Chapter 1 of Division 9 of the Vehicle Code, neither a public entity nor emergency rescue personnel shall be liable for any injury caused by an action taken by the emergency rescue personnel acting within the scope of their employment to provide emergency services, unless the action taken was performed in bad faith or in a grossly negligent manner.

(c) For purposes of this section, it shall be presumed that the action taken when providing emergency services was performed in good faith and without gross negligence. This presumption shall be one affecting the burden of proof.

(d) For purposes of this section, "emergency rescue personnel" means any person who is an officer, employee, or member of a fire department or fire protection or firefighting agency of the federal government, the State of California, a city, county, city and county, district, or other public or municipal corporation or political subdivision of this state, whether such person is a volunteer or partly paid or fully paid, while he or she is actually engaged in providing

CHAPTER 1401

An act to amend Sections 72252, 81370, 84313, and 87010 of, and to add Sections 72034, 72252.3, and 84313.5 to, the Education Code, to amend Section 4 of Chapter 343 of the Statutes of 1982, and to amend Section 19 of Chapter 1 of the 1983–84 Second Extraordinary Session, relating to community colleges, and making an appropriation therefor.

[Approved by Governor September 25, 1984. Filed with Secretary of State September 26, 1984.]

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

SECTION 1. Section 72034 is added to the Education Code, to read:

72034. Notwithstanding any provision of Chapter 366 of the Statutes of 1982, the terms of office of the members of the governing board of the Santa Monica Community College District whose terms were scheduled to expire in April 1985, expired in November 1984, and the terms of office of those members whose terms were scheduled to expire in April 1987, shall expire in November 1986.

The terms of the members elected in November of even-numbered years shall commence on the first Tuesday following that election, and those elected shall serve for a term of four years. Each member shall continue to serve until his or her successor in office is elected and qualified.

This section is declaratory of existing law.

SEC. 2. Section 72252 of the Education Code is amended to read:

72252. (a) Commencing with the semester, term, or quarter which begins after July 31, 1984, the governing board of each community college district shall charge each student a fee, pursuant to this section.

(b) The fee prescribed by this section shall equal fifty dollars ($50) per semester for students enrolled in classes totaling six or more credit semester units, and five dollars ($5) per unit per semester for students enrolled in classes totaling less than six credit semester units.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system or other alternative system approved pursuant to Section 78002, and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivision (f) shall be deemed to be local property tax

revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district which does not collect the fees prescribed by this section.

(e) The fee requirement shall not apply to students enrolled in the noncredit courses designated by Section 84711, or to California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The fee requirements of this section shall be defrayed pursuant to Section 19 of Chapter 1 of the 1983–84 Second Extraordinary Session for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(g) The requirements of Section 69534 shall apply to financial aid applicants enrolling in six or more credit semester units, but shall not apply to financial aid applicants who seek aid only for the fees required by this section and who enroll for less than six credit semester units. The chancellor shall prescribe a financial aid application for students enrolling in less than six credit semester units.

(h) The board of governors shall adopt regulations implementing this section as regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(i) This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

SEC. 3. Section 72252.3 is added to the Education Code, to read:

72252.3. The governing board of a community college district may authorize a person to audit a community college course and may charge that person a fee pursuant to this section.

(a) If a fee for auditing is charged, it shall not exceed fifteen dollars ($15) per unit per semester.

The governing board shall proportionately adjust the amount of the fee for term lengths based upon a quarter system or other alternative system approved pursuant to Section 78002, and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the governing board may round the per unit fee and the per term or per session fee to the nearest dollar.

(b) Students enrolled in classes to receive credit for six or more semester credit units shall not be charged a fee to audit three or fewer semester units per semester.

(c) No student auditing a course shall be permitted to change his

or her enrollment in that course to receive credit for the course.

(d) Priority in class enrollment shall be given to students desiring to take the course for credit towards a degree or certificate.

(e) Classroom attendance of students auditing a course shall not be included in computing the apportionment due a community college district.

(f) The board of governors shall adopt any necessary regulations implementing this section as regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 4. Section 81370 of the Education Code is amended to read:

81370(a) At the time and place fixed in the resolution for the meeting of the governing body, all sealed proposals which have been received shall, in public session, be opened, examined, and declared by the board. Except as provided in subdivision (b), of the proposals submitted which conform to all terms and conditions specified in the resolution of intention to sell or to lease and which are made by responsible bidders, the proposal which is the highest, after deducting therefrom the commission, if any, to be paid a licensed real estate broker in connection therewith, shall be finally accepted, unless a higher oral bid is accepted or the board rejects all bids.

(b) Notwithstanding subdivision (a), the governing board of any community college district may apply to the Board of Governors of the California Community Colleges for a waiver of the requirement that the governing board accept the highest responsible bid for the sale or lease of real property. The board of governors may grant a waiver pursuant to this subdivision if it determines that the waiver is in the best interests of the community college district.

SEC. 5. Section 84313 of the Education Code is amended to read:

84313. For each of three fiscal years, the Controller shall deduct from apportionments paid to a community college district pursuant to law, an amount not less than one-third of the amount actually allocated to the district pursuant to this article, together with amounts representing interest at a rate based on the most current investment rate of the Pooled Money Investment Account as of the date of the disbursement of funds to the district.

For each of three fiscal years, the amount deducted by the Controller pursuant to this section shall be reapportioned to Section B of the State School Fund for apportionment by the Chancellor of the California Community Colleges to community college districts to alleviate any deficits in state funding in the year in which the loan is made or during the period of repayment. Unless otherwise determined pursuant to Section 84313.5, the three year repayment period shall consist of three consecutive fiscal years commencing with the fiscal year following the year in which the emergency apportionment is made.

SEC. 6. Section 84313.5 is added to the Education Code, to read:

84313.5. Any community college district which has received an emergency apportionment pursuant to this article may request a

revision of the repayment schedule. The request shall be submitted to the Chancellor of the California Community Colleges with copies submitted to the county superintendent of schools within whose jurisdiction the district is located, the Joint Legislative Audit Committee, the Joint Legislative Budget Committee, and the Director of Finance. The request shall be accompanied by appropriate justification for any deferral of repayment, including a revision to the plan adopted by the district's governing board as specified in subdivision (a) of Section 84310, together with specified identification of the reasons that the actions taken by the district to correct the financial problems, as specified in subdivision (d) of Section 84310, will no longer accomplish their intended purpose.

The chancellor shall consult with representatives of the county superintendent of schools within whose jurisdiction the district is located, the Joint Legislative Audit Committee, the Joint Legislative Budget Committee, the Director of Finance, and representatives which the chancellor may select from the superintendents and presidents of the other community colleges and districts throughout the state. After consulting with these representatives, the chancellor may revise the repayment schedule, may forgive the interest payments otherwise compounded as a result of any deferral of payments, and may specify any conditions the chancellor determines are necessary to assure the repayment of the emergency apportionment. The chancellor shall report his or her actions to the Director of Finance, the Controller, and the Joint Legislative Budget Committee. The Controller shall deduct amounts from the apportionment schedule in accordance with the revised repayment plan.

SEC. 7. Section 87010 of the Education Code is amended to read:

87010. "Sex offense," as used in Sections 87290, 87335, 87405, 88022, and 88123, means any one or more of the offenses listed below:

(a) Any offense defined in Section 261.5, 266, 267, 285, 286, 288, 288a, or 647a, subdivision 2 or 3 of Section 261, or subdivision (a) or (d) of Section 647 of the Penal Code.

(b) Any offense defined in former subdivision 5 of former Section 647 of the Penal Code repealed by Chapter 560 of the Statutes of 1961, or any offense defined in former subdivision 2 of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961, if the offense defined in those sections was committed prior to September 15, 1961, to the same extent that such an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(c) Any offense defined in Section 314 of the Penal Code committed on or after September 15, 1961.

(d) Any offense defined in former subdivision 1 of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961 committed on or after September 7, 1955, and prior to September 15, 1961.

(e) Any offense involving lewd and lascivious conduct under

Section 272 of the Penal Code committed on or after September 15, 1961.

(f) Any offense involving lewd and lascivious conduct under former Section 702 of the Welfare and Institutions Code repealed by Chapter 1616 of the Statutes of 1961, if the offense was committed prior to September 15, 1961, to the same extent that such an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(g) Any offense defined in Section 286 or 288a of the Penal Code prior to the effective date of the amendment of either section enacted at the 1975–76 Regular Session of the Legislature committed prior to the effective date of the amendment.

(h) Any attempt to commit any of the above-mentioned offenses.

(i) Any offense committed or attempted in any other state which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses.

SEC. 8. Section 4 of Chapter 343 of the Statutes of 1982, as amended by Chapter 851 of the Statutes of 1983, is amended to read:

Sec. 4. (a) From funds appropriated to Section B of the State School Fund for the 1981–82 fiscal year, a sum not to exceed seven hundred fifty thousand dollars ($750,000) is hereby appropriated for allocation to the Compton Community College District for the 1982–83 fiscal year as an emergency apportionment pursuant to Article 2 (commencing with Section 84309) of Chapter 3 of Part 50 of the Education Code.

(b) Notwithstanding the three-year repayment period of Section 84313 of the Education Code, the Compton Community College District shall commence repayment of the emergency apportionment pursuant to subdivision (a) in the 1985–86 fiscal year. For each of the 1985–86, 1986–87, and 1987–88 fiscal years, the Controller shall deduct from apportionments to the Compton Community College District an amount not less than one-third of the amount actually allocated to the district pursuant to subdivision (a), together with amounts representing interest at a rate based on the most current investment rate of the Pooled Money Investment Account as of the date of the disbursement of funds to the district. Interest shall not be charged for the 1983–84 fiscal year.

(c) The effect of any deficit in the state general apportionments to community college districts in the 1981–82 fiscal year created by this reappropriation shall be excluded from the computation of community college district base revenues in the 1982–83 fiscal year.

SEC. 9. Section 19 of Chapter 1 of the 1983–84 Second Extraordinary Session is amended to read:

Sec. 19. (a) There is hereby appropriated the following sums to the Board of Governors of the California Community Colleges for the purpose of providing financial aid funds directly to low-income students who cannot afford to pay the fee specified in Section 72252 of the Education Code, and for the purpose of defraying fees pursuant to subdivision (f) of Section 72252:

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Period	Amount
July 1, 1984 to June 30, 1985	$15,000,000
July 1, 1985 to June 30, 1986	15,000,000
July 1, 1986 to June 30, 1987	15,000,000
July 1, 1987 to January 1, 1988	7,500,000

(b) The chancellor shall allocate the funds appropriated by subdivision (a) to community college districts. In prescribing the manner of allocation, the chancellor shall endeavor to ensure that students with similar characteristics shall be treated similarly with respect to the provision of financial aid pursuant to this section, regardless of the community college they attend.

In allocating funds pursuant to this section, the chancellor shall consider the number of financial aid recipients in each district and the availability of federal and other state financial aid resources.

(c) Financial aid shall be provided pursuant to this section only to those students required to pay the fee specified in Section 72252 of the Education Code, and only in an amount equal to the fee actually charged the student pursuant to that section. In addition, the chancellor shall pay districts the amount of fees defrayed pursuant to subdivision (f) of Section 72252.

(d) Districts which receive an allocation of funds pursuant to this section shall utilize appropriate financial need criteria for the distribution of the funds. These criteria may include, but are not limited to, nationally accepted needs analysis methodologies, evidence of need based upon the receipt of public assistance, or other reasonable methods.

(e) The chancellor shall submit a plan made pursuant to subdivision (b) to the California Postsecondary Education Commission, the Legislative Analyst, and to the fiscal and education policy committees of each house of the Legislature by June 15, 1984.

The California Postsecondary Education Commission shall review the plan and submit its recommendations to the fiscal and education policy committees of each house of the Legislature.

(f) If the amount appropriated pursuant to this section exceeds the need for financial aid to students who cannot afford to pay the fee charged pursuant to Section 72252, the excess shall revert to the General Fund.

(g) If the amount needed for financial aid to students who cannot afford to pay the fee charged pursuant to Section 72252 and to pay districts for the total amount of fees defrayed pursuant to subdivision (f) of Section 72252 is greater than the amount appropriated by this section, the chancellor shall certify to the Department of Finance the amount of the additional funds which are required. Upon receipt of this certification, the Director of Finance shall take any administrative action available to him or her to transfer the additional funds, pursuant to the Budget Act or otherwise.

(h) If additional funds are needed to administer the financial aid

funds provided by this section for the 1984–85 fiscal year, the chancellor shall certify to the Department of Finance the amount of additional funds which are required. Upon receipt of this certification, the Director of Finance shall certify to the Controller the necessity for the additional funds. Upon receipt of the director's certification, the Controller shall transfer to the chancellor the additional amount needed, not to exceed two hundred thousand dollars ($200,000), from the amount appropriated by this section for the period of July 1, 1984, to June 30, 1985.

SEC. 10. (a) Consistent with subdivision (a) of Section 151.3 of Chapter 323 of the Statutes of 1983, the working drawings and site development phases of construction of the Los Angeles Mission College campus shall ultimately be funded with proceeds from the sale, lease, trade, or encumbrance of the surplus property held by the Los Angeles Community College District and known as the Northwest Valley site.

(b) The Legislature recognizes, however, that the Los Angeles Community College District may not be able to secure funds for that development from the Northwest Valley site during the 1984–85 fiscal year. It is therefore the intent of the Legislature to provide the Los Angeles Community College District with a loan from the Capital Outlay Fund for Public Higher Education to begin development of the campus in the 1984–85 fiscal year. It is further the intent of the Legislature that the loan be repaid by the district during the 1985–86 fiscal year.

(c) The sum of one million seven hundred thousand dollars ($1,700,000) is hereby appropriated from the Capital Outlay Fund for Public Higher Education to the Chancellor of the California Community Colleges for allocation to the Los Angeles Community College District as a loan for the development of Los Angeles Mission College. This loan amount, together with an amount representing interest at a rate equal to the most current investment rate of the Pooled Money Investment Account as of the date of disbursement of the funds to the district, shall be repaid to the Capital Outlay Fund for Public Higher Education not later than June 30, 1986. The chancellor shall withhold from the regular apportionment due the Los Angeles Community College District any unpaid balance remaining from this loan after June 30, 1986.

CHAPTER 1402

An act to amend Section 25402 of the Public Resources Code, relating to energy appliance standards.

[Approved by Governor September 25, 1984. Filed with Secretary of State September 26, 1984.]

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[Approved by Governor September 23, 1985. Filed with Secretary of State September 24, 1985.]

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

SECTION 1. Section 60200.5 is added to the Education Code, to read:

60200.5. Instructional materials adopted under this chapter shall, where appropriate, be designed to impress upon the minds of the pupils the principles of morality, truth, justice, patriotism, and a true comprehension of the rights, duties, and dignity of American citizenship, and to instruct them in manners and morals and the principles of a free government. The State Board of Education shall endeavor to see that this objective is accomplished in the evaluation of instructional materials for educational content in appropriate subject areas.

CHAPTER 919

An act relating to Alzheimer's disease.

[Approved by Governor September 23, 1985. Filed with Secretary of State September 24, 1985.]

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

SECTION 1. Recognizing that maintaining victims having Alzheimer's disease or related disorders in the home environment with the support of family members provides the most humane and cost-effective method of caring for the neurologically disabled, the Alzheimer's Disease Task Force established pursuant to Chapter 16 (commencing with Section 171) of Part 1 of Division 1 of the Health and Safety Code shall conduct, as its first priority, a study to determine the feasibility of insurance coverage for respite care services that make it possible to maintain the disabled person in the home for as long as possible. The task force shall report its findings and recommendations to the Legislature by January 1, 1987.

CHAPTER 920

An act to amend Section 72252 of the Education Code, and to amend Section 19 of Chapter 1 of the 1983–84 Second Extraordinary Session, relating to community colleges.

[Approved by Governor September 23, 1985. Filed with Secretary of State September 24, 1985.]

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

SECTION 1. Section 72252 of the Education Code is amended to read:

72252. (a) Commencing with the semester, term, or quarter which begins after July 31, 1984, the governing board of each community college district shall charge each student a fee, pursuant to this section.

(b) The fee prescribed by this section shall equal fifty dollars ($50) per semester for students enrolled in classes totaling six or more credit semester units, and five dollars ($5) per unit per semester for students enrolled in classes totaling less than six credit semester units.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system or other alternative system approved pursuant to Section 78002, and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivision (f) shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district which does not collect the fees prescribed by this section.

(e) The fee requirement shall not apply to students enrolled in the noncredit courses designated by Section 84711, or to California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The fee requirements of this section shall be defrayed pursuant to Section 19 of Chapter 1 of the 1983–84 Second Extraordinary Session for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(g) Student financial aid funds appropriated for the purpose of assisting students to pay the fee required by this section may be awarded without regard to the requirements of Chapter 2 (commencing with Section 69500) of Part 42.

(h) The board of governors shall adopt regulations implementing this section as regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2

of the Government Code.

(i) This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

SEC. 2. Section 19 of Chapter 1 of the 1983–84 Second Extraordinary Session is amended to read:

Sec. 19. (a) There is hereby appropriated the following sums to the Board of Governors of the California Community Colleges for the purpose of providing financial aid funds directly to low-income students who cannot afford to pay the fee specified in Section 72252 of the Education Code, and for the purpose of defraying fees pursuant to subdivision (f) of Section 72252:

Period	Amount
July 1, 1984 to June 30, 1985	$15,000,000
July 1, 1985 to June 30, 1986	15,000,000
July 1, 1986 to June 30, 1987	15,000,000
July 1, 1987 to January 1, 1988	7,500,000

(b) The chancellor shall allocate the funds appropriated by subdivision (a) to community college districts. In prescribing the manner of allocation, the chancellor shall endeavor to ensure that students with similar characteristics shall be treated similarly with respect to the provision of financial aid pursuant to this section, regardless of the community college they attend.

In allocating funds pursuant to this section, the chancellor shall consider the number of financial aid recipients in each district and the availability of federal and other state financial aid resources.

The chancellor may allocate up to 7 percent of the total amount appropriated by subdivision (a) to community college districts for delivery of student financial aid services required as a result of this section. Funds so allocated for delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1983–84 fiscal year.

(c) Financial aid shall be provided pursuant to this section only to those students required to pay the fee specified in Section 72252 of the Education Code, and only in an amount equal to the fee actually charged the student pursuant to that section. In addition, the chancellor shall pay districts the amount of fees defrayed pursuant to subdivision (f) of Section 72252.

(d) Districts which receive an allocation of funds pursuant to this section shall utilize appropriate financial need criteria for the distribution of the funds. These criteria may include, but are not limited to, nationally accepted needs analysis methodologies, evidence of need based upon the receipt of public assistance, or other reasonable methods.

(e) The chancellor shall submit a plan made pursuant to subdivision (b) to the California Postsecondary Education Commission, the

Legislative Analyst, and to the fiscal and education policy committees of each house of the Legislature by June 15, 1984.

The California Postsecondary Education Commission shall review the plan and submit its recommendations to the fiscal and education policy committees of each house of the Legislature.

(f) If the amount appropriated pursuant to this section exceeds the need for financial aid to students who cannot afford to pay the fee charged pursuant to Section 72252, the excess shall revert to the General Fund.

(g) If the amount needed for financial aid to students who cannot afford to pay the fee charged pursuant to Section 72252 and to pay districts for the total amount of fees defrayed pursuant to subdivision (f) of Section 72252 is greater than the amount appropriated by this section, the chancellor shall certify to the Department of Finance the amount of the additional funds which are required. Upon receipt of this certification, the Director of Finance shall take any administrative action available to him or her to transfer the additional funds, pursuant to the Budget Act or otherwise.

(h) If additional funds are needed to administer the financial aid funds provided by this section for the 1984–85 fiscal year, the chancellor shall certify to the Department of Finance the amount of additional funds which are required. Upon receipt of this certification, the Director of Finance shall certify to the Controller the necessity for the additional funds. Upon receipt of the director's certification, the Controller shall transfer to the chancellor the additional amount needed, not to exceed two hundred thousand dollars ($200,000), from the amount appropriated by this section for the period of July 1, 1984, to June 30, 1985.

CHAPTER 921

An act to amend Sections 19850.1, 19850.3, 20022.1, and 20022.2 of, and to add Section 20022.05 to, the Government Code, relating to state employees, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1985. Filed with Secretary of State September 24, 1985.]

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

SECTION 1. Section 19850.1 of the Government Code is amended to read:

19850.1. (a) State employees shall be responsible for the purchase of uniforms required as a condition of employment. The state shall provide for an annual uniform allowance to state employees for the replacement of uniforms worn on a full-time basis, and an annual uniform allowance to state employees for the

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(a) The sum of two hundred thousand dollars ($200,000) for the acquisition and installation of an Automated Local Evaluation in Real Time (ALERT) flood warning system in locations to be determined by the department. Because of the imminent threat of severe, wildfire-induced flood damage during the 1985–86 flood season, the department may use urgency purchasing and contracting procedures as determined to be necessary to acquire and install this warning system.

(b) The sum of two million dollars ($2,000,000) for assistance to local agencies in preventing further wildfire-induced damage during the 1985–86 flood season. Among other purposes, this appropriation may be utilized by the department (1) to evaluate the probable effectiveness of protective works proposed by local agencies. (2) to meet the requirements for nonfederal financial participation under flood prevention programs of the federal government, provided local agencies expend at least 10 percent of the total cost of federally assisted protective work, and (3) to meet the requirements for flood prevention programs not eligible for federal funds, provided local agencies extend at least 25 percent of the total cost for state assisted protective work. For the purposes of this subdivision, the Juncal Dam Watershed of Santa Barbara County and the Lexington Dam Watershed of Santa Clara County are eligible for state assistance.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Widespread wildfires have stripped protective vegetation away from many areas, exposing the state to potentially severe flooding problems in major burn areas. In order for the flood warning system and funding provided for by this act to be effective during the 1985–86 flood season, it is necessary that this act take effect immediately. In addition, in order for the Department of Water Resources to perform necessary river studies and river bank protection work in as timely a manner as possible, it is necessary that this act take effect immediately.

CHAPTER 1454

An act to amend Section 72252 of the Education Code, relating to community colleges.

[Approved by Governor October 1, 1985. Filed with Secretary of State October 1, 1985.]

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

SECTION 1. Section 72252 of the Education Code is amended to read:

72252. (a) Commencing with the semester, term, or quarter which begins after July 31, 1984, the governing board of each community college district shall charge each student a fee, pursuant to this section.

(b) The fee prescribed by this section shall equal fifty dollars ($50) per semester for students enrolled in classes totaling six or more credit semester units, and five dollars ($5) per unit per semester for students enrolled in classes totaling less than six credit semester units.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system or other alternative system approved pursuant to Section 78002, and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivision (f) shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district which does not collect the fees prescribed by this section.

(e) The fee requirement shall not apply to students enrolled in the noncredit courses designated by Section 84711, or to California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be defrayed pursuant to Section 19 of Chapter 1 of the 1983–84 Second Extraordinary Session for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(h) The requirements of Section 69534 shall apply to financial aid applicants enrolling in six or more credit semester units, but shall not apply to financial aid applicants who seek aid only for the fees required by this section and who enroll for less than six credit semester units. The chancellor shall prescribe a financial aid application for students enrolling in less than six credit semester

units.

(i) The board of governors shall adopt regulations implementing this section as regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(j) This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

SEC. 2. Section 72252 of the Education Code is amended to read:

72252. (a) Commencing with the semester, term, or quarter which begins after July 31, 1984, the governing board of each community college district shall charge each student a fee, pursuant to this section.

(b) The fee prescribed by this section shall equal fifty dollars ($50) per semester for students enrolled in classes totaling seven or more credit semester units, and five dollars ($5) per unit per semester for students enrolled in classes totaling less than seven credit semester units.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system or other alternative system approved pursuant to Section 78002, and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivision (f) shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district which does not collect the fees prescribed by this section.

(e) The fee requirement shall not apply to students enrolled in the noncredit courses designated by Section 84711, or to California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be defrayed pursuant to Section 19 of Chapter 1 of the 1983–84 Second Extraordinary Session for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State

Supplementary Program, or a general assistance program.

(h) The requirements of Section 69534 shall apply to financial aid applicants enrolling in seven or more credit semester units, but shall not apply to financial aid applicants who seek aid only for the fees required by this section and who enroll for less than seven credit semester units. The chancellor shall prescribe a financial aid application for students enrolling in less than seven credit semester units.

(i) The board of governors shall adopt regulations implementing this section as regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(j) This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

SEC. 3. Sections 1 and 2 of this act shall become operative on July 1, 1986, except as otherwise provided in Section 4.

SEC. 4. Section 2 of this bill incorporates amendments to Section 72252 of the Education Code proposed by both this bill and AB 979. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1986, (2) each bill amends Section 72252 of the Education Code, and (3) this bill is enacted after AB 979, in which case Section 72252 of the Education Code, as amended by Section 1 of AB 979, shall remain operative only until July 1, 1986, at which time Section 2 of this bill shall become operative, and Section 1 of this bill shall not become operative.

CHAPTER 1455

An act to amend the heading of Article 8 (commencing with Section 60110) of Chapter 1 of Part 33 of, and to add Sections 51220.1 and 60115 to, the Education Code, and to amend Sections 1660.8, 11113, and 27360 of the Vehicle Code, relating to vehicles, and making an appropriation therefor.

[Approved by Governor October 1, 1985. Filed with Secretary of State October 1, 1985]

I am deleting the $262,750 General Fund appropriation contained in Section 10 of Senate Bill No. 127.

I am supportive of this legislation which would ensure that young people are informed of the hazards of drinking or the use of drugs while driving a vehicle. However, I am not convinced of the need for the additional funding called for by this bill.

The demands placed on budget resources require all of us to set priorities. The budget enacted in July of 1985 appropriated over $28 billion (from the General Fund) to essential services provided by State government as determined by the Legislature and this Administration. This represents an 11.5% increase in expenditures over the budget enacted in July of 1984. That increase was for the purpose of funding priority programs while at the same time maintaining our reserve and preserving our fiscal integrity. It is imperative that the State of California continues to live within its means.

With this deletion, I approve Senate Bill No. 127.

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Article 10. Classified School Employee Week

88270. The third full week in May is designated as Classified School Employee Week.

All community colleges shall annually observe that week in recognition of classified school employees and the contributions they make to the educational community. The observances required by this section shall be integrated into the regular community college program.

This section shall apply to all colleges under the jurisdiction of any community college district that has adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060), as well as to colleges under the jurisdiction of any district that has not adopted the merit system.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to have the third full week in May of 1986 designated as Classified School Employee Week, it is necessary that this act take effect immediately.

CHAPTER 46

An act to amend Section 72252 of the Education Code, relating to community colleges.

[Approved by Governor April 9, 1986. Filed with Secretary of State April 9, 1986.]

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

SECTION 1. Section 72252 of the Education Code is amended to read:

72252. (a) Commencing with the semester, term, or quarter that begins after July 31, 1984, the governing board of each community college district shall charge each student a fee, pursuant to this section.

(b) The fee prescribed by this section shall equal fifty dollars ($50) per semester for students enrolled in classes totaling six or more credit semester units, and five dollars ($5) per unit per semester for students enrolled in classes totaling less than six credit semester units.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system or other alternative system approved pursuant to Section 78002, and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these

adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivision (f) shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement shall not apply to students enrolled in the noncredit courses designated by Section 84711, or to California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be defrayed pursuant to Section 19 of Chapter 1 of the 1983–84 Second Extraordinary Session for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(h) Student financial aid funds appropriated for the purpose of assisting students to pay the fee required by this section may be awarded without regard to the requirements of Chapter 2 (commencing with Section 69500) of Part 42.

(i) The board of governors shall adopt regulations implementing this section as regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(j) This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

evaluation.

(b) In the case of a certificated noninstructional employee, who is employed on a 12-month basis, the evaluation and assessment made pursuant to this article shall be reduced to writing and a copy thereof shall be transmitted to the certificated employee no later than June 30 of the year in which the evaluation and assessment is made. A certificated noninstructional employee, who is employed on a 12-month basis shall have the right to initiate a written reaction or response to the evaluation. This response shall become a permanent attachment to the employee's personnel file. Before July 30 of the year in which the evaluation and assessment takes place, a meeting shall be held between the certificated employee and the evaluator to discuss the evaluation and assessment.

SEC. 2. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

CHAPTER 394

An act to amend Section 72252 of the Education Code, relating to community colleges, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 16, 1986. Filed with Secretary of State July 17, 1986.]

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

SECTION 1. It is the Legislature's intent, in enacting this act, to cause the provisions in Section 72252 of the Education Code, as amended by Chapter 46 of the Statutes of 1986, to become operative in time for implementation for the 1986–87 school year.

SEC. 2. Section 72252 of the Education Code is amended to read:

72252. (a) Commencing with the semester, term, or quarter that begins after July 31, 1984, the governing board of each community college district shall charge each student a fee, pursuant to this section.

(b) The fee prescribed by this section shall equal fifty dollars ($50) per semester for students enrolled in classes totaling six or more credit semester units, and five dollars ($5) per unit per semester for students enrolled in classes totaling less than six credit semester units.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system or other alternative

system approved pursuant to Section 78002, and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivision (f) shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement shall not apply to students enrolled in the noncredit courses designated by Section 84711, or to California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be defrayed pursuant to Section 19 of Chapter 1 of the 1983–84 Second Extraordinary Session for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(h) Student financial aid funds appropriated for the purpose of assisting students to pay the fee required by this section may be awarded without regard to the requirements of Chapter 2 (commencing with Section 69500) of Part 42.

(i) The board of governors shall adopt regulations implementing this section as regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(j) This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that a streamlined community college student application process be implemented prior to the 1986 full term, it is necessary that this act take effect immediately.

SEC. 4. If this act is enacted prior to July 1, 1986, Sections 1 and

2 shall become operative on July 1, 1986.

CHAPTER 395

An act to amend Section 58844 of the Food and Agricultural Code, relating to marketing orders.

[Approved by Governor July 16, 1986. Filed with Secretary of State July 17, 1986.]

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

SECTION 1. Section 58844 of the Food and Agricultural Code is amended to read:

58844. A member of an advisory board is entitled to actual expenses which are incurred while engaged in performing duties that are authorized by this chapter and, with the approval of the advisory board concerned, may receive compensation not to exceed fifty dollars ($50) per day for each day spent in actual attendance at, or traveling to and from, meetings of the board or on special assignment for the board.

CHAPTER 396

An act to add Section 65940.5 to the Government Code, relating to development projects.

[Approved by Governor July 16, 1986. Filed with Secretary of State July 17, 1986.]

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

SECTION 1. Section 65940.5 is added to the Government Code, to read:

65940.5. (a) No list compiled pursuant to Section 65940 shall include a waiver of the time periods prescribed by this chapter within which a state or local agency shall act upon an application for a development project.

(b) No application shall be deemed incomplete for lack of a waiver of time periods prescribed by this chapter within which a state or local government agency shall act upon the application.

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and wastewater disposal problems of those communities at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1118

An act to amend Sections 32033, 72245, 72246, 72250.5, 72251, 72252, 72640, 72641, 78930, 81458, and 82305.5 of, and to add and repeal Section 72252.1 of, the Education Code, relating to education.

[Approved by Governor September 24, 1987. Filed with Secretary of State September 25, 1987.]

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

SECTION 1. Section 32033 of the Education Code, as amended by Chapter 274 of the Statutes of 1984, is amended to read:

32033. The eye protective devices may be sold to the pupils and teachers at a price that shall not exceed the actual cost of the eye protective devices to the school or governing board.

This section shall not apply to the governing board of a community college district; however, this section shall not be construed as prohibiting the governing board of a community college district from offering eye protective devices for sale to students and employees who voluntarily choose to purchase those devices from the district.

This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 2. Section 32033 of the Education Code, as added by Section 2 of Chapter 1010 of the Statutes of 1976, is amended to read:

32033. The eye protective devices may be sold to the pupils and teachers or instructors at a price that shall not exceed the actual cost of the eye protective devices to the school or governing board.

This section shall become operative January 1, 1992.

SEC. 3. Section 72245 of the Education Code is amended to read:

72245. The governing board of a community college district may impose a fee on a participating student for the additional expenses incurred when physical education courses are required to use nondistrict facilities.

This section shall become operative January 1, 1992.

SEC. 4. Section 72246 of the Education Code is amended to read:

72246. (a) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than seven dollars and fifty cents ($7.50) for each semester, and five dollars ($5) for summer school, or five dollars ($5) for each quarter for health supervision and services, including direct or indirect medical and hospitalization

72251. The governing board of any community college district may impose a late application fee, not to exceed two dollars ($2), for any application for admission or readmission that is filed after the date established by the governing board for the filing of applications for admission or readmission to the community college.

This section shall become operative January 1, 1992.

SEC. 7. Section 72252 of the Education Code is amended to read:

72252. (a) Commencing with the semester, term, or quarter that begins after January 1, 1988, the governing board of each community college district shall charge each student a fee, pursuant to this section.

(b) The fee prescribed by this section shall be five dollars ($5) per unit per semester up to a maximum of fifty dollars ($50) per semester.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system or other alternative system approved pursuant to Section 78002, and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivision (f) shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement shall not apply to students enrolled in the noncredit courses designated by Section 84711, or to California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be defrayed pursuant to Section 72252.1 for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(h) Student financial aid funds appropriated for the purpose of assisting students to pay the fee required by this section may be awarded without regard to the requirements of Chapter 2

(commencing with Section 69500) of Part 42.

(i) The board of governors shall adopt regulations implementing this section as regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(j) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1992, deletes or extends that date.

SEC. 8. Section 72252.1 is added to the Education Code, to read:

72252.1. (a) It is the intent of the Legislature to provide adequate funding for the purpose of providing financial aid funds directly to low-income students who cannot pay the fee specified in subdivision (b) of Section 72252 and for the purpose of defraying fees pursuant to subdivision (g) of Section 72252, to be provided as follows:

Period	Amount
July 1, 1988, to June 30, 1989	15,000,000
July 1, 1989, to June 30, 1990	15,000,000
July 1, 1990, to June 30, 1991	15,000,000
July 1, 1991, to January 1, 1992	7,500,000

(b) It is the intent of the Legislature that all funds provided pursuant to subdivision (a) be allocated to community college districts. In prescribing the manner of allocation, the board shall endeavor to ensure that students with similar characteristics shall be treated similarly with respect to the provision of financial aid pursuant to this section, regardless of the community college they attend.

In allocating funds pursuant to this section, the board shall consider the number of students eligible for such assistance in the prior academic year and other factors that may have bearing on the amount of these funds required by each community college district.

The board may allocate up to 7 percent of the total amount of funds provided pursuant to subdivision (a) to community college districts for delivery of student financial aid services required as a result of this section. Funds so allocated to a district for delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1983–84 fiscal year, adjusted annually in accordance with the cost-of-living adjustment to the general apportionments.

The board shall be provided adequate resources through the annual Budget Act to support state administration of this financial aid program.

(c) Financial aid shall be provided pursuant to this section only to those students required to pay the fee specified in Section 72252, and only in an amount equal to the fee actually charged the student pursuant to that section. In addition, the chancellor shall pay districts

the district in providing the materials, and the materials themselves shall be tangible personal property that is owned or controlled by the student.

(b) "Instructional materials" means all material designed for use by students and their instructors as a learning resource and which help students to acquire facts, skills, or opinions or to develop cognitive processes. Instructional materials may be printed or nonprinted and may include textbooks and educational materials, but not tests. Educational materials are defined to mean any audiovisual or manipulative device including, but not limited to, films, tapes, flashcards, kits, phonograph records, study prints, graphs, charts, and multimedia systems.

(c) This section shall become operative January 1, 1992.

SEC. 14. Section 81458 of the Education Code is amended to read:

81458. The governing board of a community college district may sell to persons enrolled in classes for adults maintained by the district materials that may be necessary for the making of articles by those persons in the classes. The materials shall be sold at not less than the cost thereof to the district and any article made therefrom shall be the property of the person making it.

This section shall become operative January 1, 1992.

SEC. 15. Section 82305.5 of the Education Code is amended to read:

82305.5. The governing board of a community college district may contract for the transportation of matriculated or enrolled adults, or provide transportation to adults in district-owned equipment for educational purposes other than to and from school.

Any district which contracts to provide or provides transportation to adults pursuant to this section may charge adults all or part of the costs of contracting for or providing those transportation services.

This section shall become operative January 1, 1992.

SEC. 16. No reimbursement is required by Section 4 of this act pursuant to Section 6 of Article XIII B of the California Constitution because this act provides the local agency or school district with the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of services mandated by Section 4 of this act.

SEC. 17. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that the provisions of this act other than Section 4 contain costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

Board of Supervisors of Fresno County, and insufficient time now remains, prior to the originally scheduled November 7, 1989, governing board election, for that approval process to occur.

(d) Under the circumstances set forth above, the waiver provided under Section 4 of this act is necessary in order to further the objectives of Section 5000.5 of the Education Code, namely, to facilitate the consolidation of elections in order to increase voter participation and to reduce local election costs. Moreover, the Fresno County Board of Supervisors is aware of the circumstances set forth above, and consents to the proposal to waive the requirement that the resolution to consolidate elections, as described above, be submitted for its approval.

SEC. 4. Notwithstanding Section 5000.5 of the Education Code, the resolution described in Section 3 of this act, which was adopted by the governing board of Cutler-Orosi Unified School District to postpone the governing board election of November 7, 1989, for that district, for the purpose of consolidation with the statewide general election, commencing on November 6, 1990, shall not be required to be submitted to, or approved by, the Board of Supervisors of Fresno County as a condition of that consolidation.

SEC. 5. Due to the unique circumstances specified in Section 3 of this act concerning the Cutler-Orosi Unified School District, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to permit school district governing boards to adequately meet school facilities needs commencing in the 1989–90 school year, and to enable the Cutler-Orosi Unified School District to postpone its governing board election of November 7, 1989, for purposes of consolidation with the statewide general election of November 6, 1990, it is necessary that this act take effect immediately.

CHAPTER 136

An act to amend Sections 32320, 72252, and 72252.1 of, and the heading of Article 3 (commencing with Section 32320) of Chapter 3 of Part 19 of, the Education Code, relating to education.

[Approved by Governor July 13, 1989. Filed with Secretary of State July 13, 1989.]

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

SECTION 1. The heading of Article 3 (commencing with Section 32320) of Chapter 3 of Part 19 of the Education Code is amended to read:

Article 3. Tuition and Fee Exemptions

SEC. 2. Section 32320 of the Education Code is amended to read:

32320. No state-owned college, university, or other school shall charge any tuition, or incidental fees to any of the following:

(a) Any dependent receiving assistance under Article 2 (commencing with Section 890) of Chapter 4 of Division 4 of the Military and Veterans Code.

(b) Any child of any veteran of the United States military service who has a service-connected disability, and whose annual income not including governmental compensation for the service-connected disability, does not exceed five thousand dollars ($5,000).

(c) Any child of any veteran who has been killed in service or has died of a service-connected disability, where the annual income of the child, including the value of any support received from a parent, and the annual income of a surviving parent, does not exceed five thousand dollars ($5,000).

(d) Any dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty, and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

Nothing contained in this section shall prevent the Regents of the University of California from charging to and collecting from nonresident students an admission fee and rate of tuition nor shall anything in this section prevent the charging and collecting of fees required of nonresident students admitted to schools under the jurisdiction of the State Department of Education or the Director of Education or to a state university under the jurisdiction of the Trustees of the California State University.

This section shall not apply to a dependent of a veteran within the meaning of paragraph (4) of subdivision (a) of Section 890 of the Military and Veterans Code.

SEC. 3. Section 72252 of the Education Code is amended to read:

72252. (a) Commencing with the semester, term, or quarter that begins after January 1, 1988, the governing board of each community college district shall charge each student a fee, pursuant to this section.

(b) The fee prescribed by this section shall be five dollars ($5) per

unit per semester up to a maximum of fifty dollars ($50) per semester.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system or other alternative system approved pursuant to Section 78002, and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivision (f) shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement shall not apply to students enrolled in the noncredit courses designated by Section 84711, or to California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be defrayed pursuant to Section 72252.1 for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(h) The fee requirements of this section shall be defrayed pursuant to Section 72252.1 for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) Student financial aid funds appropriated for the purpose of assisting students to pay the fee required by this section may be awarded without regard to the requirements of Chapter 2 (commencing with Section 69500) of Part 42.

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(j) The board of governors shall adopt regulations implementing this section as regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(k) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1992, deletes or extends that date.

SEC. 4. Section 72252.1 of the Education Code is amended to read:

72252.1. (a) It is the intent of the Legislature to provide adequate funding for the purpose of providing financial aid funds directly to low-income students who cannot pay the fee specified in subdivision (b) of Section 72252 and for the purpose of defraying fees pursuant to subdivisions (g) and (h) of Section 72252, to be provided as follows:

Period	Amount
July 1, 1988, to June 30, 1989	$15,000,000
July 1, 1989, to June 30, 1990	15,000,000
July 1, 1990, to June 30, 1991	15,000,000
July 1, 1991, to January 1, 1992	7,500,000

(b) It is the intent of the Legislature that all funds provided pursuant to subdivision (a) be allocated to community college districts. In prescribing the manner of allocation, the board shall endeavor to ensure that students with similar characteristics shall be treated similarly with respect to the provision of financial aid pursuant to this section, regardless of the community college they attend.

In allocating funds pursuant to this section, the board shall consider the number of students eligible for assistance in the prior academic year and other factors that may have bearing on the amount of these funds required by each community college district.

The board may allocate up to 7 percent of the total amount of funds provided pursuant to subdivision (a) to community college districts for delivery of student financial aid services required as a result of this section. Funds so allocated to a district for delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1983–84 fiscal year, adjusted annually in accordance with the cost-of-living adjustment to the general apportionments.

The board shall be provided adequate resources through the annual Budget Act to support state administration of this financial aid program.

(c) Financial aid shall be provided pursuant to this section only to those students required to pay the fee specified in Section 72252, and only in an amount equal to the fee actually charged the student pursuant to that section. In addition, the chancellor shall pay districts

the amount of fees defrayed pursuant to subdivisions (g) and (h) of Section 72252.

(d) Districts that receive an allocation of funds pursuant to this section shall administer and award the funds in accordance with regulations adopted by the board of governors.

(e) If the amount of funds provided pursuant to subdivision (a) exceeds the need for financial aid to students who cannot afford to pay the fee charged pursuant to Section 72252, the excess shall revert to the General Fund.

(f) If the amount needed for financial aid to students who cannot afford the fee charged pursuant to Section 72252 and to pay districts for the total amount of fees defrayed pursuant to subdivisions (g) and (h) of Section 72252 is greater than the amount of funds provided pursuant to subdivision (a), the chancellor shall certify to the Department of Finance the amount of the additional funds that are required. Upon receipt of this certification, the Director of Finance shall take any administrative action available to him or her to transfer the additional funds, pursuant to the Budget Act or as otherwise provided by the Legislature.

(g) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 5. No provision of this act shall apply to the University of California unless the Regents of the University of California, by resolution, makes that provision applicable.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 114

An act to amend Sections 72252 and 72252.1 of, and to repeal Sections 72250.5 and 72251 of, the Education Code, relating to community colleges, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 15, 1991. Filed with Secretary of State July 15, 1991.]

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

SECTION 1. Section 72250.5 of the Education Code is repealed.

SEC. 2. Section 72251 of the Education Code is repealed.

SEC. 3. Section 72252.1 of the Education Code is amended to read:

72252.1. (a) It is the intent of the Legislature to provide adequate funding for the purpose of providing financial aid funds directly to low-income students who cannot pay the fees specified in subdivision (b) of Section 72252, and for the purpose of defraying fees pursuant to subdivisions (g) and (h) of Section 72252.

(b) It is the intent of the Legislature that all funds provided pursuant to subdivision (a) be allocated to community college districts. In prescribing the manner of allocation, the board shall endeavor to ensure that students with similar characteristics are treated similarly with respect to the provision of financial aid pursuant to this section, regardless of the community college they attend.

In allocating funds pursuant to this section, the board shall consider the number of students eligible for assistance in the prior academic year and other factors that may have bearing on the amount of these funds required by each community college district.

The board may allocate up to 7 percent of the total amount of funds provided pursuant to subdivision (a) to community college districts for delivery of student financial aid services required as a result of this section. Funds so allocated to a district for delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1983–84 fiscal year, adjusted annually in accordance with the cost-of-living adjustment to the general apportionments.

The board shall be provided adequate resources through the annual Budget Act to support state administration of this financial aid program.

(c) Financial aid shall be provided pursuant to this section only to those students required to pay the fee specified in subdivision (b) of Section 72252, and only in an amount equal to the fee actually charged the student pursuant to those sections. In addition, the chancellor shall pay districts the amount of fees defrayed pursuant

to subdivisions (g) and (h) of Section 72252.

(d) Districts that receive an allocation of funds pursuant to this section shall administer and award the funds in accordance with regulations adopted by the board of governors.

(e) If the amount of funds provided pursuant to subdivision (a) exceeds the need for financial aid to students who cannot afford to pay the fee charged pursuant to subdivision (b) of Section 72252, the excess shall revert to the General Fund.

(f) If the amount needed for financial aid to students who cannot afford the fee charged pursuant to subdivision (b) of Section 72252 and to pay districts for the total amount of fees defrayed pursuant to subdivisions (g) and (h) of Section 72252 is greater than the amount of funds provided pursuant to subdivision (a), the chancellor shall certify to the Department of Finance the amount of the additional funds that are required. Upon receipt of this certification, the Director of Finance shall take any administrative action available to him or her to transfer the additional funds, pursuant to the Budget Act or as otherwise provided by the Legislature.

SEC. 4. Section 72252 of the Education Code is amended to read:

72252. (a) The governing board of each community college district shall charge each student a fee, pursuant to this section.

(b) (1) The fee prescribed by this section shall be five dollars ($5) per unit per semester up to a maximum of fifty dollars ($50) per semester.

(2) For the 1991–92 academic year only, the governing board of each community college district shall, in addition to the fee prescribed in paragraph (1), impose a surcharge of one dollar ($1.00) per unit per semester up to a maximum of ten dollars ($10) per semester.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivision (f) shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84711.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the

California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be defrayed pursuant to Section 72252.1 for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(h) The fee requirements of this section shall be defrayed pursuant to Section 72252.1 for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) Student financial aid funds appropriated for the purpose of assisting students to pay the fee required by this section may be awarded without regard to the requirements of Chapter 2 (commencing with Section 69500) of Part 42.

(j) The board of governors shall adopt regulations implementing this section.

(k) As used in this section and Section 72252.1, fee includes a surcharge.

(*l*) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1995, deletes or extends that date.

SEC. 5. Community college districts shall not include the surcharge imposed pursuant to paragraph (2) of subdivision (b) of Section 72252 when computing their budgets for the 1992–93 fiscal year.

SEC. 6. Community college districts shall provide sufficient financial aid to ensure that no student is denied access during the 1991–92 academic year due to the imposition of the surcharge pursuant to paragraph (2) of subdivision (b) of Section 72252.

The Chancellor of the Community Colleges shall provide to the Legislature and the Governor, by January 1, 1992, documentation that no student has been denied access because of the imposition of that surcharge.

SEC. 7. (a) From the appropriation set forth in Schedule (a) of Item 6870-101-001 of Section 2.00 of the Budget Act of 1991, the

Chancellor of the California Community Colleges first shall apportion the amount computed under subdivision (b) to each community college district having classified employees who are members of an employee retirement system other than the Public Employees' Retirement System if that district does not achieve any savings for the 1991–92 fiscal year as a result of the repeal of the retirement allowance adjustment programs established pursuant to Sections 21235, 21236, 21237, and 21238 of the Government Code.

(b) The amount to be apportioned to each community college district that qualifies for apportionment under subdivision (a) shall be equal to the amount of the employer contributions the district would have been required to make for the 1991–92 fiscal year had its classified employees been members of the Public Employees' Retirement System.

(c) Any increase or decrease in the amount of funding received by any community college district for the 1991–92 fiscal year that results from the apportionments authorized under subdivisions (a) and (b) shall not affect the state funding entitlement of that district for the 1992–93 fiscal year or any fiscal year thereafter.

(d) This section shall be operative only if, for the 1991–92 fiscal year, community college districts are granted relief, in whole or in part, from the obligation to make expenditures during the 1991–92 fiscal year pursuant to contracts with the Public Employees' Retirement System.

SEC. 8. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health,or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure adequate sources of funding for community colleges during a period of fiscal crisis, it is necessary that this act take effect immediately.

for administration and monitoring of loans made prior to July 1, 1992, to make loans pursuant to loan commitments made prior to July 1, 1992. The department may also retain reserves for curing or averting a default that would jeopardize any security interest of the department.

SEC. 3. (a) The sum of one million eighty-two thousand dollars ($1,082,000) is hereby appropriated in the 1992–93 fiscal year from the General Fund to the Director of Housing and Community Development in accordance with the following schedule:

(1) One million two thousand dollars ($1,002,000) for implementation and administration of the HOME Investment Partnership Act (otherwise referred to as "HOME"), as authorized by the Cranston-Gonzalez National Affordable Housing Act of 1990 (Public Law 101-625).

(2) Eighty thousand dollars ($80,000) for administration of the federal Permanent Housing for the Handicapped Homeless Program.

(b) It is the intent of the Legislature that, in subsequent fiscal years, appropriations for the programs supported pursuant to this section shall be provided in the annual budget acts.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The provisions of this act address the current fiscal crisis of the state. In order that this act may be in place at the commencement of the 1992–93 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 703

An act to amend Sections 23402, 41202, 41203.1, 41302.5, 41305, and 72252 of, to add Section 41204.5 to, to add and repeal Sections 44955.6 and 72250 of, and to repeal Section 41203.1 of, the Education Code, and to amend Section 33401 of the Health and Safety Code, relating to education finance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 14, 1992. Filed with Secretary of State September 15, 1992.]

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

SECTION 1. Section 23402 of the Education Code is amended to read:

23402. (a) Notwithstanding Section 13340 of the Government Code, commencing October 1, 1991, a continuous appropriation is hereby made from the General Fund to the Controller, pursuant to

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this section, for transfer to the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 4.3 percent of the total of the salaries of the immediately preceding calendar year upon which members' contributions are based, to be calculated annually on October 1, and shall be divided into four equal quarterly payments. The percentage shall be adjusted to reflect the contribution required to fund the normal cost deficit when the unfunded obligation has been deemed to be eliminated by the board based upon a recommendation from its actuary. If a rate increase or decrease is required, the adjustment may be for no more than 0.25 percent per year and in no case may the transfer exceed 4.3 percent of the total of the salaries of the immediately preceding calendar year upon which members' contributions are based.

(b) The funds transferred pursuant to subdivision (a) shall first be applied to meeting the normal cost deficit, if any, for that fiscal year.

(c) The transfers made pursuant to this section are in lieu of the state contributions formerly made pursuant to Sections 23401 and 23402.

(d) For the purposes of this section, the term "normal cost deficit" means the difference between the normal cost rate as determined in the actuarial valuation required by Section 22226 and the total of the member contribution rate required under Section 22804 and the employer contribution rate required under Section 23400, and shall exclude (1) the portion for unused sick leave service granted pursuant to Section 22719, (2) the cost of benefit increases which occur after July 1, 1990. The contribution rates prescribed in Section 22804 and Section 23400 on July 1, 1990, shall be utilized to make the calculations. The normal cost deficit shall then be multiplied by the total of the salaries upon which member contributions are based to determine the dollar amount of the normal cost deficit for the year.

(e) Pursuant to Section 22001 and the case law, the members are entitled to a financially sound retirement system. The Legislature recognizes that the system shall, pursuant to this act, receive less funds in the short term than it would have received under former Sections 23401 and 23402 (Chapter 282 of the Statutes of 1979). However, it is the intent of the Legislature that this section shall provide the retirement fund stable and full funding over the long term.

(f) This section continues in effect but in a somewhat different form, fully performs, and does not in any way unreasonably impair, the contractual obligations determined by the court in California Teachers' Association v. Cory, 155 Cal. App. 3d 494.

(g) This section shall not be construed to be applicable to any unfunded liability resulting from any benefit increase or changes in contribution which occur after July 1, 1990.

(h) The amendments to this section during the 1991–92 Regular Session shall be construed and implemented to be in conformity with the judicial intent expressed by the court in California Teachers' Association v. Cory, 155 Cal. App. 3d 494.

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(c) The schedules of notice and hearing shall provide for any notice to be served as provided in subdivision (d) of Section 44949.

(d) Terminations shall be considered effective on a date 30 days following initial service of notice.

(e) If termination is not completed, the employee shall be entitled to compensation for the period of time between service of the notice of recommended termination and the board action restoring the employee to his or her former position.

(f) This section shall remain in effect only until July 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 1993, deletes or extends that date.

SEC. 10. Section 72250 is added to the Education Code, to read:

72250. (a) The governing board of each community college district shall charge a fee of fifty dollars ($50) per semester unit, or the quarter unit equivalent, to each student who previously has been awarded a baccalaureate or graduate degree from any public or private postsecondary educational institution.

(b) The governing board shall exempt from subdivision (a), and charge the fees specified in Section 72252 to, a student who is any of the following:

(1) A dislocated worker, as certified by a state agency in accordance with Subchapter III of the federal Job Training Partnership Act (29 U.S.C. Sec. 1651 et seq.).

(2) A displaced homemaker, as defined in accordance with the Higher Education Act of 1965, as amended (20 U.S.C. Sec. 1001 et seq.).

(3) A recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(c) Nonresident students who pay nonresident tuition shall be exempt from subdivision (a).

(d) The governing board of a community college district may require each student who is eligible for an exemption from subdivision (a) to file a written oath or affirmation that he or she is eligible for the exemption at the time of enrollment.

(e) It is the intent of the Legislature that governing boards conduct selective audits of any oath or affirmation filed by students pursuant to subdivision (d).

(e) It is the further intent of the Legislature that students who have not previously been awarded a baccalaureate or graduate degree be given priority for enrollment.

(f) (1) This section shall be operative beginning with the first regular academic semester, quarter, or term commencing after January 1, 1993.

(2) Notwithstanding subdivision (c) of Section 84750, decreases in the 1992–93 fiscal year in credit full-time equivalent students (FTES) resulting from the implementation of this section shall not result in any reduction in revenue for the 1993–94 fiscal year. Decreases in

FTES in the 1992–93 fiscal year shall result in a revenue reduction over the three-year period beginning with the 1994–95 fiscal year, except that community college districts shall be entitled to restore any reductions in apportionment revenue if there is a subsequent increase in FTES.

(3) The board of governors shall report to the Legislature on or before January 1, 1994, on the implementation and impact of this section.

(g) This section shall remain in effect only until January 1, 1996, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1996, deletes or extends that date.

SEC. 11. Section 72252 of the Education Code is amended to read:

72252. (a) The governing board of each community college district shall charge each student a fee, pursuant to this section.

(b) The fee prescribed by this section shall be ten dollars ($10) per unit per semester.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivision (f) shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84711.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be defrayed pursuant to Section 72252.1 for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

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(h) The fee requirements of this section shall be defrayed pursuant to Section 72252.1 for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) Student financial aid funds appropriated for the purpose of assisting students to pay the fee required by this section may be awarded without regard to the requirements of Chapter 2 (commencing with Section 69500) of Part 42.

(j) The board of governors shall adopt regulations implementing this section.

(k) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1995, deletes or extends that date.

SEC. 12. Section 33401 of the Health and Safety Code is amended to read:

33401. (a) The agency may in any year during which it owns property in a redevelopment project pay directly to any city, county, city and county, district, including, but not limited to, a school district, or other public corporation for whose benefit a tax would have been levied upon the property had it not been exempt, an amount of money in lieu of taxes.

A proportionate share of any amount of money paid by an agency to any city and county pursuant to this subdivision shall be disbursed by the city and county to any school district with territory located within a redevelopment project area in the city and county. "Proportionate share," as used in this section, means the ratio of the school district tax rate, which is included in the total tax rate of the city and county, to the total tax rate of the city and county.

(b) The agency may also pay to any taxing agency with territory located within a project area other than the community which has adopted the project, any amounts of money which the agency has found are necessary and appropriate to alleviate any financial burden or detriment caused to any taxing agency by a redevelopment project. The payments to a taxing agency in any single year shall not exceed the amount of property tax revenues which would have been received by that taxing agency if all the property tax revenues from the project area had been allocated to all the affected taxing agencies without regard to the division of taxes required by Section 33670, except that a greater payment may be established by agreement between the agency and one or more taxing agencies, except a school district, if the other taxing agencies agree to defer payments for one or more years in order to accomplish

the purposes of the project at an earlier time than would otherwise be the case. The amount of any greater payments shall not exceed the amount of payment deferred. The payments shall be approved by a resolution, adopted by the redevelopment agency, which shall contain findings, supported by substantial evidence, that the redevelopment project will cause or has caused a financial burden or detriment to the taxing agency and that the payments are necessary to alleviate the financial burden or detriment.

The requirement that the agency may make payments to a taxing entity only to alleviate a financial burden or detriment, as defined in Section 33012, and only after approval by a resolution which contains specified findings, shall apply only to payments made by an agency pursuant to an agreement between an agency and a taxing entity which is executed by the agency on or after the effective date of amendments to this section enacted by the Statutes of 1984.

(c) Each school district and community college district that may be eligible for payments under this section shall request, in writing, that the agency make those payments.

SEC. 13. It is the intent of the Legislature that Section 44955.6 of the Education Code, as added by Section 7 of this act, does not constitute a change in, but is declaratory of, existing law and is intended to clarify the intent of the Legislature at the time of the enactment of the section regarding its applicability.

SEC. 14. The Legislature hereby finds and declares as follows:

(a) Current law provides that the Diagnostic Schools for Neurologically Handicapped Children are a part of the public school system.

(b) Diagnostic Schools for Neurologically Handicapped Children were established to provide assessments, diagnostic services, and educational planning services for handicapped children referred by special education programs.

(c) Section 3025 of Title 5 of the California Code of Regulations states, in part, that the "Schools for the Deaf and Blind and the Diagnostic Schools shall conduct assessments pursuant to the provisions of Education Code Section 56320, et seq."

(d) Other than assessments provided by the Diagnostic Schools for Neurologically Handicapped Children, assessments provided for handicapped children by either local educational agencies or through nonpublic, nonsectarian schools are considered appropriations for the purposes set forth in Section 8 of Article XVI of the California Constitution.

SEC. 15. (a) Each school district that received funding during the 1992–93 fiscal year from the program specified in Article 9 (commencing with Section 54760) of Chapter 9 of Part 29 of the Education Code shall request the Superintendent of Public Instruction to add, commencing with the 1993–94 fiscal year and each fiscal year thereafter, the funds received under that program in the 1992–93 fiscal year to the base revenue limit, or to one or more of the categorical programs specified under that program, as it existed

during the 1992–93 fiscal year.

(b) Commencing with the 1993–94 fiscal year, and each fiscal year thereafter, the Superintendent of Public Instruction shall allocate the funds received by school districts under the program specified in Article 9 (commencing with Section 54760) of Chapter 9 of Part 29 of the Education Code during the 1992–93 fiscal year, as school districts requested pursuant to subdivision (a).

(c) The Superintendent of Public Instruction shall specify a date by which school districts shall request how the funds shall be allocated during the 1993–94 fiscal year and each fiscal year thereafter. If a school district fails to notify the Superintendent of Public Instruction by the date specified by the superintendent how it desires the funds to be allocated, the superintendent shall add the funds to the school district's revenue limit.

SEC. 16. The Legislature finds and declares that this act furthers the purposes of the Classroom Instructional Improvement and Accountability Act.

SEC. 17. (a) Section 72252 of the Education Code, as amended by Section 11 of this act, shall be operative beginning with the first regular academic semester, quarter or term commencing after January 1, 1993.

(b) Notwithstanding any other provision of law, for that portion of the 1992–93 fiscal year preceding the operative date of Section 72252 of the Education Code as amended by Section 11 of this act, the governing board of each community college district shall charge each student a fee in the amount of six dollars ($6) per unit per semester.

SEC. 18. Notwithstanding Section 2.00 of Chapter 118 of the Statutes of 1991, of the unencumbered balance of the appropriation made under Schedule (a) of Item 6110-101-001 of that section, the sum of one billion eighty-three million dollars ($1,083,000,000) shall revert, as of the effective date of this act, to the unappropriated surplus of the General Fund.

SEC. 19. (a) The sum of one billion eighty-three million dollars ($1,083,000,000) is hereby appropriated from the General Fund for transfer to Section A of the State School Fund for apportionment to school districts as an emergency loan. That appropriation shall be distributed to school districts for the 1991–92 fiscal year pursuant to Section 42238 of the Education Code in the same manner that funds are apportioned pursuant to Schedule (a) of Item 6110-101-001 of Section 2.00 of the Budget Act of 1991, as set forth in Chapter 118 of the Statutes of 1991.

(b) No interest payment shall be required with regard to the loan authorized under subdivision (a). The repayment of that loan shall be governed by statutory provision that expressly addresses that loan.

(c) The moneys appropriated for loan purposes under subdivision (a) shall not be deemed, for any fiscal year, to be either "General Fund revenues appropriated for school districts" or any part of "total allocations to school districts" for purposes of Section 8 of Article XVI

reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 33. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make certain essential changes in education-related financing for purposes of the 1992–93 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 704

An act to amend and supplement the Budget Act of 1992 by amending Items 3540-001-001, 3940-001-001, and 3940-001-193 of, and to repeal Item 3540-001-197 of, Section 2.00 thereof, relating to resources, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 14, 1992. Filed with Secretary of State September 15, 1992.]

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

SECTION 1. Item 3540-001-001 of Section 2.00 of the Budget Act of 1992 is amended to read:

3540-001-001—For Support of Department of Forestry and Fire Protection		227,033,000
Schedule:		
(a) 100000-Personal services	253,673,000	
(b) 300000-Operating expenses and equipment	110,115,000	
(bx) Travel-related reduction	−352,000	
(c) Reimbursements	−86,812,000	
(d) Amount payable from the General Fund (Item 3540-006-001)	−20,000,000	
(e) Amount payable from the Special Account for Capital Outlay (Item 3540-001-036)	−1,187,000	
(f) Amount payable from the California Environmental License Plate Fund (Item 3540-001-140)	−6,427,000	
(g) Amount payable from the Outer		

97970

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11340) of Part 1 of Division 3 of Title 2 of the Government Code, these regulations shall not be repealed by the Office of Administrative Law and shall remain in effect until revised or repealed by the department adopting the regulations.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to facilitate implementation of the Title XIX Personal Care program, and bridge the gap between the current In-Home Supportive Service Program and the Personal Care Option program and remaining in-home supportive services programs as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 8

An act to amend Sections 66602, 66606, 66901, 66904, 67143, 67380, 68052, 68076, 68077, 69513, 69612.5, 70011, 71092, 76064, 76221, 76222, 87615, 89006, 89009, 89011, 89034, 89230, 89705, 92612, 92620, 94020, 94021, 94362, 94380, and 94385 of, to amend and renumber Section 89033.1 of, to amend and renumber the heading of Chapter 15.5 (commencing with Section 67380) of Part 40 of, the heading of Chapter 9 (commencing with Section 92690) of Part 57 of, the heading of Article 6.5 (commencing with Section 69612) of Chapter 2 of Part 42 of, the heading of Article 6.6 (commencing with Section 69618) of Chapter 2 of Part 42 of, the heading of Article 6.7 (commencing with Section 69619) of Chapter 2 of Part 42 of, the heading of Article 4 (commencing with Section 71090) of Chapter 1 of Part 44 of, the heading of Article 6 (commencing with Section 72330) of Chapter 3 of Part 45 of, and the heading of Article 1.5 (commencing with Section 78210) of Chapter 2 of Part 48 of, to add Sections 72029 and 72205 to, and to add Chapter 2 (commencing with Section 76300) to Part 47 of, to repeal Sections 66907, 67381, 67382, 69506.6, 69619.3, 69702, 76300, 76330, 87356, 89010, 89033, and 92583 of, to repeal Article 2 (commencing with Section 66910) of Chapter 11 of Part 40 of, Article 2.5 (commencing with Section 66914) of Chapter 11 of Part 40 of, Article 3 (commencing with Section 66915) of Chapter 11 of Part 40 of, Article 2 (commencing with Section 72241) of Chapter 3 of Part 45 of, Article 2.5 (commencing with Section

89050) of Chapter 1 of Part 55 of, Article 3 (commencing with Section 89730) of Chapter 6 of Part 55 of, Chapter 9 (commencing with Section 85410) of Part 50 of, and Chapter 4 (commencing with Section 99170) of Part 65 of, and to repeal the heading of Chapter 15.6 (commencing with Section 67385) of Part 40 of, and the heading of Chapter 3.8 (commencing with Section 94385) of Part 59 of, the Education Code, and to amend Section 50330 of the Government Code, relating to postsecondary education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 15, 1993. Filed with Secretary of State April 15, 1993.]

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

SECTION 1. Section 66602 of the Education Code is amended to read:

66602. (a) The board shall be composed of the following four ex officio members: the Governor, the Lieutenant Governor, the Superintendent of Public Instruction, and the person named by the trustees to serve as the Chancellor of the California State University; a representative of the alumni associations of the state university and colleges, selected for a two-year term by the alumni council, California State University, which representative shall not be an employee of the California State University during the two-year term; and 16 appointive members appointed by the Governor and subject to confirmation by two-thirds of the Senate.

(b) There shall also be appointed by the Governor for a two-year term, a student from a California state university or college who shall have at least a junior year standing at the institution he or she attends, and shall remain in good standing as a student for the two-year term. In the selection of a student as a member of the board, the Governor shall appoint the student from a list of names of not more than five persons furnished by student representatives of each of the universities and colleges of the California State University. The student representative of a university or college shall be the elected student body president or, in the case of a university or college not having an elected student body president, the person receiving the highest number of votes cast at a student body election held to select the student representative. Any appointment to fill a vacancy of a student member shall be effective only for the remainder of the term of the person's office that became vacated.

The term of office of the student member of the board shall commence on July 1 and expire on June 30 two years thereafter.

(c) The Speaker of the Assembly shall be an ex officio member, having equal rights and duties with nonlegislative members.

(d) There shall also be appointed by the Governor for a two-year term, a faculty member from the California State University who shall be tenured at the California state university or college at which

72029. The governing board of a community college district may by resolution limit campaign expenditures or contributions in elections to district offices.

SEC. 28. Section 72205 is added to the Education Code, to read:

72205. The approval of any state agency shall not be a prerequisite to acceptance by the governing board of any community college district of a gift, donation, bequest, or devise. No real or personal property, including money, accepted by a governing board pursuant to this section shall be considered in determining the eligibility of the district for an apportionment from the State School Fund nor in determining the amount thereof.

SEC. 29. Article 2 (commencing with Section 72241) of Chapter 3 of Part 45 of the Education Code is repealed.

SEC. 30. The heading of Article 6 (commencing with Section 72330) of Chapter 3 of Part 45 of the Education Code is amended and renumbered to read:

Article 2. College Police

SEC. 31. Section 76064 of the Education Code is amended to read:

76064. In addition to deposit or investment pursuant to Section 76063, the funds of a student body organization may be loaned or invested in any of the following ways:

(a) Loans, with or without interest, to any student body organization established in another community college of the district for a period not to exceed three years.

(b) Invest money in permanent improvements to any community college district property including, but not limited to, buildings, automobile parking facilities, gymnasiums, swimming pools, stadia and playing fields, where those facilities, or portions thereof, are used for conducting student extracurricular activities or student spectator sports, or when those improvements are for the benefit of the student body. The investment shall be made on condition that the principal amount of the investment plus a reasonable amount of interest thereon shall be returned to the student body organization as provided herein. Any community college district approving the investment shall establish a fund in accordance with the California Community Colleges Budget and Accounting Manual in which moneys derived from the rental of community college district property to student body organizations shall be deposited. Moneys collected by the governing board for automobile parking facilities as authorized by Section 76360 shall be deposited in the fund designated by the California Community Colleges Budget and Accounting Manual if the parking facilities were provided for by investment of student body funds under this section. Moneys shall be returned to the student body organization as contemplated by this section exclusively from the special fund and only to the extent that there are moneys in the special fund. Whenever there are no outstanding obligations against the special fund, all moneys therein may be

transferred to the general fund of the school district by action of the local governing board.

Two or more student body organizations of the same community college district may join together in making the investments in the same manner as is authorized herein for a single student body. Nothing herein shall be construed so as to limit the discretion of the local governing board in charging rental for use of community college district property by student body organizations as provided in Section 76060.

SEC. 32. Section 76221 of the Education Code is amended to read:

76221. Community college districts shall notify students in writing of their rights under this chapter upon the date of the student's enrollment and at least annually thereafter. The notice shall take a form that reasonably notifies students of the availability of the following specific information:

(a) The types of student records and information contained therein that are directly related to students and maintained by the institution.

(b) The official responsible for the maintenance of each type of record.

(c) The location of the log or record required to be maintained pursuant to Section 76222.

(d) The criteria to be used by the institution in defining "officials and employees" and in determining "legitimate educational interest" as used in Section 76222 and subdivision (a) of Section 76243.

(e) The policies of the institution for reviewing and expunging those records.

(f) The right of the student to have access to his or her records.

(g) The procedures for challenging the content of student records.

(h) The cost if any that will be charged for reproducing copies of records.

(i) The categories of information that the institution has designated as directory information pursuant to Section 76240.

(j) Any other rights and requirements set forth in this chapter and the right of the student to file a complaint with the United States Department of Education concerning an alleged failure by the institution to comply with Section 438 of the General Education Provisions Act (20 U.S.C.A. 1232g).

SEC. 33. Section 76222 of the Education Code is amended to read:

76222. A log or record shall be maintained for each student's record which lists all persons, agencies, or organizations requesting or receiving information from the record and the legitimate interests therefor. The listing need not include any of the following:

(a) Students to whom access is granted pursuant to Section 76230.

(b) Parties to whom directory information is released pursuant to Section 76240.

(c) Parties for whom written consent has been executed by the

student pursuant to Section 76242.

(d) Officials or employees having a legitimate educational interest pursuant to subdivision (a) of Section 76243.

The log or record shall be open to inspection only by the student and the community college official or his or her designee responsible for the maintenance of student records, and to the Comptroller General of the United States, the Secretary of Education, an administrative head of an education agency as defined in Public Law 93-380, and state educational authorities as a means of auditing the operation of the system.

SEC. 34. Chapter 2 (commencing with Section 76300) is added to Part 47 of the Education Code, to read:

CHAPTER 2. FEES

Article 1. Enrollment Fees and Financial Aid

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) The fee prescribed by this section shall be ten dollars ($10) per unit per semester.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivisions (g) and (h) shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84711.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be defrayed pursuant to Section 72252.1 for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(h) The fee requirements of this section shall be defrayed pursuant to Section 72252.1 for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) Student financial aid funds appropriated for the purpose of assisting students to pay the fee required by this section may be awarded without regard to the requirements of Chapter 2 (commencing with Section 69500) of Part 42.

(j) The board of governors shall adopt regulations implementing this section.

(k) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1995, deletes or extends that date.

76310. (a) It is the intent of the Legislature to provide adequate funding for the purpose of providing financial aid funds directly to low-income students who cannot pay the fees specified in subdivision (b) of Section 76300, and for the purpose of defraying fees pursuant to subdivisions (g) and (h) of Section 76300.

(b) It is the intent of the Legislature that all funds provided pursuant to subdivision (a) be allocated to community college districts. In prescribing the manner of allocation, the board shall endeavor to ensure that students with similar characteristics are treated similarly with respect to the provision of financial aid pursuant to this section, regardless of the community college they attend.

In allocating funds pursuant to this section, the board shall consider the number of students eligible for assistance in the prior academic year and other factors that may have bearing on the amount of these funds required by each community college district.

The board may allocate up to 7 percent of the total amount of funds provided pursuant to subdivision (a) to community college districts for delivery of student financial aid services required as a result of this section. Funds so allocated to a district for delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1983–84 fiscal year, adjusted annually in

accordance with the cost-of-living adjustment to the general apportionments.

The board shall be provided adequate resources through the annual Budget Act to support state administration of this financial aid program.

(c) Financial aid shall be provided pursuant to this section only to those students required to pay the fee specified in subdivision (b) of Section 76300, and only in an amount equal to the fee actually charged the student pursuant to those sections. In addition, the chancellor shall pay districts the amount of fees defrayed pursuant to subdivisions (g) and (h) of Section 76300.

(d) Districts that receive an allocation of funds pursuant to this section shall administer and award the funds in accordance with regulations adopted by the board of governors.

(e) If the amount of funds provided pursuant to subdivision (a) exceeds the need for financial aid to students who cannot afford to pay the fee charged pursuant to subdivision (b) of Section 76300, the excess shall revert to the General Fund.

(f) If the amount needed for financial aid to students who cannot afford the fee charged pursuant to subdivision (b) of Section 76300 and to pay districts for the total amount of fees defrayed pursuant to subdivisions (g) and (h) of Section 76300 is greater than the amount of funds provided pursuant to subdivision (a), the chancellor shall certify to the Department of Finance the amount of the additional funds that are required. Upon receipt of this certification, the Director of Finance shall take any administrative action available to him or her to transfer the additional funds, pursuant to the Budget Act or as otherwise provided by the Legislature.

76320. The fee requirements of Section 76300 shall be defrayed pursuant to Section 19 of Chapter 1 of the 1983–84 Second Extraordinary Session for any student who, at the time of enrollment, is a child or dependent of a veteran, as specified in subdivision (a), (b), or (c) of Section 32320.

76330. (a) The governing board of each community college district shall charge a fee of fifty dollars ($50) per semester unit, or the quarter unit equivalent, to each student who previously has been awarded a baccalaureate or graduate degree from any public or private postsecondary educational institution.

(b) The governing board shall exempt from subdivision (a), and charge the fees specified in Section 72252 to, a student who is any of the following:

(1) A dislocated worker, as certified by a state agency in accordance with Subchapter III of the federal Job Training Partnership Act (29 U.S.C. Sec. 1651 et seq.).

(2) A displaced homemaker, as defined in accordance with the Higher Education Act of 1965, as amended (20 U.S.C. Sec. 1001 et seq.).

(3) A recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security

helping the victim deal with academic difficulties that may arise because of the victimization and its impact.

(7) Procedures for guaranteeing confidentiality and appropriately handling requests for information from the press, concerned students, and parents.

(8) Each victim of sexual assault should receive information about the existence of at least the following options: criminal prosecutions, civil prosecutions, the disciplinary process through the college, the availability of mediation, alternative housing assignments, and academic assistance alternatives.

(c) For the purposes of this section, "sexual assault" includes, but is not limited to, rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of sexual assault.

SEC. 56. Chapter 4 (commencing with Section 99170) of Part 65 of the Education Code is repealed.

SEC. 56.5. Section 50330 of the Government Code is amended to read:

50330. Whether governed under general laws or charter, a local agency may donate and grant to the Regents of the University of California, the Trustees of the California State University, or the governing board of a community college district real property that it owns as a site for university buildings and grounds, state university buildings and grounds, or community college buildings and grounds, as the case may be. A local agency may expend funds, incur indebtedness, and issue bonds for the acquisition of a site within or without its boundaries for the purposes of this section.

SEC. 57. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the technical changes made by this act to take effect as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 9

An act to amend Section 798.17 of the Civil Code, relating to mobilehomes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 28, 1993. Filed with Secretary of State April 29, 1993.]

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

SECTION 1. Section 798.17 of the Civil Code is amended to read:

798.17. (a) (1) Rental agreements meeting the criteria of subdivision (b) shall be exempt from any ordinance, rule, regulation,

The amount per acre in subdivision (a) may be increased by the Secretary of the Resources Agency to a figure which would offset any savings due to a more restrictive determination by the secretary as to what land is devoted to open-space use of statewide significance.

SEC. 2. The sum of twenty million nine hundred two thousand two hundred ninety dollars ($20,902,290) is hereby appropriated from the General Fund in augmentation of schedule (e) of Item 9100-101-001 of the Budget Act of 1993 for the purpose of increasing subventions to counties and cities for open space pursuant to Section 16142 of the Government Code.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide fiscal management authority as soon as possible for the urgent needs of the state and local governments in light of the current shortfall in state revenues, it is necessary that this act take effect immediately.

CHAPTER 66

An act to amend Sections 40043, 41203.1, 41204.5, 41206, 41339, 42243.6, 42243.9, 42246, 42247, 42247.2, 42249.2, 51216, 51226, 66161.5, and 76300 of, to amend and repeal Section 14022.3 of, and to add Sections 1983.5, 2558.4, 2558.45, 2558.6, 14002.1, 41204.6, 41206.1, 41601.3, 42238.14, 42238.145, 42238.16, 42238.17, 42238.18, 42238.19, 46010.3, 46015, 46300.2, 46300.6, 46300.7, 51747.3, and 84751 to, the Education Code, to amend Section 97.5 of the Revenue and Taxation Code, and to amend Sections 18, 19, 20, and 28 of, and to repeal Sections 22, 23, 26, and 27 of, Chapter 703 of the Statutes of 1992, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 30, 1993. Filed with Secretary of State June 30, 1993.]

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

SECTION 1. Section 1983.5 is added to the Education Code, to read:

1983.5. (a) Notwithstanding any other provision of law, community school apportionments may be claimed only for pupils enrolled in grades 7 to 12, inclusive.

(b) Notwithstanding any other provision of law, apportionments claimed by a county office of education for units of average daily attendance for pupils enrolled pursuant to subdivision (c) of Section 1981 in excess of the number claimed by that county office in the 1991–92 fiscal year shall be funded at the statewide average revenue

limit per unit of average daily attendance for that category of enrollment.

SEC. 2. Section 2558.4 is added to the Education Code, to read:

2558.4. For the purposes of this article, the revenue limit for the 1993–94 fiscal year for each county superintendent of schools determined pursuant to this article and adjusted pursuant to Section 2558.6 shall be reduced by a 9.77 percent deficit factor.

SEC. 3. Section 2558.45 is added to the Education Code, to read:

2558.45. (a) For the purposes of this article, the revenue limit for the 1994–95 fiscal year for each county superintendent of schools determined pursuant to this article and adjusted pursuant to Section 2558.6 shall be reduced by a deficit factor calculated as follows:

$$100 - \frac{(90.23 \times 100)}{(100 + C)}$$

For purposes of this calculation, "C" is the percentage determined pursuant to subdivision (b) of Section 42238.1 for the 1994–95 fiscal year.

(b) Notwithstanding subdivision (a), the revenue limit for each county superintendent of schools for the 1995–96 fiscal year and each fiscal year thereafter shall be determined as if the revenue limit for that county superintendent of schools had been determined for the 1994–95 fiscal year without being reduced by that deficit factor.

SEC. 4. Section 2558.6 is added to the Education Code, to read:

2558.6. (a) Notwithstanding any other provision of law, the county superintendent of schools shall increase or decrease, as appropriate, the total revenue limit computed pursuant to paragraph (2) of subdivision (c) of Section 2550 and subdivision (b) of Section 14054 by the amount of the increased or decreased employer contributions to the Public Employees' Retirement System resulting from the enactment of the act adding this section, adjusted for any changes in those contributions resulting from subsequent changes in employer contribution rates, excluding rate changes due to the direct transfer of the state-mandated portion of the employer contributions to the Public Employees' Retirement System, through the current fiscal year.

(b) For the 1993–94 fiscal year, the amount per average daily attendance for each county office of education computed pursuant to paragraph (2) of subdivision (c) of Section 2550 and subdivision (b) of Section 14054 shall be reduced by the 1992–93 Public Employees' Retirement System reduction computed pursuant to Provision 3 of Item 6110-106-001 of Section 2.00 of the Budget Act of 1992, excluding Investment Dividend Disbursement Account (IDDA) and Extraordinary Performance Dividend Account (EPDA) credits, divided by the 1992–93 "other purpose average daily attendance" computed pursuant to paragraph (2) of subdivision (c) of Section 2550 and subdivision (b) of Section 14054.

amount of the fee increase for the 1992–93 academic year shall be included in the base fee for the 1993–94 academic year, and each academic year thereafter.

SEC. 34. Section 76300 of the Education Code, as added by Chapter 8 of the Statutes of 1993, is amended to read:

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) The fee prescribed by this section shall be fifteen dollars ($15) per unit per semester up to a total not to exceed one hundred fifty dollars ($150) per student per semester.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivisions (g) and (h) shall be deemed to be local property tax revenue within the meaning of Section 84751.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84711.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be defrayed pursuant to Section 76310 for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(h) The fee requirements of this section shall be defrayed pursuant to Section 76310 for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the

active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) Student financial aid funds appropriated for the purpose of assisting students to pay the fee required by this section may be awarded without regard to the requirements of Chapter 2 (commencing with Section 69500) of Part 42.

(j) The board of governors shall adopt regulations implementing this section.

(k) This section shall remain in effect only until July 1, 1995, and as of that date is repealed, unless a later enacted statute, which is chaptered before July 1, 1995, deletes or extends that date.

SEC. 35. Section 84751 is added to the Education Code, to read:

84751. In calculating each community college district's revenue level for each fiscal year pursuant to subdivision (a) of Section 84750, the chancellor shall subtract, from the total revenues owed, all of the following:

(a) The local property tax revenue specified by law for general operating support, exclusive of bond interest and redemption.

(b) Ninety-eight percent of the fee revenues collected pursuant to Section 76300 and moneys received for fees defrayed pursuant to subdivisions (g) and (h) of that section.

(c) Motor vehicle license fees received pursuant to Section 11003.4 of the Revenue and Taxation Code.

(d) Timber yield tax revenue received pursuant to Section 38905 of the Revenue and Taxation Code.

SEC. 35.5. Section 97.5 of the Revenue and Taxation Code is amended to read:

97.5. Except as otherwise provided in Section 97.51 or 97.52, for the purpose of apportioning property tax revenues each fiscal year:

(a) The amount of property tax revenue allocated pursuant to subdivisions (a) and (b) of Section 96 or subdivision (a) of Section 97, modified by any adjustments made pursuant to Section 99 or 99.4, and subdivision (e) of Section 98, shall be combined to compute the total amount of property tax revenue allocated to the jurisdiction with respect to the tax rate area.

(b) The total amount of property tax revenue allocated to each jurisdiction with respect to all tax rate areas as determined pursuant to subdivision (a) shall be added to compute a total amount of property tax revenue for a jurisdiction in all tax rate areas.

(c) Each amount determined pursuant to subdivision (b) shall be divided by the total of all such amounts computed. The quotient determined shall be used to apportion actual property tax collections and shall be known as the "property tax apportionment factors."

(d) (1) Notwithstanding any other provision of law, for the 1990-91 fiscal year and each fiscal year thereafter, the auditor shall divide the sum of the amounts calculated with respect to each

services, shall not exceed the total amount appropriated for those education programs for the 1993–94 fiscal year.

(a) A loan payment is made pursuant to Section 61 of this act.

(b) The aggregate sum of funds appropriated for the purposes of Section 8 of Article XVI of the California Constitution for education programs for K-12, is less than four thousand two hundred seventeen dollars ($4,217) per 'enrollment' as defined in subdivision (a) of Section 14022.3 of the Education Code. For the purposes of this subdivision, "the aggregate sum of funds appropriated for the purposes of Section 8 of Article XVI of the California Constitution for education programs for K-12' is General Fund revenues and allocated local proceeds of taxes provided to programs for K-12 pursuant to Section 8 of Article XVI of the California Constitution, adjusted for loans and shifts between fiscal years in a manner that reflects actual funding available for education programs for kindergarten and grades 1 to 12, inclusive, for the fiscal year in which this subdivision applies.

SEC. 64. Notwithstanding any provision of law to the contrary, for the 1993–94 and 1994–95 fiscal years, the Superintendent of Public Instruction shall certify to the Controller for purposes of Sections 14002, 14004, and 41301 of the Education Code amounts that do not exceed the amounts needed to fund school district revenue limits pursuant to Section 42238 of the Education Code, as adjusted pursuant to Sections 42238.14 and 42238.145 of the Education Code, and county office of education revenue limits pursuant to Section 2558 of the Education Code, as adjusted pursuant to Section 2558.4 and 2558.45 of the Education Code. In determining the amounts to be certified to the Controller, the Superintendent of Public Instruction shall include and reflect the emergency loan made and distributed pursuant to Section 48.

SEC. 65. Any judicial action or proceeding to challenge, review, set aside, void, or annul the provisions of Sections 18, 19, 20, and 28, of Chapter 703 of the Statutes of 1992, as amended by Sections 36, 37, 38, and 43, respectively, of Senate Bill 399 of the 1993–94 Regular Session or any other provision of this act, shall proceed by application or complaint filed within 45 days of the effective date of this act.

SEC. 66. If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 67. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 68. (a) Subdivision (b) shall be operative in the event that any appellate court of this state determines that any of Sections 9, 36, 37, 38, 43, 48, or 49 of this act are unconstitutional, unenforceable, or otherwise invalid.

(b) (1) Subject to subdivision (a), and pursuant to the authority set forth in subdivision (h) of Section 8 of Article XVI of the California Constitution, the Legislature hereby suspends for the 1993–94 fiscal year subdivision (b) of Section 8 of Article XVI of the California Constitution, excepting subparagraph (B) of paragraph (3) of subdivision (b) of that section.

(2) The Legislature finds and declares that the state is faced with an unprecedented fiscal crisis and that successive years of declining revenue and increasing program costs have strained state resources to the maximum. The Legislature further finds and declares that, if the condition set forth in subdivision (a) occurs, the suspension of subdivision (b) of Section 8 of Article XVI, as set forth in paragraph (1), would be necessary in order to avoid substantial reductions in other state services, including health care and subsistence programs.

(3) It is the intent of the Legislature that the amount of General Fund revenues appropriated for the support of school districts and community college districts that would otherwise be considered to be appropriated for the purposes of subdivision (b) of Section 8 of Article XVI not exceed thirteen billion five hundred two million seven hundred ninety-three thousand dollars ($13,502,793,000) for the 1993–94 fiscal year. It is further the intent of the Legislature that any amount appropriated in excess of that amount shall not be considered, for any fiscal year, to be either "General Fund revenues appropriated for school districts and community college districts" or any part of "total allocations to school districts and community college districts from General Fund proceeds of taxes" for the purposes of Section 8 of Article XVI of the California Constitution.

SEC. 69. Under no circumstances shall the State Department of Education interpret or use Section 15 of Chapter 703 of the Statutes of 1992 as an appropriation.

SEC. 70. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make certain essential changes in education-related financing at the earliest possible opportunity, it is necessary that this act take effect immediately.

CHAPTER 67

An act to amend Section 76300 of the Education Code, relating to postsecondary education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 30, 1993. Filed with Secretary of State June 30, 1993.]

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

SECTION 1. Section 76300 of the Education Code is amended to read:

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) The fee prescribed by this section shall be thirteen dollars ($13) per unit per semester.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivisions (g) and (h) shall be deemed to be local property tax revenue within the meaning of Section 84751.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84711.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be defrayed pursuant to Section 76310 for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance

program.

(h) The fee requirements of this section shall be defrayed pursuant to Section 76310 for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) Student financial aid funds appropriated for the purpose of assisting students to pay the fee required by this section may be awarded without regard to the requirements of Chapter 2 (commencing with Section 69500) of Part 42.

(j) The board of governors shall adopt regulations implementing this section.

(k) This section shall remain in effect only until July 1, 1995, and as of that date is repealed, unless a later enacted statute, which is chaptered before July 1, 1995, deletes or extends that date.

SEC. 2. Notwithstanding any other provision of law, Section 66156 of the Education Code shall not apply to the imposition of student fees by the Trustees of the California State University for the 1993–94 academic year.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the provisions of this act regarding student fees to take effect for the fall 1993 semester, it is necessary that this act take effect immediately.

CHAPTER 68

An act to amend Sections 33020, 33680, 33681, 33682, and 33683 of, and to add Sections 33681.5 and 33682.5 to, the Health and Safety Code, and to amend Sections 95.1 and 97.04 of, to add Sections 97.02, 97.035, 11005.4, and 11005.7 to, and to repeal Sections 98.6, 98.65, 98.66, 98.67, and 98.68 of, the Revenue and Taxation Code, relating to local government finance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

discrimination compliance activities required pursuant to subdivision (b) of Section 253 of the Education Code be provided annually in the Budget Act.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1124

An act to amend Section 76300 of, and to repeal Section 76310 of, the Education Code, relating to postsecondary education, and making an appropriation therefor.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 76300 of the Education Code, as amended by Chapter 67 of the Statutes of 1993, is amended to read:

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) The fee prescribed by this section shall be thirteen dollars ($13) per unit per semester.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84711.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. The governing board of a community college district may also waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) and (h).

From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) and (h). From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 7 percent of the fee waivers provided pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and

delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992–93 fiscal year.

(j) The board of governors shall adopt regulations implementing this section.

(k) This section shall remain in effect only until July 1, 1995, and as of that date is repealed, unless a later enacted statute, which is chaptered before July 1, 1995, deletes or extends that date.

SEC. 2. Section 76310 of the Education Code, as added by Chapter 8 of the Statutes of 1993, is repealed.

SEC. 3. The Board of Governors of the California Community Colleges shall allocate funds appropriated for the Board Financial Aid Program pursuant to subdivision (i) of Section 76300 of the Education Code.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 5. Ninety-one percent of the funds allocated for the Board Financial Aid Program in Provision 5(b) of Item 6870-101-001 of the Budget Act of 1993 is hereby reappropriated to Schedule (a) of Item 6870-101-001 of the Budget Act of 1993.

CHAPTER 1125

An act to amend Section 186.22 of, to amend, repeal, and add Sections 186.2, 487, and 666.5 of, to add and repeal Sections 487h, 499, and 666.7 of, and to repeal Section 499b.1 of, the Penal Code, to amend, repeal, and add Section 10851 of the Vehicle Code, and to amend, repeal, and add Section 653.5 of the Welfare and Institutions Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 186.2 of the Penal Code is amended to read:

186.2. For purposes of the application of this chapter, the

Assembly Bill No. 2480

CHAPTER 153

An act to amend Sections 2558, 2558.45, 41203.1, 41205, 42238.145, 76300, 76330, and 84751 of, and to add Sections 2558.6, 42238.11, 42238.12, and 54761.1 to, the Education Code, and to amend Sections 15816 and 15820.21 of, to add Sections 7550.6 and 15817.1 to, and to repeal Section 15820.62 of, the Government Code, relating to education finance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 9, 1994. Filed with Secretary of State July 11, 1994.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2480, Vasconcellos. Education finance.

(1) Existing law requires the county superintendent of schools to reduce the revenue limit computed for school districts and county offices of education, as specified, by the amount of the decreased employer contributions to the Public Employees' Retirement System, and sets forth a method for calculating that decrease for the 1993–94 fiscal year (hereafter the PERS reduction).

This bill, in addition, would apply these provisions to the 1994–95 fiscal year and would require the county superintendents of schools, in the 1995–96 fiscal year and each fiscal year thereafter, to adjust the total revenue limits by the amount of increased or decreased employer contributions to the Public Employees' Retirement System and would set forth a method for calculating the adjustment.

(2) Existing law, as set forth in the California Constitution, requires the state to apply a minimum amount of funding for each fiscal year for the support of school districts, as defined, and community college districts.

Existing law directs that the amount of state funding appropriated in each fiscal year, to comply with the minimum state school funding obligation set forth in Section 8 of Article XVI of the California Constitution (Proposition 98), be distributed to school districts, as defined, to community college districts, and to state-operated schools in proportion to the enrollment in each of those segments of public education, as specified.

This bill would specify that this provision does not apply to the 1994–95 fiscal year.

(3) For purposes of Proposition 98, existing law defines school districts to include direct elementary and secondary level instructional services provided by the State of California, and further finds that the only state agencies that provide direct elementary and secondary level instructional services for purposes of that definition are those agencies that receive educational funding under the

94 90

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than 10% of the amount apportioned to any school district, county office of education, or other agency under Item 6110-230-001 of Section 2.00 of the Budget Act of 1994 for any program may be expended by that recipient for the purposes of any other program for which the recipient is eligible for funding under that item. However, the bill would also specify that the total amount of funding allocated to the recipient under that item that is expended by the recipient for the purposes of any program funded pursuant to that item shall not exceed 115% of the amount of state funding allocated to that recipient for that program for the 1994–95 fiscal year.

(15) Under existing law, the Superintendent of Public Instruction is required to allocate to county superintendents of schools or school districts that maintain schools or classes for adults in correctional facilities an amount equal to the actual current expense of the district or county superintendent of schools of maintaining those classes. This amount allocated per unit of average daily attendance may not exceed the statewide average revenue limit for adults multiplied by 0.80.

This bill would require that funds allocated to each county superintendent of schools and each school district in the 1994–95 fiscal year for adults in correctional facilities not exceed the amount of funds received by each county superintendent of schools or each school district in the 1993–94 fiscal year, and would further require that the total amount allocated to those entities not exceed $13,400,000. In certain situations, the amount to be allocated to each county superintendent of schools and each school district would be reduced to reflect any reduction to, or elimination of, its adults in correctional facilities program in the 1994–95 fiscal year.

(16) Existing law authorizes a county board of education to enroll in community schools pupils who are probation-referred, as specified, who are on probation or parole and are not in attendance in any school, or who are expelled for specified reasons, including any pupil found to be possessing a firearm at school or at a school activity off school grounds. Existing law provides for apportionments from the State School Fund and for purposes of those apportionments, pupils so placed are deemed to be enrolled in county juvenile halls or camps.

This bill would require the Superintendent of Public Instruction, for the 1994–95 fiscal year to apportion not more than $88,525,000 from all sources for purposes of funding the average daily attendance of the aforementioned pupils enrolled in community schools. The bill would provide that it would not apply to those pupils who are enrolled in community schools because of expulsion for specified reasons, including possession in a firearm at school or at a school activity off school grounds.

(17) Existing law provides for an apportionment computed according to a specified formula, to be provided as an incentive to school districts to offer a longer instructional year.

This bill would specify that certain advanced placement classes conducted on evenings and weekends be counted for purposes of that funding formula.

(18) Existing law requires that mandatory systemwide student fees at the California State University, the University of California, and the Hastings College of the Law be fixed at least 10 months prior to the fall term in which the fees become effective.

This bill would specify that this requirement does not apply to the imposition of student fees by the Trustees of the California State University for the 1994–95 academic year.

(19) As specified above, existing law, as set forth in Proposition 98, requires the state to apply a minimum amount of funding for each fiscal year for the support of school districts, as defined, and community college districts.

This bill would specify that for purposes of determining the minimum amount of funding for the 1995–96 fiscal year the total allocation to school districts and community colleges shall be the sum of the actual amounts allocated from specified sources for the 1994–95 fiscal year plus $75,000,000.

(20) This bill would also make a statement of legislative intent.

(21) Funds appropriated by this bill may be applied toward the minimum funding requirements for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution.

(22) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

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

SECTION 1. Section 2558 of the Education Code is amended to read:

2558. Notwithstanding any other provision of law, for the 1979–80 fiscal year and each fiscal year thereafter, the Superintendent of Public Instruction shall apportion state aid to county superintendents of schools pursuant to the provisions of this section.

(a) The Superintendent of Public Instruction shall total the amounts computed for the fiscal year pursuant to Sections 2550, 2551, 2551.3, 2554, 2555, and 2557. For the 1979–80 fiscal year and for purposes of calculating the 1979–80 fiscal year base amounts in succeeding fiscal years, the amounts in Sections 2550, 2551, 2552, 2554, 2555, and 2557, as they read in the 1979–80 fiscal year, shall be multiplied by a factor of 0.994. For the 1981–82 fiscal year and for purposes of calculating the 1981–82 fiscal year base amounts in succeeding fiscal years, the amount in this subdivision shall be multiplied by a factor of 0.97.

(b) For the 1995–96 fiscal year and each fiscal year thereafter, the county superintendent of schools shall adjust the total revenue limit

limits made by this provision may be reflected as an expenditure from appropriate sources of revenue as directed by the Superintendent of Public Instruction.

(f) The amount of the increase or decrease to the revenue limits of school districts computed pursuant to subdivision (c) for the 1995–96 fiscal year shall not be adjusted by the deficit factor calculated pursuant to Section 42238.145 for that fiscal year.

SEC. 8. Section 42238.145 of the Education Code is amended to read:

42238.145. For the purposes of this article, the revenue limit for the 1994–95 and 1995–96 fiscal years for each school district determined pursuant to this article shall be reduced by a deficit factor calculated as follows:

$$100 - \frac{(91.86 \times 100)}{(100 + C)}$$

For purposes of this calculation, "C" is the percentage determined pursuant to subdivision (b) of Section 42238.1 for the 1994–95 fiscal year.

The revenue limit for the 1994–95 fiscal year for each school district shall be determined as if the revenue limit for each school district had been determined for the 1993–94 fiscal year without being reduced by the deficit factor required pursuant to Section 42238.14.

The revenue limit for each school district for the 1995–96 fiscal year shall be determined as if the revenue limit for that school district had been determined for the 1994–95 fiscal year without being reduced by the deficit factor specified in this section.

The revenue limit for each school district for the 1996–97 fiscal year, and each fiscal year thereafter, shall be determined as if the revenue limit for that school district had been determined for the 1995–96 fiscal year without being reduced by the deficit factor specified in this section.

SEC. 9. Section 54761.1 is added to the Education Code, to read:

54761.1. (a) The sum of one hundred seventy-eight million eight hundred sixty-six thousand dollars ($178,866,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for allocation to school districts for purposes of this article for the 1994–95 fiscal year. The funds appropriated pursuant to this subdivision shall be allocated pursuant to subdivision (c) of Section 12.32 of the Budget Act of 1994.

(b) Any action by a school district to change, or any decision by the school district to maintain, the 1993–94 designation of supplemental grant funds in the 1994–95 fiscal year pursuant to subdivision (c) of Section 12.32 of the Budget Act of 1994 shall be considered a new designation and shall be applicable in the 1994–95 fiscal year and each fiscal year thereafter.

(c) For purposes of computing the base revenue limit per unit of

average daily attendance of a school district for the 1995–96 fiscal year, the base revenue limit per unit of average daily attendance of the school district for the 1994–95 fiscal year shall be increased by an amount equal to the amount of supplemental grant funds added to the total revenue limit in the 1994–95 fiscal year divided by the school district's revenue limit average daily attendance for the 1994–95 fiscal year determined pursuant to Section 42238.5 and Article 4 (commencing with Section 42280) of Chapter 7 of Part 24. This increase shall be subject to any other adjustments applicable to the base revenue limit.

(d) For the purpose of computing the entitlement of any school district for any of the categorical programs described in Section 54760.1 and clause (i) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 54761, the following adjustments shall be made:

(1) For programs that base the current fiscal year entitlement on the prior fiscal year entitlement, in whole, or in part, for the 1995–96 fiscal year, and each fiscal year thereafter, the entitlement under each of those programs for the 1994–95 fiscal year shall be deemed to include the amount of supplemental grant funds allocated by the school district to the program pursuant to subdivision (b) in the 1994–95 fiscal year.

(2) For programs that base the current fiscal year entitlement on factors other than the prior fiscal year entitlement, the entitlement under each of those programs shall be increased in the 1995–96 fiscal year and each fiscal year thereafter by the amount of the supplemental grant funds allocated by the school district to the program pursuant to subdivision (b) in the 1994–95 fiscal year.

The increases described in paragraphs (1) and (2) are subject to any applicable adjustments to the relevant categorical program for the 1995–96 fiscal year and each fiscal year thereafter.

SEC. 10. Section 76300 of the Education Code is amended to read:

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) The fee prescribed by this section shall be thirteen dollars ($13) per unit per semester.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

(d) The chancellor shall reduce apportionments by up to 10

percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84711.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. The governing board of a community college district may also waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) and (h).

From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) and (h). From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 7 percent of the fee waivers provided pursuant to

subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992–93 fiscal year.

(j) The board of governors shall adopt regulations implementing this section.

(k) This section shall remain in effect only until July 1, 1995, and as of that date is repealed, unless a later enacted statute, which is chaptered before July 1, 1995, deletes or extends that date.

SEC. 11. Section 76330 of the Education Code is amended to read:

76330. (a) The governing board of each community college district shall charge a fee of fifty dollars ($50) per semester unit, or the quarter unit equivalent, to each student who previously has been awarded a baccalaureate or graduate degree from any public postsecondary educational institution or any private postsecondary educational institution approved to operate by the Council for Private Postsecondary and Vocational Education, accredited by an agency recognized by the United States Department of Education, or operated pursuant to Section 94303. Any student charged a fee pursuant to this section shall be exempt from the fees required pursuant to Section 76300.

(b) The governing board shall exempt from subdivision (a), and charge the fees specified in Section 76300 to, a student who is any of the following:

(1) A dislocated worker, as certified by a state agency in accordance with Subchapter III of the federal Job Training Partnership Act (29 U.S.C. Sec. 1651 et seq.).

(2) A displaced homemaker, as defined in accordance with the Higher Education Act of 1965, as amended (20 U.S.C. Sec. 1001 et seq.).

(3) A recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(4) An enrollee in a course offered pursuant to a contract between the community college and a public or private entity if (A) the contract provides for the payment by the public or private entity of all costs associated with the course and (B) full-time equivalent student enrollment in the course is not counted for the purpose of determining district or statewide apportionment.

(5) A student who demonstrates, pursuant to Chapter 2 (commencing with Section 69500) of Part 42 or Section 76310, financial need in excess of the amount of the fee specified in subdivision (a).

(c) Nonresident students who pay nonresident tuition shall be

for purposes of the Education Code.

SEC. 29. Notwithstanding any other provision of law, Section 66156 of the Education Code shall not apply to the imposition of student fees by the Trustees of the California State University for the 1994–95 academic year.

SEC. 30. Notwithstanding former Section 15820.62 of the Government Code, as it read on June 30, 1994, a new project may be authorized pursuant to Chapter 3.8 (commencing with Section 15820.50) of Part 10b of Division 3 of Title 2 of the Government Code on and after July 1, 1994.

SEC. 31. Notwithstanding any other provision of law, the total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes, as calculated pursuant to paragraphs (2) and (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, for purposes of determining the minimum state school funding obligation under that constitutional provision for the 1995–96 fiscal year, shall be deemed to be the sum of the actual amounts allocated from these sources for the 1994–95 fiscal year plus seventy-five million dollars ($75,000,000).

SEC. 32. The Legislature hereby finds and declares that the total resources per pupil available for expenditure by school districts and county offices of education for the 1994–95 fiscal year is not less than the total resources per pupil available for expenditure by those entities for the 1993–94 fiscal year, estimated to be approximately four thousand two hundred seventeen dollars ($4,217) per unit of average daily attendance. The Legislature further finds and declares that Sections 3 and 6 of this act reflect reductions in revenue limits for county superintendents of schools and school districts in amounts not to exceed the reductions in costs experienced by those entities as a result of the decrease in their required employer contributions to the Public Employees' Retirement System in the 1994–95 fiscal year.

SEC. 33. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to effectuate the necessary statutory changes to implement the Budget Act of 1994, it is necessary that this act take effect immediately.

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Assembly Bill No. 2589

CHAPTER 422

An act to amend Sections 32320, 76300, 76330, 76355, 94302, 94310, 94311, 94311.1, 94311.4, 94312, 94312.2, and 94330 of, to add Section 94311.8 to, and to repeal Section 94319.7 of, the Education Code, and to amend Sections 11011.21, 11126, and 15814.21 of the Government Code, relating to postsecondary education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2589, Bornstein. Postsecondary education.

(1) Existing law prohibits community colleges, among other educational institutions, from charging any tuition or fees to certain dependents of veterans. Under existing law, nothing contained in those provisions prevents the charging and collecting of fees required of nonresident students admitted to the University of California, at schools under the jurisdiction of the State Department of Education or the Director of Education, or to a state university under the jurisdiction of the Trustees of the California State University.

This bill, instead, would provide that nothing in these provisions prevents the charging and collecting of fees required of nonresident students admitted to the University of California, to a community college, or to a state university under the jurisdiction of the trustees.

(2) Existing law requires the governing board of each community college district to charge each student a fee in the amount of $13 per unit per semester, as specified. Existing law requires that the fee be waived for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need, as specified. Existing law authorizes the governing board also to waive the fee for any student who demonstrates eligibility according to specified income standards established by the Board of Governors of the California Community Colleges.

This bill would require, rather than authorize, the governing board of each community college to waive the fee for any student who demonstrates eligibility according to specified income standards established by the board of governors. To the extent increased duties would be imposed on the governing boards of community college districts, the bill would impose a state-mandated local program.

(3) Existing law requires the governing board of each community college district to charge a fee of $50 per semester unit, or the quarter

or to a state university under the jurisdiction of the Trustees of the California State University.

This section shall not apply to a dependent of a veteran within the meaning of paragraph (4) of subdivision (a) of Section 890 of the Military and Veterans Code.

(e) This section shall become operative on July 1, 1994.

SEC. 2. Section 76300 of the Education Code, as amended by Section 10 of Chapter 153 of the Statutes of 1994, is amended to read:

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) The fee prescribed by this section shall be thirteen dollars ($13) per unit per semester.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and also shall proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84711.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. The governing board of a community college district also shall waive the fee requirements of this section

for any student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) and (h).

From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) and (h). From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 7 percent of the fee waivers provided pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992–93 fiscal year.

(j) The board of governors shall adopt regulations implementing this section.

(k) This section shall remain in effect only until July 1, 1995, and as of that date is repealed, unless a later enacted statute, which is chaptered before July 1, 1995, deletes or extends that date.

SEC. 3. Section 76330 of the Education Code, as amended by Section 11 of Chapter 153 of the Statutes of 1994, is amended to read:

76330. (a) The governing board of each community college district shall charge a fee of fifty dollars ($50) per semester unit, or the quarter unit equivalent, to each student who previously has been awarded a baccalaureate or graduate degree from any public postsecondary educational institution or any private postsecondary educational institution approved to operate by the Council for Private Postsecondary and Vocational Education, accredited by an agency recognized by the United States Department of Education, or operated pursuant to Section 94303. Any student charged a fee pursuant to this section shall be exempt from the fees required

service obligation for the bonds sold to finance the projects.

SEC. 16. The Legislature hereby finds and declares that the amendment made to Section 94330 of the Education Code by Section 14 of this act is not a change of, but is declaratory of, the law as it existed immediately prior to the effective date of the Private Postsecondary and Vocational Education Reform Act of 1989.

SEC. 17. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 18. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to effectuate changes in California's public postsecondary institutions at the earliest possible time and particularly in order to limit the scope of a certain surplus property inventory required to be completed by January 1, 1995, it is necessary that this act take effect immediately.

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Assembly Bill No. 825

CHAPTER 308

An act to amend Sections 2557.5, 2558, 2558.45, 41202, 41203.1, 42238, 42238.4, 42238.12, 42238.145, 42241.7, 42243.7, 42247.3, 42249.2, 56728.8, 66171, and 84751 of, to add Article 3.5 (commencing with Section 2560) to Chapter 12 of Part 2 of, to add Sections 14002.7, 54761.2, and 76300 to, and to add Chapter 3.65 (commencing with Section 44776.1) and Chapter 3.66 (commencing with Section 44777.1) to Part 25 of, the Education Code, to amend Sections 96102, 96103, 96109, and 96110 of, to amend and repeal Section 20750.94 of, and to repeal Section 96108 of, the Government Code, and to amend Sections 97.2, 97.3, and 97.38 of, the Revenue and Taxation Code, relating to education finance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 3, 1995. Filed with Secretary of State August 3, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

AB 825, W. Brown. Education finance.

(1) Existing law increases the revenue limits of school districts and county superintendents of schools in an amount sufficient to provide additional revenue equal to a specified expenditure for the costs of complying with provisions pertaining to unemployment insurance. Existing law requires that in certain fiscal years the revenue limits of school districts and county superintendents be reduced by a specified deficit factor.

This bill would provide that the amount of the increase to the revenue limits of school district and county superintendents of schools is not subject to the deficit factor that otherwise applies to the revenue limits of school districts and county superintendents of schools.

(2) Existing law requires the county superintendent of schools to increase or decrease the revenue limits computed for school districts and county offices of education, as specified, by the amount of the decreased employer contributions to the Public Employees' Retirement System, and sets forth a method for calculating that increase or decrease for the 1993–94 fiscal year. Existing law requires that the amount of that increase or decrease not be adjusted by the deficit factor described in (1) for the 1995–96 fiscal year.

This bill would require that the amount of the increase or decrease to the revenue limits computed for school districts and county superintendent of schools not be adjusted by the deficit factor

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the current entitlement for each educational agency. Notwithstanding any other provisi law, no funds shall be allocated pursuant to Section 56726 for the 1995-96 fiscal year services provided to children with exceptional needs who are younger than three years of

SEC. 19. Section 66171 of the Education Code is amended to read:

66171. (a) Each governing board shall charge duplicate degree tuition to a student v has earned a degree equivalent to or higher than the degree awarded by the program which he or she is enrolled or who has earned a baccalaureate degree or postbaccalaur degree and is enrolled without a declared degree objective.

(b) No duplicate degree tuition shall be charged to a student who is any of the follow

(1) A dislocated worker, as certified by a state agency in accordance with Title 3 of federal Job Training Partnership Act.

(2) A displaced homemaker, as defined in accordance with the Higher Education Ac 1965, as amended (20 U.S.C. Sec. 1001 et seq.).

(3) A person who is an enrollee in any program leading to a credential or certificate v has been approved by the Commission on Teacher Credentialing.

(4) A recipient of benefits under the Aid to Families with Dependent Children prog the Supplemental Security Income or State Supplementary Program, or a general assist program.

(5) A participant in the Executive Fellow Program, the Jesse M. Unruh Asser Fellowship Program, or the California Senate Associates Program, administered by Center for California Studies of California State University, Sacramento.

(c) For purposes of this article, the following shall apply:

(1) A degree earned in a joint degree or double-major program shall not be considere equivalent degree earned prior to any other degree awarded by the joint degree or dou major program.

(2) A program that awards a master's degree as part of a course of study leading doctorate shall not be considered a program that awards the master's degree, unless stated objective of the student is to earn the master's degree.

SEC. 20. Section 76300 is added to the Education Code, to read:

76300. (a) The governing board of each community college district shall charge v student a fee pursuant to this section.

(b) The fee prescribed by this section shall be thirteen dollars ($13) per unit per seme

The chancellor shall proportionately adjust the amount of the fee for term lengths b upon a quarter system and also shall proportionately adjust the amount of the fee for sum sessions, intersessions, and other short-term courses. In making these adjustments, chancellor may round the per unit fee and the per term or per session fee to the nea dollar.

(c) For the purposes of computing apportionments to community college districts purs to Section 84750, the chancellor shall subtract from the total revenue owed to each district percent of the revenues received by districts from charging a fee pursuant to this sect

(d) The chancellor shall reduce apportionments by up to 10 percent to any district does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84711.

(2) California State University or University of California students enrolled in reme classes provided by a community college district on a campus of the University of Califc or a campus of the California State University, for whom the district claims an attenda apportionment pursuant to an agreement between the district and the California S University or the University of California.

(f) The governing board of a community college district may exempt special part-t students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. The governing board of a community college district also shall waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) and (h).

From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) and (h). From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 7 percent of the fee waivers provided pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992–93 fiscal year.

(j) The board of governors shall adopt regulations implementing this section.

SEC. 21. Section 84751 of the Education Code is amended to read:

84751. In calculating each community college district's revenue level for each fiscal year pursuant to subdivision (a) of Section 84750, the chancellor shall subtract, from the total revenues owed, all of the following:

(a) The local property tax revenue specified by law for general operating support, exclusive of bond interest and redemption.

(b) Ninety-eight percent of the fee revenues collected pursuant to Section 76300 and 76330.

(c) Motor vehicle license fees received pursuant to Section 11008.4 of the Revenue and Taxation Code.

(d) Timber yield tax revenue received pursuant to Section 38905 of the Revenue and Taxation Code.

(e) Any amounts received pursuant to Section 33492.15, 33607.5, or 33607.7 of the Health and Safety Code, and Section 33676 of the Health and Safety Code as amended by Section 2 of Chapter 1868 of the Statutes of 1990, that are considered to be from property tax revenues pursuant to those sections for the purposes of community college revenue levels, except those amounts that are allocated exclusively for educational facilities.

(f) Ninety-eight percent of the revenues received through collection of a student fee from a student enrolled in the district who registered or enrolled between July 1, 1995 and the date this act becomes operative.

SEC. 22. Section 20750.94 of the Government Code is amended to read:

20750.94. The contribution of a school employer to the retirement fund with respect to school members and local members employed by a school district or a county superintendent of schools, and the contribution of any employer of a school member, as defined in Section

school districts made pursuant to Section 32235 of the Education Code, from asset forfeiture revenues are not "General Fund revenue proceeds of tax moneys to be applied by the state for the support of school districts and community college districts," as defined in subdivision (f) of Section 41202 of the Education Code.

SEC. 45. Notwithstanding any other provision of law, for the purposes of Sections 14002, 14004, and 41301, for the 1996–97 fiscal year, the Superintendent of Public Instruction shall certify to the Controller amounts that do not exceed the amounts needed to fund the revenue limits of school districts as determined pursuant to Section 42238, and as adjusted by the deficit factor specified for the fiscal year in Section 42238.145, and the revenue limits of county superintendents of schools as determined pursuant to Section 2558 and as adjusted by the deficit factor specified in for the fiscal year in to Section 2558.45.

SEC. 46. Item 6110-230-001 of Section 2.00 of the Budget Act of 1995 provides funding to school agencies that qualify for desegregation funding. The San Francisco Unified School District has been approved to receive funding in the amount of five million four hundred forty-eight five hundred forty-six dollars ($5,448,546) as a result of claims for desegregation costs in the 1984–85, 1985–86, 1986–87, 1988–89, and 1989–90 fiscal years. Audits identified that the San Francisco Unified School District received overpayments for desegregation programs in the 1991–92 fiscal year in the amount of two million forty-eight thousand six hundred thirty-five dollars ($2,048,635). This latter amount that the San Francisco Unified School District received in overpayment for the 1991–92 fiscal year shall constitute full and complete payment for all claims for desegregation costs in the 1984–85, 1985–86, 1986–87, 1987–88, 1988–89, and 1989–90 fiscal years.

SEC. 47. The governing board of a community college district shall charge the fee described in Section 76300 of the Education Code, as added by this act, to a student enrolled in the community college district who registered or enrolled between July 1, 1995, and the date upon which this act becomes operative.

SEC. 48. The sum of five million dollars ($5,000,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for purposes of allocating funds for social tolerance resource centers, established pursuant to Chapter 3.65 (commencing with Section 44776.1) of Part 25 of the Education Code, as added by this act. For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by this section shall be deemed to be "General Fund revenues appropriated to school districts" as defined in subdivision (c) of Section 41202 of the Education Code, for the 1994–95 fiscal year and included within the "total allocations to school districts and community college districts from General Fund

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proceeds of taxes appropriated pursuant to Article XIII B" as defined in subdivision (e) of Section 41202 of the Education Code, for the 1994–95 fiscal year.

SEC. 49. The sum of six hundred thousand dollars ($600,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for purposes of allocating funds for Latino heritage resource centers, established pursuant to Chapter 3.66 (commencing with Section 44777.1) of Part 25 of the Education Code, as added by this act. For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by this section shall be deemed to be "General Fund revenues appropriated to school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1994–95 fiscal year and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1994–95 fiscal year.

SEC. 50. Notwithstanding Sections 61 and 62 of Chapter 66 of the Statutes of 1993, the sum of fifty million dollars ($50,000,000) is hereby appropriated from the General Fund in partial discharge of the emergency loans to school districts and community college districts made in Sections 21 and 25 of Chapter 703 of the Statutes of 1992, and Sections 48 and 49 of Chapter 66 of the Statutes of 1993. For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by this section shall be deemed to be "General Fund revenues appropriated to school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1994–95 fiscal year and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1994–95 fiscal year.

SEC. 51. Notwithstanding Sections 61 and 62 of Chapter 66 of the Statutes of 1993, the sum of one hundred million dollars ($100,000,000) is hereby appropriated from the General Fund in partial discharge of the emergency loans to school districts and community college districts made in Sections 21 and 25 of Chapter 703 of the Statutes of 1992, and Sections 48 and 49 of Chapter 66 of the Statutes of 1993. For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by this section shall be deemed to be "General Fund revenues appropriated to school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1995–96 fiscal year and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined

SEC. 54. (a) The sum of two hundred seventy-nine million three hundred twenty-seven thousand dollars ($279,327,000) is hereby appropriated from the General Fund for transfer to Section A of the State School Fund for allocation to school districts and county offices of education on the basis of an equal amount per unit of average daily attendance for the 1994–95 second principal apportionment. That allocation shall be used for instructional materials, deferred maintenance, education technology, or any other non-recurring costs.

(b) Prior to the use of funds appropriated in subdivision (a), the governing board of the school district or county board of education shall hold a public hearing or hearings at which time the board shall report on the needs of, and resources for, instructional materials, deferred maintenance, education technology and any other non-recurring costs in the district or county office of education. The board shall encourage the participation of parents, teachers, members of the community interested in the affairs of the school district or county office of education, and bargaining unit leaders. The board shall provide 10 days' notice of the public hearing or hearings. The notice shall contain the time, place, and purpose of the hearing and shall be posted in three public places. The board may include the hearing specified in this section as part of any regularly scheduled meeting.

(c) Prior to the use of funds appropriated in subdivision (a) for non-recurring costs related to employee compensation, the governing board of the school district or the county board of education shall hold a public hearing or hearings, in addition to the hearing or hearings provided in subdivision (b), at which time the board shall report on the needs of and resources for instructional materials, deferred maintenance, and education technology. The board shall encourage the participation by parents, teachers, members of the community interested in the affairs of the school district or county office of education, and bargaining unit leaders. The board shall provide 10 days' notice of the public hearing or hearings. The notice shall contain the time, place, and purpose of the hearing. The board may include the hearing specified in this section as part of any regularly scheduled meeting.

(d) The appropriation made in subdivision (a) shall be deemed to be "General Fund revenues appropriated to school districts," as defined in subdivision (c) of Section 41202, for the 1994–95 fiscal year and "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 for that fiscal year, for purposes of Section 8 of Article XVI of the California Constitution.

SEC. 55. It is the intent of the Legislature that, in the event that this bill passes the Assembly and the Senate, this bill shall be

presented to the Governor for consideration at the same time that the Budget Bill is presented to the Governor for consideration.

SEC. 56. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to effectuate the necessary statutory changes to implement the Budget Act of 1995, it is necessary that this act take effect immediately.

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Assembly Bill No. 3031

CHAPTER 63

An act to amend Section 76300 of the Education Code, relating to postsecondary education.

[Approved by Governor June 11, 1996. Filed with Secretary of State June 12, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3031, Baca. Postsecondary education: community college districts: contract education courses.

Existing law requires the governing board of each community college district to charge each student a fee of $13 per unit per semester. Existing law exempts from this fee requirement students enrolled in specified noncredit courses and California State University and University of California students enrolled in remedial classes provided by a community college district under specified conditions.

This bill would also exempt from this fee requirement students enrolled in specified credit contract education courses, if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting and if these students are not included in the calculation of the average daily attendance of that district.

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

SECTION 1. Section 76300 of the Education Code is amended to read:

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) (1) The fee prescribed by this section shall be thirteen dollars ($13) per unit per semester.

(2) The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and also shall proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84711.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(3) Students enrolled in credit contract education courses pursuant to Section 78021, if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting and if these students are not included in the calculation of the average daily attendance of that district.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. The governing board of a community college district also shall waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) (1) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) and (h).

(2) From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) and (h). From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 7 percent of the fee waivers provided pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992–93 fiscal year.

(j) The board of governors shall adopt regulations implementing this section.

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(2) The Superintendent of Public Instruction shall contract for an independent evaluation of the effectiveness of funds awarded under this chapter in assisting local educational agencies in implementing the English Language Acquisition Program. No later than April 1, 2004, the Superintendent of Public Instruction shall submit to the Governor and the Legislature the results of the evaluation, and a summary of the reports submitted to the superintendent pursuant to this subdivision.

(b) The evaluation shall focus on the extent to which goals and objectives have been met and shall include recommendations for modifications to the program to achieve those goals. The evaluation shall also compare the success of participating local educational agencies in meeting the goals and objectives to local educational agencies not participating in the program and shall take into consideration comparisons to schools with similar characteristics.

(c) Additional independent evaluations may be conducted by the Superintendent of Public Instruction subject to additional funding being made available for purposes of this chapter in subsequent fiscal years.

410. (a) Subject to funds appropriated therefor in the annual Budget Act or any other measure, the California Research Bureau of the California State Library shall convene a broadly diverse group to examine the available research on English language acquisition by English language learners. This research shall include evaluations of English language acquisition programs that demonstrate success in assisting English language learners in being redesignated as fluent in English, as well as achieving academic progress. The research shall include short-term strategies that may be made available to local educational agencies as soon as practicable, as well as long-term research that may provide for case studies and model programs distributed to local educational agencies pursuant to paragraph (c).

(b) The Superintendent of Public Instruction shall compile a compendium of model programs identified in subdivision (a) that demonstrate success in assisting English language learners in being redesignated as fluent in English, and shall provide this compendium in a program advisory to local educational agencies.

(c) The Superintendent of Public Instruction shall provide the compendium of model programs identified in subdivision (a) that demonstrate success in teaching strategies and methodologies to institutions of higher education and other institutions that offer teacher training programs so that these strategies may be considered for inclusion in teacher training programs.

POSTSECONDARY EDUCATION—ASSUMPTION PROGRAM OF LOANS FOR EDUCATION—GENERAL AMENDMENTS

CHAPTER 72

A.B. No. 1118

AN ACT to amend Sections 66025, 69615.6, 69618.1, 69618.2, 69618.3, and 76300 of the Education Code, relating to postsecondary education, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State July 6, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1118, Reyes. Postsecondary education: systemwide fees: Graduate Assumption Program of Loans for Education.

(1) Existing law provides for a public postsecondary educational system in this state, which consists of the University of California, the California State University, and the California Community Colleges.

Existing law requires systemwide fees charged to resident undergraduate students at the University of California and the California State University to be reduced for the 1998–99 fiscal year by 5% below the level charged during the 1997–98 fiscal year, and, for the 1999–2000 fiscal year, to be at the same level as for the 1998–99 fiscal year.

This bill would require systemwide education and registration fees charged to resident undergraduate students at the University of California and the California State University for the 1999–2000 fiscal year to be reduced by 5% below the level charged for those resident students for the 1998–99 fiscal year.

(2) Existing law establishes the Assumption Program of Loans for Education, under which an applicant enrolled in a participating institution of postsecondary education, or who agrees to participate in a qualifying teacher training program, is eligible to receive a loan assumption warrant upon completing a specified period of teaching in a public elementary or secondary school. Existing law provides that, for the 1998–99 school year, and each school year thereafter, the Student Aid Commission is required to issue warrants for the assumption of up to 4,500 loans under this program.

This bill would require the commission to issue warrants for the assumption of up to 5,500 loans each school year, commencing with the 1999–2000 school year. The bill would require, beginning with the 2000–01 school year, and each school year thereafter, the commission to issue up to 100 of those warrants for the assumption of student loans for applicants who agree to teach in school districts serving rural areas.

(3) Existing law establishes the Graduate Assumption Program of Loans for Education, under which an applicant enrolled in a participating institution of postsecondary education, and who agrees, upon graduation, to teach full-time at a California college or university, is eligible to receive a conditional warrant for loan assumption, to be redeemed pursuant to a prescribed procedure upon becoming employed as a full-time teacher at a California college or university.

The bill would make persons who render the equivalent of full-time service by teaching part-time at more than one California college or university eligible to participate in the program.

(4) Existing law establishes the fee charged per unit per semester charged to resident undergraduate students at the California Community Colleges at $13, except that for the 1998–99 and 1999–2000 academic years the fee per unit per semester is $12.

This bill would reduce this fee to $11 per unit per semester, effective with the fall term of the 1999–2000 academic year.

(5) The bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 66025 of the Education Code is amended to read:

66025. (a) * * * Systemwide fees charged to resident undergraduate students at the University of California and the California State University shall be reduced for the 1998–99 fiscal year by 5 percent below the level charged during the 1997–98 fiscal year, and the systemwide fees charged to those students for the 1999–2000 fiscal year shall be * * *reduced by 5 percent below the level charged during the 1998–99 fiscal year. Systemwide education and registration fees charged to resident graduate students at the University of California and the California State University for the 1999–2000 fiscal year shall be reduced by 5 percent below the level charged those resident students for the 1997–98 fiscal year. This subdivision does not apply to resident students pursuing a course of study leading to a professional degree who are subject to a supplemental fee pursuant to the policy of the University of California.

* * *

(b) No provision of this section shall apply to the University of California except to the extent that the Regents of the University of California, by appropriate resolution, make that provision applicable.

SEC. 2. Section 69615.6 of the Education Code is amended to read:

69615.6. (a) Beginning no later than the 1986–87 school year, and each school year thereafter * * *up to and including the 1997–98 school year, the commission shall issue warrants for the assumption of up to 500 student loans for program participants eligible under this article.

(b) For the 1998–99 school year, the commission shall issue warrants for the assumption of up to 4,500 student loans for program participants eligible under this article.

(c) For the 1999–2000 school year, and each school year thereafter, the commission shall issue warrants for the assumption of up to 5,500 student loans for program participants eligible under this article.

(d) Commencing with the 2000–01 school year, and each school year thereafter, up to 100 of the 5,500 warrants issued pursuant to subdivision (c), shall be issued for the assumption of student loans for applicants who agree to teach in school districts serving rural areas.

(e) The issuance of warrants shall be subject to funding to be provided in the Budget Act for each fiscal year. * * *

SEC. 3. Section 69618.1 of the Education Code is amended to read:

69618.1. (a) Program participants shall meet all of the following eligibility criteria prior to selection in the program and must continue to meet these criteria, as appropriate, during the payment periods:

(1) The participant shall be a United States citizen or eligible noncitizen.

(2) The participant shall be a California resident attending an eligible school or college in the state.

(3) The participant shall be making satisfactory academic progress.

(4) The participant shall have complied with United States Selective Service requirements.

(5) The participant shall not owe a refund on any state or federal educational grant or have delinquent or defaulted student loans.

(b) Any person enrolled in an institution of postsecondary education and participating in the loan assumption program set forth in this article may be eligible to receive a conditional warrant for loan assumption, to be redeemed pursuant to Section 69618.2 upon becoming employed as a full-time faculty member at a California college or university or the equivalent of full-time service as a faculty member employed part-time at two or more California colleges or universities.

(c)(1) The commission shall award warrants to students with demonstrated academic ability and financial need, as determined by the commission pursuant to Article 1.5 (commencing with Section 69503).

(2) The applicant shall have completed a baccalaureate degree program or be enrolled in an academic program leading to a graduate level degree.

(3) The applicant shall be currently enrolled in or admitted to a program in which he or she will be enrolled in a full-time course of study each academic term as defined by an eligible institution. The applicant shall agree to maintain * * *satisfactory academic progress.

(4) The applicant shall have been judged by his or her postsecondary institution to have outstanding ability on the basis of criteria that may include, but need not be limited to, any of the following:

(A) Grade point average.

(B) Test scores.

(C) Faculty evaluations.

(D) Interviews.

(E) Other recommendations.

(5) In order to meet the costs of obtaining a graduate degree, the applicant shall have received, or be approved to receive, a loan under one or more of the following designated loan programs:

(A) The Federal Family Education Loan Program (20 U.S.C. Sec. 1071 et seq.).

(B) Any loan program approved by the commission.

(6) The applicant shall have agreed to teach on a full-time basis at * * *one or more accredited California colleges or universities for at least three consecutive years after obtaining a graduate degree.

(d) A person participating in the program pursuant to this section shall not receive more than one warrant.

SEC. 4. Section 69618.2 of the Education Code is amended to read:

69618.2. The commission shall redeem an applicant's warrant and commence loan assumption payments as specified in Section 69618.3 upon verification that the applicant has fulfilled all of the following:

(a) The applicant has received a graduate degree from an accredited, participating California institution.

(b) The applicant has provided the equivalent of full-time instruction at * * *one or more regionally accredited California colleges or universities for one academic year or the equivalent.

(c) The applicant has met the requirements of the warrant and all other conditions of this article.

SEC. 5. Section 69618.3 of the Education Code is amended to read:

69618.3. The terms of the loan assumptions granted under this article shall be as follows, subject to the specific terms of each warrant:

(a) After a program participant has completed one academic year, or the equivalent of teaching, at * * *one or more regionally accredited, eligible California colleges or universities, the Student Aid Commission shall assume up to two thousand dollars ($2,000) of the participant's outstanding liability under one or more of the designated loan programs. The initial year of eligible teaching must begin within 10 years of receiving an initial conditional warrant from the commission.

(b) After the program participant has completed two consecutive academic years, or the equivalent of teaching, at * * *one or more regionally accredited California colleges or universities, the commission shall assume up to an additional two thousand dollars ($2,000) of the participant's outstanding liability under one or more of the designated loan programs, for a total loan assumption of up to four thousand dollars ($4,000).

(c) After a program participant has completed three consecutive academic years, or the equivalent of teaching, at * * *one or more regionally accredited California colleges or universities, the commission shall assume up to an additional two thousand dollars ($2,000) of the participant's outstanding liability under one or more of the designated loan programs, for a total loan assumption of up to six thousand dollars ($6,000).

SEC. 6. Section 76300 of the Education Code is amended to read:

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b)(1) The fee prescribed by this section shall be twelve dollars ($12) per unit per semester, effective with the fall term of the 1998–99 academic year, and eleven dollars ($11) per unit per semester effective with the fall term of the 1999–2000 academic year.

(2) The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and also shall proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84757.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(3) Students enrolled in credit contract education courses pursuant to Section 78021, if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting and if these students are not included in the calculation of the average daily attendance of that district.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. The governing board of a community college district also shall waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, * * *refers to a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i)(1) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) and (h).

(2) From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) and (h). From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 7 percent of the fee waivers provided pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992-93 fiscal year.

(j) The board of governors shall adopt regulations implementing this section.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary statutory changes to implement the Budget Act of 1999 with respect to the funding of higher education as soon as possible, it is necessary that this act take effect immediately.

SixTen and Associates
Mandate Reimbursement Services

ITH B. PETERSEN, MPA, JD, President
52 Balboa Avenue, Suite 807
San Diego, CA 92117

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November 9, 2000

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: CSM 99-TC-13
TEST CLAIM OF LOS RIOS COMMUNITY COLLEGE DISTRICT
Chapter 72, Statutes of 1999, et al.
Education Code Section 76300
Title 5, California Code of Regulations, Sections 58500-58508
Enrollment Fee Collection

Dear Ms. Higashi:

I have received the August 4, 2000 response from Patrick Lenz on behalf of the Community College Chancellor's Office and the October 13, 2000 response from the Attorney General on behalf of the Department of Finance, to which I respond on behalf of the test claimant.

1. Enrolment Fee Collection is a new program or higher level of service

The statutory standard of review for costs mandated by the state are Article XIIIB, Section 6 and Government Code Section 17514. That is, generally, costs mandated by the state are any increased costs of a new program or higher level of service of an existing program.

It appears that the state agencies concur with the claimant that the activities alleged in the test claim are a new program or higher level of service. "For the most part, DOF agrees that the Test Claim statutes constitute a new program or higher level of service because Community College Districts had not previously been required to collect enrollment fees from students." The Chancellor's Office concurs that "This requirement [collecting the

enrollment fees] was clearly a higher level of service for community colleges."

Since this threshold issue is not disputed, the costs mandated by the state are subject to reimbursement unless there is an exception to reimbursement.

2. There are no statutory exceptions to reimbursement

Government Code section 17556[1] states the statutory exceptions to reimbursement of new programs or higher levels of service.

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[1] Government Code section 17556:

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

The Chancellor's Office notes, as does the test claim, that the colleges are compensated in the amount of two percent of the enrollment fees collected for the cost of collecting the enrollment fee, which the Chancellor's Office characterizes as a "revenue credit." The Chancellor's Office also notes that the Legislative Analyst concluded that the two percent revenue credit was an insufficient reimbursement, which is not a compelling conclusion, but nevertheless interesting. In comparison, the Department of Finance, without factual support, "submits that the Legislature has validly determined that two percent of the revenue from fees is an amount to adequately compensate Community College Districts for their tasks in administering the Test Claim statutes," apparently in application of Government Code section 17556 (d) or (e).

There are two statutory exceptions to reimbursement of costs mandated by the state relevant to funding for the mandated activities. Section 17556 states:

> " The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:
>
> 0 0 0
>
> (d) The local agency or school district has the **authority to levy** service charges, fees, or assessments **sufficient to pay** for the mandated program or increased level of service.
>
> (e) The **statute or executive order provides for offsetting savings** to local agencies or school districts **which result in no net costs** to the local agencies or school districts, or includes **additional revenue that was specifically intended to fund the costs** of the state mandate in an **amount sufficient** to fund the cost of the state mandate.'
>
> 0 0 0"

These two subdivisions require the Commission to make findings of law and fact. Regarding subdivision (d), it can be determined that as a matter of law, neither the test claim statutes or other laws provide the "authority to levy service charges, fees, or assessments" for the collection of enrollment fees The "revenue credit" is not a service fee, charge, or assessment upon the consumer (student) of a service provided by the college district.

Regarding subdivision (e), as matter of law, the test claim statutes do not include "offsetting savings" which result in no net costs. A new program was added, and no other mandated program was removed by the statute. However, as a matter of law, it can be said that the test claim statutes did include "additional revenue that specifically intended to fund the costs

of the mandate" in the form of the "revenue credit." This being the case, this begs the question of fact of whether the additional revenue is "in an amount sufficient to fund the cost of the state mandate." The Commission can take notice that the entire cost to implement the mandate will vary from district to district, so it cannot be determined as a matter of fact that the revenue credit is sufficient for any or all districts. The revenue credit can in the usual course of the mandate process be addressed by the annual claiming process whereby the claimants are required by law to report their cost of implementing the mandate from which they must deduct other reimbursement and funds, in this case, the two-percent revenue credit.

The Department of Finance states without foundation that "Since the collection of the enrolment fees is entwined with the entire admission process it would be extremely difficult, if not impossible, to accurately isolate the specific tasks involved with collecting enrollment fees." This is neither a statutory exception to reimbursement of costs mandated by the state, nor a practical argument. The parameters and guidelines determine which activities are reimbursable and the cost accounting methods to be used, and the claimants have the burden of complying with the parameters and guidelines, not the state. I am also informed and believe that the costs of enrollment fee collection involves a high volume of uniform transactions (collecting the fee from a student) comprised of directly identifiable direct costs (staff time and forms to collect the fee). This cost accounting circumstance makes this mandate a good candidate for an uniform cost allowance in the future after several years of cost data is accumulated, a method which has been adopted for several reimbursable state mandates.

The Department of Finance also insists that the costs to process refunds "do not constitute state mandated costs" because of the existing authority to collect from the student a nominal fee of up to ten dollars per semester or quarter to refund the enrollment fees. The cited authority, Title 5, CCR, Section 58508, did not "pre-exist" the collection of enrollment fees, but was adopted as a result of the establishment of enrollment fees. That is, there were no enrollment fees to refund until there were enrollment fees. The need to refund enrollment fees is a foreseeable consequence of collecting enrollment fees and is properly an activity to be included in the cost mandated by the state subject to reimbursement. There is no statutory assertion that the ten dollars is adequate for the refunding process, rather, as with the two percent revenue credit, it will be a reduction of the total cost of implementing the mandate.

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Inasmuch as the state agencies agree that the collection of the enrollment fees is a new program or higher level of service and that the two percent credit and refund fee are properly reductions of the total cost of implementing the mandate and not legally or factually sufficient to be an exception to reimbursement, the claimant requests that the Commission adopt the test claim as filed.

CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information or belief.

Sincerely,

Keith B. Petersen

PROOF OF SERVICE

Re: CSM 99-TC-13
TEST CLAIM OF LOS RIOS COMMUNITY COLLEGE DISTRICT
Chapter 72, Statutes of 1999, et al.
Education Code Section 76300
Title 5, California Code of Regulations, Sections 58500-58508
Enrollment Fee Collection

I, the undersigned, declare as follows:

I am employed in the County of San Diego, State of California. I am 18 years of age or older and am not a party to the entitled action. My business address is 5252 Balboa Avenue, Suite 807, San Diego, CA 92117.

On November 9, 2000, I served the attached letter to Paula Higashi from SixTen and Associates, on behalf of the claimant, and to the following interested parties, by placing a true copy thereof to the Commission and other state agencies and persons in the United States Mail at San Diego, California, with first-class postage thereon fully prepaid:

Leslie R. Lopez, Deputy A.G.
Department of Justice
1300 I Street, Room 125
Sacramento, CA 95814

Dr. Carol Berg, EMCN
c/o School Services of California
1121 L Street, Suite 1060
Sacramento, CA 95814

Louise Davatz, Executive Vice Chancellor
Los Rios Community College District
1919 Spanos Court
Sacramento, CA 95825

Mr. Paige Vorhies (B-8)
State Controller's Office
3301 C Street, Suite 500
Sacramento, CA 95816

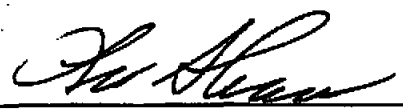
Scott Hannan
State Board of Education
560 J Street, Room 170
Sacramento, CA 95814

Patrick J. Lenz, Executive Vice-Chancellor
California Community Colleges
1102 Q Street, Suite 300
Sacramento, CA 95814

Mr. Jim Lombard
Department of Finance
915 L Street, Room 8020
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 9, 2000 at San Diego, California.



Leo Shaw

980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (2/91)

TEST CLAIM FORM

Claim No.

Local Agency or School District Submitting Claim

GLENDALE COMMUNITY COLLEGE DISTRICT

Contact Person	Telephone Number
Keith B. Petersen, President SixTen and Associates	Voice: 858-514-8605 Fax: 858-514-8645

Address

Glendale Community College District
1500 North Verdugo Road
Glendale, California 91208

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network
c/o School Services of California
1121 L Street, Suite 1060
Sacramento, CA 95814

Voice: 916-446-7517
Fax: 916-446-2011

This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

Enrollment Fee Waivers

Chapter 1, Statutes of 1984XX	Chapter 274, Statutes of 1984	
Chapter 1401, Statutes of 1984	Chapter 920, Statutes of 1985	Education Code Section 76300
Chapter 1454, Statutes of 1985	Chapter 46, Statutes of 1986	
Chapter 394, Statutes of 1986	Chapter 1118, Statutes of 1987	Title 5, California Code of Regulations
Chapter 136, Statutes of 1989	Chapter 8, Statutes of 1993	Sections 58600, 58601, 58610
Chapter 66, Statutes of 1993	Chapter 67, Statutes of 1993	through 58613, 58620, 58630
Chapter 1124, Statutes of 1993	Chapter 153, Statutes of 1994	
Chapter 422, Statutes of 1994	Chapter 308, Statutes of 1995	Executive Orders of the California
Chapter 63, Statutes of 1996	Chapter 72, Statutes of 1999'	Community Colleges Chancellor's
Chapter 71, Statutes of 2000		Office

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative	Telephone No.
Lawrence Serot, Vice-President Administrative Services	(818) 240-1000 FAX: (818) 549-9436

Signature of Authorized Representative	Date
X	May 16, 2001

Claim Prepared By:
Keith B. Petersen
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117
Voice: (858) 514-8605
Fax: (858) 514-8645

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Test Claim of:	No. CSM. _____
Glendale Community College District,	Chapter 71, Statutes of 2000 Chapter 72, Statutes of 1999 Chapter 63, Statutes of 1996 Chapter 308, Statutes of 1995 Chapter 422, Statutes of 1994 Chapter 153, Statutes of 1994 Chapter 1124, Statutes of 1993 Chapter 67, Statutes of 1993 Chapter 66, Statutes of 1993 Chapter 8, Statutes of 1993 Chapter 136, Statutes of 1989 Chapter 1118, Statutes of 1987 Chapter 394, Statutes of 1986 Chapter 46, Statutes of 1986 Chapter 1454, Statutes of 1985 Chapter 920, Statutes of 1985 Chapter 1401, Statutes of 1984 Chapter 274, Statutes of 1984 Chapter 1, Statutes of 1984XX
Test Claimant.	Title 5, California Code of Regulations Sections 58600, 58601, 58610 through 58613, 58620, 58630
	Education Code Section 76300
	Executive Orders of the California Community Colleges Chancellor's Office "Board of Governors Fee Waiver Program and Special Programs

2000-2001 Program Manual"
Effective: July 1, 2000-June 30,2001

Enrollment Fee Waivers

TEST CLAIM FILING

PART I. AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government Code section 17551(a) to ". . . hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." The Glendale Community College District is a "school district" as defined in Government Code section 17519.[1]

PART II. LEGISLATIVE HISTORY OF THE CLAIM

This test claim alleges mandated costs subject to reimbursement by the state for community colleges to determine eligibility for enrollment fee waivers. There was no requirement to perform these duties prior to 1984.

Chapter 1, Statutes of 1984, Second Extraordinary Session, Section 7, operative July 1, 1984, added Education Code section 72252[2] to require for the first time, at

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[1] Government Code Section 17519, as added by Chapter 1459/84:

"School district" means any school district, community college district, or county superintendent of schools.

[2] Education Code section 72252, as added by Chapter 1/84/7, Second Extraordinary Session, approved January 26, 1984, operative July 1, 1984:

subdivision (a), that the community colleges collect an enrollment fee, specified at subdivision (b) to be $50 per semester for the students enrolled in classes totaling six or more credit semester units, to be proportionally adjusted by the Chancellor for term lengths based upon a quarter system or other alternative system. Subdivision (c) allowed a revenue credit of 2% of the fees collected or exempted for the cost of collecting or exempting the enrollment fee. Subdivision (d) required the Chancellor to

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(a) Commencing with the semester, term, or quarter which begins after July 31, 1984, the governing board of each community college district shall charge each student a fee, pursuant to the provisions of this section.

(b) The fee prescribed by this section shall equal fifty dollars ($50) per semester for students enrolled in classes totaling six or more credit semesters units, and five dollars ($5) per unit per semester for students enrolled in classes totaling less than six credit semester units.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system or other alternative system approved pursuant to Section 78002.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from reimbursements received for fees exempted pursuant to subdivision (f) shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district which does not collect the fees prescribed by this section.

(e) The fee requirement shall not apply to students enrolled in the noncredit courses designated by Section 84711.

(f) The fee requirements of this section shall not apply to a student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or the General Assistance Program.

(g) The board of governors shall adopt regulations implementing the provisions of this section as regulations in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of title 2 of the Government Code.

(h) This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

reduce apportionments by up to 10 percent to any district which does not collect the fees. Subdivision (e) exempted students enrolled in certain noncredit courses.

Subdivision (f) of new Section 72252 exempted a student from the fee requirement who, at the time of enrollment, was a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or the General Assistance Program.

Subdivision (g) of new Section 72252 required the board of governors to adopt regulations implementing the provisions of Section 72252 and Subdivision (h) established a January 1, 1988, repealer unless a later enacted statute, chaptered before January 1, 1988, deleted or extended that date. Section 19 of Chapter 1, Statutes of 1984XX established a funding scheme for those students who could not afford the fees.[3]

Chapter 274, Statutes of 1984, Section 3, operative July 2, 1984 as a matter of urgency, amended Section 72252, as adopted by Chapter 1, Statutes of 1984XX. New subdivision (g) indicated that the financial aid application requirements would not apply to students enrolling for less than six credit semester units. Previous subdivisions (g) and (h) were renumbered (h) and (i) respectively.

Chapter 1401, Statutes of 1984, Section 2, effective January 1, 1985, amended Section 72252, as amended by Chapter 274, Statutes of 1984, at subdivision (e) to

[3] The funding scheme provided by Section 19, of Chapter 1, Statutes of 1984XX, became the subject matter of Education Code Section 72252.1, enacted pursuant to Chapter 1118, Statutes of 1987. Chapter 8, Statutes of 1993, repealed Section 72252.1, transferring its contents to new Section 76310, effective April 15, 1993. Section 76310 was repealed by Chapter 1124, Statutes of 1993, effective January 1994, and its language transferred to Section 76300, subdivision (i).

exempt students attending community college remedial courses at campuses of the California State Universities or the University of California.

Chapter 920, Statutes of 1985, Section 1, effective only from January 1, 1986 through July 1, 1986 deleted subdivision (g) of Section 72252 relating to a differentiation between students enrolling for more or less than six credit semester units and added a new section (g) which permitted enrollment fee waivers to be awarded without regard to the requirements of Chapter 2 (commencing with Section 69500).[4]

Chapter 1454, Statutes of 1985, Section 2, added new section (f) which permitted community college districts to exempt special part-time students from the fees otherwise required; former section (f) which provided waivers for students who were recipients of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program was renumbered new section (g); the differentiation between students enrolling for more or less than six credit semester units was restored at new section (h); and former sections (h) and (i) were renumbered (i) and (j) respectively.

Effective September 20, 1984, the Board of Governors added Subchapter 7, "Student Financial Aid" to Chapter 9 of Title 5 of the California Code of Regulations. This new chapter governs the administration of student financial aid (for enrollment fee waivers) allocated by the Board to the community college districts.[5] By amendment filed

[4] Generally, Chapter 2 (Education Code Sections 69500, et seq.) governed student financial aid programs.

[5] California Code of Regulations, Section 58600:

"This chapter governs the administration of student financial aid allocated by the Board of Governors to Community College Districts."

November 15, 1985 (effective December 15, 1985), the Board amended Section 58601, Sections 58610 through 58613, 58620 and 58630.

Section 58601[6] defined a Board of Governors Grant ("BOGG") as a means of processing financial assistance to low income students. Section 58610[7] directs the Chancellor to estimate each district's need for Board of Governors Grants and to allocate funds to the district based upon those estimated needs. Section 58611[8] requires the community college districts to report the number and amounts provided for Board of Governors Grants; and upon receipt of this information the Chancellors shall then adjust the financial assistance allocations to reflect each district's actual

[6] California Code of Regulations, Section 58601, as last amended on March 4, 1991:

"Definitions. As used in this chapter: Board of Governors Grant. An instrument used by a community college district to process the financial assistance provided to a low income student pursuant to the terms of this chapter."

[7] California Code of Regulations, Section 58610 Allocations. (as last amended March 4, 1991):

(a) The Chancellor shall estimate each community college district's need for Board of Governors Grants, and shall allocate funds to districts based on that anticipated need.
(b) In estimating each district's need for these financial assistance funds the Chancellor shall consider the following factors:
    (1) The number of Pell Grant recipients in the district in the previous fiscal year.;
    (2) The estimated number of students in the district who are eligible pursuant to Education Code section 72252(f);
    (3) The estimated number of low-income students in the district who are enrolled for fewer than six units.
(c) The Chancellor shall apportion the allocations in the advanced apportionment certified by the Chancellor.

[8] California Code of Regulations, Section 58611 Adjustments. (as last amended March 4, 1991):

"Districts shall report the number of and amounts provided for Board of Governors Grants. The Chancellors shall then adjust the financial assistance allocation in the First and Second Principal Apportionments to reflect each district's actual expenditure of funds allocated pursuant to this chapter. Any necessary additional adjustments shall be made in the applicable fiscal year recalculations."

expenditure of funds. Section 58612[9] requires a community college to provide a Board of Governors Grant to all students who are eligible and who apply for a grant. Section 58613[10] provides that the amount of Board of Governors Grants shall be made in the same amount as the enrollment fees. Section 58620[11] sets forth the eligibility

[9] California Code of Regulations, Section 58612 Financial Assistance Awards. (as last amended March 4, 1991):

"(a) A community college district shall provide Board of Governors Grants to all students who are eligible and who apply for this assistance.
(b) A student who is determined to be eligible for a Board of Governors Grant may be presumed to be eligible for that assistance for the remainder of the academic year and until the beginning of the following fall term.
(d) Nothing in this chapter shall prohibit a community college district from establishing a date beyond which it will not accept applications for this financial assistance."

[10] California Code of Regulations, Section 58613 (as last amended March 4, 1991:

"Board of Governors Grants shall be made in the amount of the enrollment fee calculated pursuant to Section 58507 of this division."

[11] California Code of Regulations, Section 58620 (as last amended on March 4, 1991):

"To be eligible for a Board of Governors grant, a student must:
(a) Be a California resident;
(b) Meet one of the following criteria:
(1) Income Standards.
(A) Be a single and independent student having no other dependents and whose total income in the prior year was equal to or less than 150% of the US Department of Health and Human Services Poverty Guidelines for a family of one. Or be a married, independent student having no dependents other than a spouse, whose total income of both student and spouse in the prior year was equal to or less than 150% of the US Department of Health and Human Services Poverty Guidelines for a family of two.
(B) Be a student who is dependent in a family having a total income in the prior year equal to or less than 150% of the US Department of Health and Human Services Poverty Guidelines for a family of that size, not including the student's income, but including the student in the family size.
(C) Provide documentation of taxable or untaxed income.
(D) Be a student who is married or a single head of household in a family having a total income in the prior year equal to or less than 150% of the US Department of Health and Human Services Poverty Guidelines for a family of that size.

requirements for Board of Governors Grants. Note that the requirements include those eligible under Education Code Section 72252, subdivisions (g) [recipients of benefits under the Aid to Families with Dependent Children programs, recipients of benefits under the Supplemental Security Income/State Supplemental Program, or the beneficiaries of general assistance programs] and (h) [dependents and unmarried surviving spouses of members of the California National Guard who were killed or disabled while on active duty]. Therefore, those qualifying for financial assistance under subdivisions (g) or (h) are eligible for Board of Governors Grants.

(E) Be an independent student whose Estimated Family Contribution as determined by Federal Methodology is equal to zero or a dependent student for whom the parent portion of the Estimated Family Contribution as determined by Federal Methodology is equal to or less than zero.

(F) For purposes of this subsection US Department of Health and Human Services Poverty Guidelines used each year shall be the most recently published guidelines immediately preceding the academic year for which a fee waiver is requested.

(2) Current recipient of benefits described in Education Code section 76300(g).

(A) At the time of enrollment be a recipient of benefits under the Temporary Assistance to Needy Families (TANF) program. A dependent student whose parent(s) or guardian(s) are recipients of TANF shall be eligible if the TANF program grant includes a grant for the student or if the TANF grant is the sole source of income for the parent or guardian.

(B) At the time of enrollment be a recipient of benefits under the Supplemental Security Income (SSI) program. A dependent student whose parent(s) or guardian(s) are recipients of SSI shall be eligible if the SSI program grant is the sole source of income for the parent(s) or guardian(s).

(C) At the time of enrollment be a recipient of benefits under the General Assistance program.

(D) Provide documentation that the student if (sic) a recipient of benefits under one of the programs identified in Education Code section 76300(g) and (h) at the time of enrollment. Documentation sufficient to meet the requirements of this subdivision shall provide official Education of these benefits.

(3) Need-Based Financial Aid Eligibility. Any student who has been determined financially eligible for federal and/or state needed based financial aid."

Section 58630[12] requires each community college to allocate financial assistance dollars separately in district accounts and requires the governing board of each community college district to adopt procedures to document all financial assistance provided on behalf of students and to collect and retain supporting documentation which would permit independent determination regarding the accuracy of the district's certification of need for financial assistance.

Chapter 46, Statutes of 1986, Section 1, and Chapter 394, Statutes of 1986, Section 2, amended subdivision (h) to allow financial aid funds to be awarded without the formal procedures required by Section 69500 and other sections.

In addition to changes in the fee structure, Chapter 1118, Statutes of 1987, Section 8 added Education Code Section 72252.1 which established a funding scheme for fee waivers. Subdivision (g) was amended by Section 7 to note that the AFDC and SSI exemptions established in Section 19 of Chapter 1/84, were now located in new Section 72252.1. The 1988 repealer was extended to January 1, 1992.

Chapter 136, Statutes of 1989, Section 3, added new subdivision (h)[13] defraying fees for dependents and unremarried surviving spouses of members of the California

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[12] California Code of Regulations, Section 58630, as amended on March 4, 1991:

"(a) Dollars allocated for financial assistance pursuant to this chapter shall be identified separately in district accounts.

(c) The governing board of each community college district shall adopt procedures that will document all financial assistance provided on behalf of students pursuant to this chapter. Authorized procedures shall include rules for retention of support documentation which will enable an independent determination regarding accuracy of the district's certification of need for financial assistance."

[13] Education Code Section 72252(h), as amended by Chapter 136, Statutes of 1989, Section 3:

" (h) The fee requirements of this section shall be defrayed pursuant to Section 722252.1 for any student who, at the time of enrollment is a dependent or surviving spouse who has not

National Guard who were killed or disabled while in active service of the state. Former subdivisions (h), (i), and (j), were renumbered (i), (j), and (k), respectively.

After fee changes in 1991 and 1992[14], Chapter 8, Statutes of 1993, Section 29, repealed Sections 72252 and 72252.1. Section 34 of Chapter 8/93 added new Section 76300 which is substantially similar to previous section 72252. Section 34 also added Education Code Section 76310, a new funding provision, Section 76320, defraying fees for children of veterans, and Section 76330 requiring fees for students who had previously been awarded a graduate degree from any postsecondary educational institution.

After amendments by Chapter 66, Statutes of 1993, Section 34, and Chapter 67, Statutes of 1993, Section 1, the amount of the fee charged was increased to $13 per semester and the former references in subdivision (g) and (h) were changed from Education Code section 72252.1 to section 76310.

Chapter 1124, Statutes of 1993, changed the language in subdivisions (g) and (h) from fees "defrayed" to fees "waived" and subdivision (g) was expanded to include exemptions for the new Board of Governor's Grant (BOGG) students.[15] Subdivision (i)

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remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. 'Active service of the state', for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code."

[14] Chapter 114, Statutes of 1991, Section 4; Chapter 703, Statutes of 1992, Section 11.

[15] Education Code Section 76300(g) as amended by Chapter 1124, Statutes of 1993:

"(g) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set

was amended to include the Budget Act language previously located in Section 76310 which was repealed.

Chapter 1124, Statutes of 1993 also moved the 2 percent fee apportionment from subdivision (c) to subdivision (i) and provided that the Board of Governors shall also allocate to community college districts 7 percent of the fee waivers pursuant to subdivisions (g) and (h) for the determination of financial need and for the delivery of student financial aid services.[16]

Chapter 1124, Statutes of 1993, Section 2 also repealed Section 76310. The repealer date was moved to July 1, 1995.

While the 7% credit is within the scope of this test claim, the 2% credit is not. It is the subject of another test claim.

Chapter 153, Statutes of 1994, Section 10, and Chapter 422, Statutes of 1994, Section 2, each enacted as urgency measures, resulted in a change to subdivision (c)

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forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. The governing board of a community college district may also waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

[16] Education Code Section 76300(l), as amended by Chapter 1124, Statutes of 1993:

"(1) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) and (h).

(2) From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) and (h). From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 7 percent of the fee waivers provided pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and delivery of financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992-93 fiscal year.

to change the revenue reference from the property tax calculation to the total district revenue entitlement. Neither one of these chapters changed the July 1, 1995 repealer.

Section 76300 self-repealed on July 1, 1995, pursuant to Chapter 422, Statutes of 1994. Chapter 308, Statutes of 1995, Section 20, operative August 3, 1995 as a matter of urgency added a new Section 76300 which was substantially the same as the version repealed thirty-four days earlier.[17] The fee waiver provisions previously cited remained in subdivisions (g) and (h).

[17] Education Code section 76300, as added by 308/95/20

(a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) The fee prescribed by this section shall be thirteen dollars ($13) per unit per semester.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and also shall proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84711.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. The governing board of a community college district also shall waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of

Sections 76320 and 76330 were repealed by Chapter 758, Statutes of 1995, at sections 96, 97 and 98. Chapter 63, Statutes of 1996, at section 1 added a new exempted course; renumbered the first sentence of Section 76300, Subdivision (i) as (i)(1); and renumbered the balance of subdivision (i) as (i)(2). Chapter 72, Statutes of 1999, Section 6 changed student enrollment fees to twelve dollars ($12) per unit per semester, effective with the fall term of the 1998-99 academic year, and eleven dollars ($11) per unit per semester effective with the fall term of the 1999-2000 academic year. Nothing in the repeal of these code sections, the adding of a new exempt course, the renumbering of subsections or the change in the amount of enrollment fees have any bearing on this test claim.

Subdivision (i)(2) of Section 76300[18] was amended by Chapter 71, Statutes of 2000, Section 27, effective July 5, 2000, to change the fee allocation to Community

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the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) and (h).

From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) and (h). From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 7 percent of the fee waivers provided pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992-93 fiscal year.

(j) The board of governors shall adopt regulations implementing this section.

[18] Education Code section 76300, as amended by 71/2000/27

(a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) (1) The fee prescribed by this section shall be twelve dollars ($12) per unit per semester, effective with the fall term of the 1998-99 academic year, and eleven

dollars ($11) per unit per semester effective with the fall term of the 1999-2000 academic year.

(2) The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and also shall proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84711.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(3) Students enrolled in credit contract education courses, pursuant to Section 78021, if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting and if these students are not included in the calculation of the average daily attendance of that district.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. The governing board of a community college district also shall waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, refers to member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) (1) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) and (h).

(2) From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to

College Districts for the determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived, from 7 percent of the fees waived to ninety-one cents ($0.91) per credit unit waived.

In addition to the above referenced statutes and code of regulation sections, the California Community Colleges Chancellor's Office has issued an executive order entitled "Board of Governors Fee Waiver Program and Special Programs – 2000-2001 Program Manual, Effective July 1, 2000-June 30, 2001, which sets forth instructions on the fee waiver application process.

PART III. STATEMENT OF THE CLAIM

SECTION 1. REQUIREMENT FOR STATE REIMBURSEMENT

The Statutes, Education Code sections, Title 5 California Code of Regulations sections and executive orders referenced in this test claim result in community college districts incurring costs mandated by the state, as defined in Government Code section 17514[19], by creating new state-mandated duties related to the uniquely governmental

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2 percent of the fees waived pursuant to subdivisions (g) and (h). From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to ~~7 percent of the fee waivers provided~~ ninety-one cents ($0.91) per credit unit waived pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992-93 fiscal year.

(j) The board of governors shall adopt regulations implementing this section.

[19] Government Code section 17514, as added by Chapter 1459/84:

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

function of providing public education[20] to students and these statutes apply to community colleges and do not apply generally to all residents and entities in the state.[21]

The new duties mandated by the state upon community colleges require state reimbursement of the direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, staff and student training and travel to implement the following activities:

A) Pursuant to Section 58612 of Title 5 of the California Code of Regulations, determine and classify those students who are eligible for Board of Governor grants according to the eligibility criteria set forth in Section 58620.

B) Pursuant to Education Code Section 76300(g), determine, at the time of enrollment, if fees should be waived for any student because he or she is a recipient of benefits under the Aid to Families with Dependent Children program;

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[20] Education Code section 66700, as amended by Chapter 1372, Statutes of 1990:

The California Community Colleges are postsecondary schools and shall continue to be a part of the public school system of this state. The Board of Governors of the California Community Colleges shall prescribe minimum standards for the formation and operation of the California Community Colleges and exercise general supervision over the California Community Colleges.

[21] Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 275 Cal.Rptr. 449, 225 Cal.App.3d 155:

"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. v. State of California (1987) 190 Cal.App.3d at p. 537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

C) Pursuant to Education Code Section 76300(g), determine, at the time of enrollment, if fees should be waived for any student because he or she is a recipient of benefits under the Supplemental Security Income/State Supplementary program;

D) Pursuant to Education Code Section 76300(g), determine, at the time of enrollment, if fees should be waived for any student because he or she is a beneficiary under a general assistance program;

E) Pursuant to Education Code Section 76300(g), determine, at the time of enrollment, if fees should be waived for any student because he or she has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid;

F) Pursuant to Education Code Section 76300(h), determine, at the time of enrollment, if fees should be waived for any student because he or she is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state.

G) Enter the enrollment fee waiver information into the district cashier system and data processing and accounting systems, and process all agency billings for students whose fees are waived.

H) Pursuant to Section 58630 of Title 5 of the California Code of Regulations, separately document and account for the funds allocated for the collection of enrollment fees and financial assistance in order to enable an independent determination regarding the accuracy of the District's certification of need for financial assistance.

l) Pursuant to Section 58611 of Title 5 of the California Code of Regulations, Prepare and submit reports regarding number and amounts of the enrollment fees waived as required by the Board of Governors and other state agencies.

In performing the above described duties, each community college district is required to follow executive orders of the Chancellor's Office which are set forth in the California Community Colleges Chancellor's Office manual entitled: "Board of Governors Fee Waiver Program and Special Programs 2000-2001 Program Manual", a copy of which is attached hereto as Exhibit 4.

SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT

None of the Government Code Section 17556[22] statutory exceptions to a finding of costs mandated by the state apply to this test claim. Note that to the extent

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[22]Government Code section 17556 as last amended by Chapter 589/89:

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

community college districts may have previously performed functions similar to those mandated by the referenced code sections, such effort did not establish a preexisting duty that would relieve the state of its constitutional requirement to later reimburse community college districts when these activities became mandated.[23]

SECTION 3. FUNDING FOR THE STATE MANDATE

To the extent that State funds are, and continue to be appropriated, allocated, or otherwise credited to the community college districts pursuant to Education Code section 76300, subdivision (i)(2), in the annual Budget Act, or from other state sources for the purpose of reimbursing the costs of determining financial need and the delivery of student financial aid services, computed as 7% of the fees waived from July 1, 1999 through July 4, 2000 and at ninety-one cents ($0.91) per credit unit waived thereafter, these amounts are a reduction to the total costs mandated by the state to implement Section 76300 and the relevant Title 5, California Code of Regulations sections.

Inasmuch as this test claim does not seek reimbursement for the administrative process of collecting enrollment fees, the two-percent funding provided pursuant to Education Code section 76300, subdivision (i), does not qualify to reduce the total costs mandated by the state alleged by this test claim.

PART IV. ADDITIONAL CLAIM REQUIREMENTS

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

[23] Government Code section 17565:

If a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.

The following elements of this claim are provided pursuant to Section 1183, Title 2, California Code of Regulations:

Exhibit 1: The Declaration of Lawrence Serot

Exhibit 2: Education Code sections and Title 5, California Code of Regulations sections cited.

Exhibit 3: Statutes cited:

Chapter 1, Statutes of 1984XX
Chapter 274, Statutes of 1984
Chapter 1401, Statutes of 1984
Chapter 920, Statutes of 1985
Chapter 1454, Statutes of 1985
Chapter 46, Statutes of 1986
Chapter 394, Statutes of 1986
Chapter 1118, Statutes of 1987
Chapter 136, Statutes of 1989
Chapter 8, Statutes of 1993
Chapter 66, Statutes of 1993
Chapter 67, Statutes of 1993
Chapter 1124, Statutes of 1993
Chapter 153, Statutes of 1994
Chapter 422, Statutes of 1994
Chapter 308, Statutes of 1995
Chapter 63, Statutes of 1996
Chapter 72, Statutes of 1999
Chapter 71, Statutes of 2000

Exhibit 4: California Community Colleges Chancellor's Office
Board of Governors Fee Waiver Program and Special Programs
2000-2001 Program Manual
Effective: July 1, 2000 – June 30, 2001

PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on May 16, 2001, at Glendale, California, by:

Lawrence Serot
Vice President, Administrative Services

Voice: (818) 240-1000
Fax: (818) 549-9436

/

/

PART VI. APPOINTMENT OF REPRESENTATIVE

Glendale Community College District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.

Lawrence Serot
Vice President, Administrative Services

5/16/2001
Date

EXHIBIT 1

DECLARATION OF

LAWRENCE SEROT

Exhibit 1
Declaration of Lawrence Serot

DECLARATION OF LAWRENCE SEROT

VICE PRESIDENT, ADMINISTRATIVE SERVICES

COSM No. _____

TEST CLAIM OF GLENDALE COMMUNITY COLLEGE DISTRICT

Chapter 71, Statutes of 2000
Chapter 72, Statutes of 1999
Chapter 63, Statutes of 1996
Chapter 308, Statutes of 1995
Chapter 422, Statutes of 1994
Chapter 153, Statutes of 1994
Chapter 1124, Statutes of 1993
Chapter 67, Statutes of 1993
Chapter 66, Statutes of 1993
Chapter 8, Statutes of 1993
Chapter 136, Statutes of 1989
Chapter 1118, Statutes of 1987
Chapter 394, Statutes of 1986
Chapter 46, Statutes of 1986
Chapter 1454, Statutes of 1985
Chapter 920, Statutes of 1985
Chapter 1401, Statutes of 1984
Chapter 274, Statutes of 1984
Chapter 1, Statutes of 1984XX

Title 5, California Code of Regulations, Sections 58600, 58601, 58610 through 58613, 58620, 58630

Education Code Section 76300

Executive Orders of the California Community Colleges Chancellor's Office
"Board of Governors Fee Waiver Program and Special Programs
2000-2001 Program Manual" Effective: July 1, 2000-June 30,2001

Enrollment Fee Waivers

I, Lawrence Serot, Vice President, Administrative Services, Glendale Community College District, make the following declaration and statement:

In my capacity as Vice President, Administrative Services, I am the Chief Administrative Officer responsible for college financial administration and facilities. I am responsible for implementing the requirements of Education Code Section 76300, (former Section 72252) as added by Chapter 1, Statutes of 1984, Second Extraordinary Session and last amended by Chapter 71, Statutes of 2000, and supplemented by the above referenced sections of Title 5, California Code of Regulations and Executive Orders of the California Community Colleges Chancellor's Office, which requires the District to perform the following administrative tasks at the time of enrollment to determine which students are entitled to have his or her enrollment fees waived for any of the reasons stated in Education Code Section 76300, subdivisions (g) and (h):

ACTIVITIES REQUIRED TO IMPLEMENT THE MANDATE

A) Pursuant to Section 58612 of Title 5 of the California Code of Regulations, determine and classify those students who are eligible for Board of Governor grants according to the eligibility criteria set forth in Section 58620.

B) Pursuant to Education Code Section 76300(g), determine, at the time of enrollment, if fees should be waived for any student because he or she is a recipient of benefits under the Aid to Families with Dependent Children program;

C) Pursuant to Education Code Section 76300(g), determine, at the time of enrollment, if fees should be waived for any student because he or she is a recipient of benefits under the Supplemental Security Income/State Supplementary program;

D) Pursuant to Education Code Section 76300(g), determine, at the time of enrollment, if fees should be waived for any student because he or she is a beneficiary under a general assistance program;

E) Pursuant to Education Code Section 76300(g), determine, at the time of enrollment, if fees should be waived for any student because he or she has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid;

F) Pursuant to Education Code Section 76300(h), determine, at the time of enrollment, if fees should be waived for any student because he or she is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state.

G) Enter the enrollment fee waiver information into the district cashier system and data processing and accounting systems, and process all agency billings for students whose fees are waived.

H) Pursuant to Section 58630 of Title 5 of the California Code of Regulations, separately document and account for the funds allocated for the collection of enrollment fees and financial assistance in order to enable an independent determination regarding the accuracy of the District's certification of need for financial assistance.

I) Pursuant to Section 58611 of Title 5 of the California Code of Regulations, prepare and submit reports regarding number and amounts

of the enrollment fees waived as required by the Board of Governors and other state agencies.

ESTIMATED UNFUNDED COST TO IMPLEMENT THE MANDATE

It is estimated that the District incurred more than approximately $359,916 in staffing and other costs (or about $9.53 per student enrollment) for the period of July, 1999 through June, 2000 to implement these new duties mandated by the state in excess of seven-percent of the enrollment fees waived[1] from the State pursuant to Education Code Section 76300, subdivision (i)(2), and related Budget Act appropriations, for the purpose of implementing this mandate, and for which it cannot otherwise obtain reimbursement.

CERTIFICATION

The foregoing facts are known to me personally and if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED, this 16 day of May, 2001, in the City of Glendale, California.

Lawrence Serot
Vice President, Administrative Services
Glendale Community College District

[1] Commencing July 5, 2000 the credit will be ninety-one cents ($0.91) per credit unit waived.

ATTACHMENT TO THE DECLARATION OF
LAWRENCE SEROT
VICE PRESIDENT, ADMINISTRATIVE SERVICES
FOR
TEST CLAIM OF GLENDALE COMMUNITY COLLEGE DISTRICT

Education Code Section 76300
Enrollment Fee Waivers

FOR FISCAL YEAR 1999-2000

Cost of Waiver Eligibility Determination at Time of Enrollment

Number of Enrollments – Summer Semester:	7,174
Number of Enrollments – Fall Semester	15,501
Number of Enrollments – Spring Semester	15,073
Total Number of Enrollments:	37,748

Average Time (in minutes) of district personnel (and average hourly wages and benefits) in making fee waiver determinations:

Financial Aid Technician	$29.13/hr	10 minutes
Financial Aid Assistant Technician	$23.91/hr	15 minutes

Calculation of Cost:

Financial Aid Technician $\frac{10 \times 37{,}748 \times \$29.13}{60} = \$183{,}267$

Financial Aid Assistant Technician $\frac{15 \times 37{,}748 \times \$23.91}{60} = 225{,}639$

Total Annual Cost of Financial Aid Determinations: $408,906

Cost of Entering Data Into Data Processing and Accounting Systems:

Number of Fee Waivers – Summer Semester:	2,063
Number of Fee Waivers – Fall Semester	5,062
Number of Fee Waivers – Spring Semester	5,061
Total Number of Fee Waivers:	12,186

Average Time (in minutes) of district personnel (and average hourly wages and benefits) in entering data into data processing and accounting systems:

Financial Aid Assistant	$23.30/hr	8 minutes

Calculation of Cost:

Financial Aid Assistant $\frac{8 \times 12{,}186 \times \$23.30}{60} = \$\ 37{,}858$

TOTAL COST OF WAIVER DETERMINATION AND ACCOUNTING:

Waiver Determinations:	$408,906
Accounting:	37,858
Total Cost:	$446,764

COST REIMBURSEMENT:

Fees Waived	$1,240,692
Percentage	7%
Total Reimbursement	$ 86,848

NET REIMBURSABLE COST: $446,764 less $86,848 = $ 359,916

TOTAL COST PER ENROLLMENT: $446,764 divided by 37,748 = $ 11.84

NET COST PER ENROLLMENT: $359,916 divided by 37,748 = $ 9.53

EXHIBIT 2

EDUCATION CODE SECTIONS AND TITLE 5 CODE CCR SECTIONS CITED

Exhibit 2
Education Code Sections and
Title 5 California Code of Regulations

ENROLLMENT FEES AND FINANCIAL AID

Article 1 was added by Stats.1993, c. 8 (A.B.46), § 51.

§ 76300. Student fees; amount; adjustments; computation of apportionments; exemptions; waivers

(a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b)(1) The fee prescribed by this section shall be twelve dollars ($12) per unit per semester, effective with the fall term of the 1998–99 academic year, and eleven dollars ($11) per unit per semester effective with the fall term of the 1999–2000 academic year.

(2) The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and also shall proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84757.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(3) Students enrolled in credit contract education courses pursuant to Section 78021, if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting and if these students are not included in the calculation of the average daily attendance of that district.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. The governing board of a community college district also shall waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, refers to a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i)(1) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) and (h).

(2) From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) and (h). From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to * * * ninety-one cents ($0.91) per credit unit waived pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992–93 fiscal year.

(j) The board of governors shall adopt regulations implementing this section.

(Added by Stats.1995, c. 308 (A.B.825), § 20, eff. Aug. 3, 1995. Amended by Stats.1996, c. 63 (A.B.3031), § 1; Stats.1999, c. 72 (A.B.1118), § 6, eff. July 6, 1999; Stats.2000, c. 71 (S.B.1667), § 27, eff. July 5, 2000.)

(b) A student shall be allowed at least two weeks from the final qualifying date of the program change specified in Subsection (a) to request an enrollment fee refund.

(c) A community college district shall not refund any enrollment fee or differential enrollment fee paid by a student for program changes made after the first two weeks of instruction for a primary term–length course, or after the 10 percent point of the length of the course for a short–term course, unless the program change is a result of action by the district to cancel or reschedule a class or to drop a student pursuant to Section 55202(g) where the student fails to meet a prerequisite.

(d) When refunding an enrollment fee or differential enrollment fee pursuant to Subsection (a), a community college district may retain once each semester or quarter an amount not to exceed $10.00.

(e) If the district has adopted a withdrawal policy pursuant to Section 55758, any student who is a member of an active or reserve United States military service, and who has withdrawn from courses due to military orders, may file a petition with the district requesting refund of the enrollment fee or differential enrollment fee. The district shall refund the entire fee unless academic credit has been awarded.

NOTE: Authority cited: Sections 66700, 70901 and 76300, Education Code. Reference: Sections 76300 and 76330, Education Code.

HISTORY

1. New section filed 9–5–84; effective upon filing pursuant to Government Code section 11346.2(d) (Register 84, No. 36).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. New subsection (d) filed 5–20–91 and submitted to OAL on 5–24–91 for printing only pursuant to Education Code section 70901.5; operative 6–19–91 (Register 91, No. 31).
4. Amendment of subsection (b) filed 3–26–92; operative 4–24–92 (Register 92, No. 17).
5. Amendment of section and NOTE filed 2–24–93; operative 3–26–93 (Register 93, No. 9).
6. New subsection (b), subsection redesignation, and amendment of subsection (c) and NOTE filed 5–25–94; operative 6–24–94. Submitted to OAL for printing only (Register 94, No. 22).
7. Amendment of subsections (b), (d) and (e) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).
8. Editorial correction of HISTORY 2 (Register 95, No. 23).

Article 2. Student Center Fee

§ 58510. Student Center Fee Election.

If it desires to exercise the authority given by section 72253 of the Education Code, the governing board of a community college district shall establish procedures for an election conducted for the purpose of collecting a student body center building and operating fee, and call an election for such purpose. The procedures shall be developed in consultation with the student government body of the college(s) at which the fee would be assessed. The election shall, at minimum, meet the following criteria:

(a) The governing board shall make available in its district office and the student government office written information regarding the election procedures. Such information shall be made available to the public upon request.

(b) Adequate notice of the election shall be given. Adequate notice is deemed to be at least ten school days prior to the election date.

(c) The election shall be held on a day which counts toward the 175 day requirement set forth in Education Code section 84890. In instances where the election is conducted for more than one day, those days shall be consecutive and shall be limited to a maximum of five days.

(d) The ballot proposal seeking authorization of the fee shall specify the intended duration of the fee and the intended use of the fee revenue.

(e) The election shall be conducted in a manner that would allow equal opportunity for day and evening students to participate.

NOTE: Authority cited: Sections 66700, 70901 and 72253, Education Code. Reference: Section 72253, Education Code.

HISTORY

1. New section filed 5–12–88; operative 5–12–88 (Register 88, No. 20).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 23).

Subchapter 7. Student Financial Aid

§ 58600. Scope.

This chapter governs the administration of student financial aid allocated by the Board of Governors to community college districts.

NOTE: Authority cited: Sections 66700, 70901 and 72252, Education Code. Reference: Section 72252, Education Code; and Section 19, Chapter 1, Statutes of 1984.

HISTORY

1. New chapter 7 (sections 58600–58630, not consecutive) filed 9–20–84; effective upon filing pursuant to Government Code section 11346.2(d) (Register 84, No. 40).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 23).

§ 58601. Definitions.

As used in this chapter:

Board of Governors Grant. An instrument used by a community college district to process the financial assistance provided to a low–income student pursuant to the terms of this chapter.

NOTE: Authority cited: Sections 66700, 70901, and 72252, Education Code. Reference: Section 72252, Education Code; and Section 19, Chapter 1, Statutes of 1984.

HISTORY

1. Amendment filed 11–15–85; effective thirtieth day thereafter (Register 85, No. 46).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 23).

§ 58610. Allocations.

(a) The Chancellor shall estimate each community college district's need for Board of Governors Grants, and shall allocate funds to districts based on that anticipated need.

(b) In estimating each district's need for these financial assistance funds the Chancellor shall consider the following factors:

(1) The number of Pell Grant recipients in the district in the previous fiscal year;

(2) The estimated number of students in the district who are eligible pursuant to Education Code section 72252(f).

(3) The estimated number of low–income students in the district who are enrolled for fewer than six units.

(c) The Chancellor shall apportion the allocations in the advanced apportionment certified by the Chancellor.

NOTE: Authority cited: Sections 66700, 70901, and 72252, Education Code. Reference: Section 72252, Education Code; 20 U.S.C. 1070(a); and Section 19, Chapter 1, Statutes of 1984.

HISTORY

1. Amendment of subsections (a) and (b) filed 11–15–85; effective thirtieth day thereafter (Register 85, No. 46).
2. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 23).

§ 58611. Adjustments.

Districts shall report the number of and amounts provided for Board of Governors Grants. The Chancellors shall then adjust the financial assistance allocation in the First and Second Principal Apportionments to

reflect each district's actual expenditure of funds allocated pursuant to this chapter. Any necessary additional adjustments shall be made in the applicable fiscal year recalculations.

NOTE: Authority cited: Sections 66700, 70901, and 72252, Education Code. Reference: Section 72252, Education Code; and Section 19, Chapter 1, Statutes of 1984.

HISTORY

1. Amendment filed 11-15-85; effective thirtieth day thereafter (Register 85, No. 46).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 23).

§ 58612. Financial Assistance Awards.

(a) A community college district shall provide Board of Governors Grants to all students who are eligible and who apply for this assistance.

(b) A student who is determined to be eligible for a Board of Governors Grant may be presumed to be eligible for that assistance for the remainder of the academic year and until the beginning of the following fall term.

(c) Nothing in this chapter shall prohibit a community college district from establishing a date beyond which it will not accept applications for this financial assistance.

NOTE: Authority cited: Sections 66700, 70901, and 72252, Education Code. Reference: Section 72252, Education Code; and Section 19, Chapter 1, Statutes of 1984.1

HISTORY

1. Amendment filed 11-15-85; effective thirtieth day thereafter (Register 85, No. 46).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 23).

§ 58613. Award Amounts.

Board of Governors Grants shall be made in the amount of the enrollment fee calculated pursuant to section 58507 of this division.

NOTE: Authority cited: Sections 66700, 70901, and 72252, Education Code. Reference: Section 72252, Education Code; and Section 19, Chapter 1, Statutes of 1984.

HISTORY

1. Amendment filed 11-15-85; effective thirtieth day thereafter (Register 85, No. 46).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 23).

§ 58620. Student Eligibility: Board of Governors Grant.

To be eligible for a Board of Governors grant, a student must:

(a) Be a California resident;

(b) Meet one of the following criteria:

(1) Income Standards.

(A) Be a single and independent student having no other dependents and whose total income in the prior year was equal to or less than 150% of the US Department of Health and Human Services Poverty Guidelines for a family of one. Or be a married, independent student having no dependents other than a spouse, whose total income of both student and spouse in the prior year was equal to or less than 150% of the US Department of Health and Human Services Poverty Guidelines for a family of two.

(B) Be a student who is dependent in a family having a total income in the prior year equal to or less than 150% of the US Department of Health and Human Services Poverty Guidelines for a family of that size, not including the student's income, but including the student in the family size.

(C) Provide documentation of taxable or untaxed income.

(D) Be a student who is married or a single head of household in a family having a total income in the prior year equal to or less than 150% of the US Department of Health and Human Services Poverty Guidelines for a family of that size.

(E) Be an independent student whose Estimated Family Contribution as determined by Federal Methodology is equal to zero or a dependent student for whom the parent portion of the Estimated Family Contribution as determined by Federal Methodology is equal to or less than zero.

(F) For purposes of this subsection US Department of Health and Human Services Poverty Guidelines used each year shall be the most recently published guidelines immediately preceding the academic year for which a fee waiver is requested.

(2) Current recipient of benefits described in Education Code section 76300(g).

(A) At the time of enrollment be a recipient of benefits under the Temporary Assistance to Needy Families (TANF) program. A dependent student whose parent(s) or guardian(s) are recipients of TANF shall be eligible if the TANF program grant includes a grant for the student or if the TANF grant is the sole source of income for the parent or guardian.

(B) At the time of enrollment be a recipient of benefits under the Supplemental Security Income (SSI) program. A dependent student whose parent(s) or guardian(s) are recipients of SSI shall be eligible if the SSI program grant is the sole source of income for the parent(s) or guardian(s).

(C) At the time of enrollment be a recipient of benefits under the General Assistance program.

(D) Provide documentation that the student if a recipient of benefits under one of the programs identified in Education Code section 76300(g) and (h) at the time of enrollment. Documentation sufficient to meet the requirements of this subdivision shall provide official evidence of these benefits.

(3) Need-Based Financial Aid Eligibility. Any student who has been determined financially eligible for federal and/or state needed based financial aid.

NOTE: Authority cited: Sections 66700, 70901, and 72252, Education Code. Reference: Section 76300(g) and (h), Education Code; 20 U.S.C. 1070(a); 34 C.F.R. 674.12; and Section 19, Chapter 1, Statutes of 1984.

HISTORY

1. Amendment filed 11-15-85; effective thirtieth day thereafter (Register 85, No. 46).
2. Amendment filed 3-4-91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4-5-91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
3. Editorial correction of HISTORY 2 (Register 95, No. 23).
4. Amendment filed 5-8-2000; operative 6-7-2000. Submitted to OAL for printing only (Register 2000, No. 23).
5. Redesignation of second subsection (b)(1)(C) to subsection (b)(1)(D), subsection relettering, amendment of subsections (b)(2) and (b)(2)(D) and amendment of NOTE filed 7-18-2000; operative 8-17-2000. Submitted to OAL for printing only (Register 2000, No. 29).

§ 58621. Student Eligibility: Enrollment Fee Credit.

NOTE: Authority cited: Sections 66700, 71020, 71062 and 72252, Education Code. Reference: Section 72252, Education Code; and Section 19, Chapter 1, Statutes of 1984.

HISTORY

1. Repealer filed 11-15-85; effective thirtieth day thereafter (Register 85, No. 46).

§ 58622. Student Eligibility: Enrollment Fee Waiver.

NOTE: Authority cited: Sections 66700, 71020, 71062 and 72252, Education Code. Reference: Section 72252, Education Code; and Section 19, Chapter 1, Statutes of 1984.

HISTORY

1. Repealer filed 11-15-85; effective thirtieth day thereafter (Register 85, No. 46).

§ 58630. District Reporting and Accountability.

(a) Dollars allocated for financial assistance pursuant to this chapter shall be identified separately in district accounts.

(b) The governing board of each community college district shall adopt procedures that will document all financial assistance provided on

behalf of students pursuant to this chapter. Authorized procedures shall include rules for retention of support documentation which will enable an independent determination regarding accuracy of the district's certification of need for financial assistance.

NOTE: Authority cited: Sections 66700, 70901, and 72252, Education Code. Reference: Section 72252, Education Code; and Section 19, Chapter 1, Statutes of 1984.

HISTORY

1. Amendment filed 3–4–91 by Board of Governors of California Community Colleges with the Secretary of State; operative 4–5–91 (Register 91, No. 23). Submitted to OAL for printing only pursuant to Education Code Section 70901.5(b).
2. Editorial correction of HISTORY 1 (Register 95, No. 23).

Subchapter 8. Program–Based Funding

Article 1. General Provisions

§ 58700. Introduction.

(a) The criteria and standards set forth in this Subchapter shall serve as the basis of making the Board of Governors annual budget request for the California Community Colleges to the Governor and the Legislature and as the basis for Board of Governors allocation of the state general apportionment revenues.

(b) The provisions of Chapter 5, Article 2.5 of Part 50 of the Education Code and the provisions of this Subchapter shall be the sole basis for budget requests and allocations of state general apportionment revenues.

(c) Notwithstanding the foregoing, adjustments for prior year apportionments shall be made using the funding mechanism applied for apportionment purposes in the year for which adjustments are made.

NOTE: Authority cited: Sections 66700, 70901 and 84750, Education Code. Reference: Section 84750, Education Code.

HISTORY

1. New section filed 5–29–91 and submitted to OAL 6–3–91 for printing only pursuant to Education Code section 70901.5; operative 6–30–91 (Register 91, No. 28).
2. Amendment of subsections (a) and (b) filed 9–6–94; operative 10–6–94. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 94, No. 38).

§ 58702. Scope of Subchapter.

This subchapter applies to the allocation of general state apportionment.

NOTE: Authority cited: Sections 66700, 70901 and 84750, Education Code. Reference: Section 84750, Education Code.

HISTORY

1. New section filed 5–29–91 and submitted to OAL 6–3–91 for printing only pursuant to Education Code section 70901.5; operative 6–30–91 (Register 91, No. 28).

§ 58702.5. Waiver.

The Chancellor is authorized to waive or adjust any provision of this Subchapter as necessary to ensure that districts not party to district reorganization authorized by Education Code Sections 74265 and 74265.5 will not be adversely affected during the fiscal year in which any such reorganization occurs.

NOTE: Authority cited: Sections 66700, 70901 and 84750, Education Code. Reference: Sections 74265, 74265.5 and 84750.

HISTORY

1. New section filed 11–12–99; operative 12–12–99. Submitted to OAL for printing only pursuant to Education Code section 70901.5 (Register 99, No. 47).

§ 58704. Program Based Funding Principles.

(a) General funding for community college districts shall be prior year general apportionment revenue (state and local) adjusted for any amount attributed to a deficit mechanism, with revenue adjustments being made for inflation, increases or decreases in workload measures, program improvement and such other adjustments as are authorized by law.

(b) The funding mechanism for credit instruction shall be based on the categories of operation provided for in section 84750 of the Education Code, articles 2–6 of this subchapter, and such other categories of operation as may, from time to time, be determined by the Legislature.

(c) The funding mechanism for community college noncredit activities shall be as specified in section 84750(b)(3) of the Education Code, and articles 6 and 7 of this subchapter.

(d) Standards determine the level of service and the corresponding funding deemed appropriate for each category. That corresponding funding level shall be referred to as the target allocation. From the target allocation, a simplified standard rate(s) shall be derived that when applied to the applicable workload measure(s) and scale factor will compute approximately the same result. The standards applicable to each category are as set forth in articles 2–7.

(e) Recognition shall be given to small colleges (up to 5,000 credit FTES) and small districts (up to 10,000 credit FTES) for special financial consideration to accommodate the additional cost of being small.

(f) The Board of Governors may, in conjunction with consultation, add new or refine existing factors for special financial consideration to provide incentives for particular programs, services or circumstances.

(g) Nothing in these regulations for state apportionment allocation shall require district governing boards to expend allocated revenues in specified categories of operation or according to workload measures contained herein.

(h) The Chancellor may develop and provide for district use, any procedures, processes and formulas he or she deems necessary to the utilization of the criteria and standards specified herein.

(i) The prospective funding priority for state budget negotiations shall be

(1) base revenues and budget stability, pursuant to sections 58771 and 58776,

(2) inflation and program improvement adjustments pursuant to sections 58773 and 58775(a), and

(3) growth and restoration, pursuant to sections 58774 and 58777. Restoration shall be included in priority (1) if funds have been reserved in the base for this purpose.

NOTE: Authority cited: Sections 66700, 70901 and 84750, Education Code. Reference: Section 84750, Education Code.

HISTORY

1. New section filed 5–29–91 and submitted to OAL 6–3–91 for printing only pursuant to Education Code section 70901.5; operative 6–30–91 (Register 91, No. 28).

§ 58706. Definitions.

For purposes of this subchapter:

(a) "Continuing credit enrollment" means the total number of unduplicated students whose attendance is eligible for state support and who are actively enrolled at the reporting college in a credit course for which census attendance accounting is taken as of the census date or for which positive attendance is taken and the student has generated at least eight student contact hours of positive attendance or was awarded a half unit of credit in any primary term, and who were enrolled in a credit course in a previous primary term within the last three academic years.

(b) "FTES in less than 100% leased space" means the state supported credit and noncredit FTES generated in facilities leased for less than 100% of the time (not reported as inventoried space) and paid for by general purpose funds of the district.

(c) "Gross square footage" means the sum of the floor areas of all facilities of the district reported on the annual inventory in accordance with Education Code, section 81821.

(d) "High revenue district" means a district that receives a level of funding as a percentage of the standard which is higher than the statewide average percent of standard.

(e) "Low revenue district" means a district that receives a level of funding as a percentage of the standard which is lower than the statewide average percent of standard.

(f) "New credit enrollment" means the total number of unduplicated students whose attendance is eligible for state support and who are actively enrolled at the reporting college in a credit course for which census attendance accounting is taken as of the census date or for which positive

EXHIBIT 3

STATUTES CITED

Chapter 1, Statutes of 1984XX

Chapter 274, Statutes of 1984

Chapter 1401, Statutes of 1984

Chapter 920, Statutes of 1985

Chapter 1454, Statutes of 1985

Chapter 46, Statutes of 1986

Chapter 394, Statutes of 1986

Chapter 1118, Statutes of 1987

Chapter 136, Statutes of 1989

Chapter 8, Statutes of 1993

Chapter 66, Statutes of 1993

Chapter 67, Statutes of 1993

Chapter 1124, Statutes of 1993

Chapter 153, Statutes of 1994

Chapter 422, Statutes of 1994

Chapter 308, Statutes of 1995

Chapter 63, Statutes of 1996

Chapter 72, Statutes of 1999

Chapter 71, Statutes of 2000 3

Exhibit 3
Statutes Cited

West's

CALIFORNIA LEGISLATIVE SERVICE

STATUTES AND CODE AMENDMENTS 1983-1984 SECOND EXTRAORDINARY SESSION

(1983-1984 ENACTMENTS)

COMMUNITY COLLEGES—FINANCE—FEES

Assembly Bill No. 1

CHAPTER 1

An act to amend Sections 72247, 84700, 84701, 84702, and 84706 of, to amend and repeal Sections 32033, 72640, and 72641 of, to add and repeal Sections 72246.5 and 72252 of, and to repeal and add Sections 72245, 72246, 72250.5, 72251, 78930, 81458, and 82305.6 of, the Education Code, relating to community colleges, and making an appropriation therefor.

[Approved by Governor January 26, 1984. Filed with Secretary of State January 26, 1984.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1, Katz. Community colleges: fees: finance.

(1) This bill would declare the Legislature's intent pertaining to the fees imposed by this bill.

(2) Existing law authorizes the governing board of a community college district to charge various permissive fees.

This bill would, until January 1, 1988, eliminate the authorization to impose a fee (1) upon a participating student when physical

education courses are required to use nondistrict facilities; (2) for filing an application for admission or readmission after the established deadline; (3) for participation in an instructionally-related field trip or excursion within the state; (4) for the cost of medical insurance required for students participating in a field trip or excursion; (5) for instructional materials; (6) for materials used to make articles in adult classes; (7) for health services; (8) for certain transportation to and from community colleges provided by the district; and (9) for adding courses more than 2 weeks after instruction begins. The bill would also exclude a community college district governing board from a provision regarding the selling of the eye protective devices required to be worn in courses involving activities likely to cause injury to the eyes until January 1, 1988.

This bill would impose a state-mandated local program by requiring any district which provided health services in the 1983–84 fiscal year for which it was authorized to charge a fee to maintain health services at the level provided during the 1983–84 fiscal year until January 1, 1988.

With regard to the fees authorized to be charged for parking services, this bill would specify that in no event shall the fees required for these services exceed the actual cost of providing the services. This bill would limit the use of the parking fees to parking services for vehicles and motor vehicles and for the reduction of costs to students and faculty of using public transportation to and from the college.

(3) This bill would impose a state-mandated local program by requiring the governing board of each community college district, commencing with the term which begins after July 31, 1984, to charge each student a fee equal to $50 per semester for students enrolled in classes totaling 6 or more credit semester units, and $5 per unit per semester for those enrolled in classes totaling less than 6 credit semester units, or the equivalent. This requirement would not apply to students enrolled in certain noncredit courses or to recipients of certain public assistance funds.

Ninety-eight percent of the fee proceeds, and of reimbursements received for exemption from the payment of fees by recipients of public assistance, would be deemed to be local property tax revenues for the purpose of computing apportionments.

This bill would require the Chancellor of the California Community Colleges to reduce by up to 10% the funds apportioned to any community college district which fails to collect tuition fees.

The fee requirement would not apply to semesters, terms, or quarters which begin after January 1, 1988.

(4) Existing law requires the chancellor to apportion state aid to community college districts according to a specified procedure.

This bill would make various changes in that procedure.

This bill would permit the chancellor to adjust allocations provided to districts for the period of July through January, as provided, upon the demonstrated need of any community college district for

increased allocation levels in any month which are based on district expenditure patterns and cash flow needs.

(5) Existing law prescribes the method for computation of the average daily attendance for apportionment purposes of a community college district.

If the total actual average daily attendance of a district declined in the 1984–85 fiscal year from the fully funded average daily attendance of the 1982–83 fiscal year, this bill would permit the district to increase its 1984–85 fiscal year average daily attendance up to the level of its 1982–83 fully funded average daily attendance, and would require the chancellor to adjust the 1984–85 base revenues by the appropriate incremental cost rate.

For the 1984–85 fiscal year and each fiscal year thereafter, this bill would also require an adjustment to a district's base revenues to be made, as specified, for the next year if a district's total actual average daily attendance for the current fiscal year is less than its base average daily attendance.

This bill would also prescribe other adjustments in the base revenue computation for the 1984–85 fiscal year to take into account the total amounts prescribed for certain equalization and cost-of-living adjustments.

(6) Under current law, increases in statewide average daily attendance are required to be based upon the rate of change of the state's adult population as determined by the Department of Finance.

This bill would prescribe the basis for, and various requirements relating to, the statewide adult population percentage change reported by the Department of Finance.

(7) This bill would require the chancellor, in consultation with the California Postsecondary Education Commission, to conduct a study of the impact of the mandatory tuition fee upon the California community colleges with regard to specified matters. The chancellor would be required to submit findings and recommendations based upon the study to the Joint Legislative Budget Committee and the California Postsecondary Education Commission in a progress report by January 1, 1987, and in a final report by July 1, 1987. The bill would require the commission to submit written comments and recommendations regarding the progress report and final report to the Legislature. This bill would appropriate $100,000 to the chancellor for the purpose of carrying out the study, and would require the chancellor to enter into an interagency agreement with the California Postsecondary Education Commission to reimburse the commission for the cost of carrying out its duties under these provisions. This bill would also require the chancellor to conduct a specified study regarding noncredit courses.

(8) This bill would appropriate $15,000,000 per year according to a specified schedule to the Board of Governors of the California Community Colleges for purposes of providing financial aid funds directly to low-income students who cannot afford to pay the fee required by this bill, and for purposes of reimbursing districts for the amount of fees lost due to the exemption from the fee requirement

provided to students receiving certain public assistance funds. The chancellor would be required to allocate these funds to community college districts, subject to certain conditions. Districts receiving an allocation of these funds would be required to utilize appropriate financial need criteria, including certain specified criteria. The bill would require the chancellor to submit a plan summarizing the allocations to be made to the California Postsecondary Education Commission, the Legislative Analyst, and the fiscal and educational policy committees of both houses of the Legislature by June 15, 1984. The commission would be required to review the plan and submit its recommendations to the fiscal and education policy committees of each house of the Legislature.

If the amount of funds appropriated by this bill for the above described financial aid and reimbursement exceeds the need for those funds, this bill would require the excess to revert to the General Fund. This bill would also require the Director of Finance to take any available administrative action to transfer the additional amount certified by the chancellor to be necessary for providing that financial aid and reimbursement, if the amounts needed for those purposes are greater than the amounts appropriated by this bill.

(9) Existing law provides for the Capital Outlay Fund for Public Higher Education and appropriates various amounts to that fund.

This bill would transfer $28,000,000 from the unencumbered balance of that fund to the General Fund.

(10) Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

This bill would provide that no appropriation is made and no reimbursement is required by this act for a specified reason.

(11) This bill would become operative on July 1, 1984, with the exception of items (8) and (9), above, which would become operative on the effective date of this bill.

Appropriation: yes.

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

SECTION 1. It is the intent of the Legislature that:

(a) Community colleges remain a low-cost segment of public postsecondary education.

(b) Financial assistance shall be provided for all low-income students attending community college upon the imposition of fees.

(c) The costs assessed of students in the 1983–84 fiscal year for instructional materials pursuant to Section 78930 be eliminated and funded directly in subsequent fiscal years from the revenues prescribed by this act.

(d) The Legislature further recognizes and shares the Governor's intention that community college fees not be increased above the levels prescribed by this act.

(e) For semesters, terms, and quarters which begin after January 1, 1988, the total fees and charges paid by students pursuant to Section 72252 of the Education Code, as added by Section 7 of this act, shall not exceed 5 percent of the total of state apportionments and local property tax revenues per unit of credit average daily attendance.

SEC. 2. Section 32033 of the Education Code is amended to read:

32033. The eye protective devices may be sold to the pupils and teachers ▽ at a price which shall not exceed the actual cost of the eye protective devices to the school or governing board.

This section shall not apply to the governing board of a community college district.

This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1988, deletes or extends that date. If that date is not deleted or extended, then, on and after January 1, 1988, pursuant to Section 9611 of the Government Code, Section 32033 of the Education Code, as added by Section 2 of Chapter 1010 of the Statutes of 1976, shall have the same force and effect as if this temporary provision had not been enacted.

SEC. 3. Section 72245 of the Education Code is repealed.

SEC. 3.5. Section 72245 is added to the Education Code, to read:

72245. The governing board of a community college district may impose a fee on a participating student for the additional expenses incurred when physical education courses are required to use nondistrict facilities.

This section shall become operative January 1, 1988.

SEC. 4. Section 72246 of the Education Code is repealed.

SEC. 4.5. Section 72246 is added to the Education Code, to read:

72246. (a) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than seven dollars and fifty cents ($7.50) for each semester, and five dollars ($5) for summer school, or five dollars ($5) for each quarter for health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health center or centers, authorized by Section 72244, or both.

(b) If pursuant to this section a fee is required, the governing board of a district shall decide the amount of the fee, if any, that a part-time student is required to pay. The governing board may decide whether the fee shall be mandatory or optional.

(c) The governing board of a district maintaining a community college shall adopt rules and regulations that either exempt low-income students from any fee required pursuant to subdivision (a) or provide for the payment of the fee from other sources.

(d) The governing board of a district maintaining a community college shall adopt rules and regulations that exempt from any fee

required pursuant to subdivision (a): (1) students who depend exclusively upon prayer for healing in accordance with the teachings of a bona fide religious sect, denomination, or organization; (2) students who are attending a community college under an approved apprenticeship training program.

(e) All fees collected pursuant to this section shall be deposited in the fund of the district designated by the California Community Colleges Budget and Accounting Manual. These fees shall be expended only for the purposes for which they were collected.

Authorized expenditures shall not include, among other things, athletic trainers' salaries, athletic insurance, medical supplies for athletics, physical examinations for intercollegiate athletics, ambulance services and the salaries of health professionals for athletic events, any deductible portion of accident claims filed for athletic team members, or any other expense that is not available to all students. No student shall be denied a service supported by student health fees on account of participation in athletic programs.

(f) This section shall become operative January 1, 1988.

SEC. 4.7. Section 72246.5 is added to the Education Code, to read:

72246.5. Any community college district which provided health services for which it was authorized to charge a fee pursuant to former Section 72246 in the 1983–84 fiscal year shall maintain health services at the level provided during the 1983–84 fiscal year in the 1984–85 fiscal year and each fiscal year thereafter. This maintenance of effort requirement shall apply to all community college districts which levied a health services fee in the 1983–84 fiscal year, regardless of the extent to which the health services fees collected offset the actual costs of providing health services at the 1983–84 fiscal year level.

This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

SEC. 5. Section 72247 of the Education Code is amended to read:

72247. The governing board of a community college district may require of students in attendance in grades 13 and 14 and employees of the district, the payment of a toll, in an amount not to exceed twenty dollars ($20) per semester or forty dollars ($40) per regular school year to be fixed by the board, for parking services.

Such toll shall only be required of students and employees using parking services.

All such tolls collected shall be deposited in the designated fund of the district in accordance with the California Community Colleges Budget and Accounting Manual and shall be expended only for parking services or for purposes of reducing the costs to students and faculty of the college of using public transportation to and from the college.

Tolls collected for use of parking services provided for by investment of student body funds under the authority of Section 76064 shall be deposited in a designated fund in accordance with the California Community Colleges Budget and Accounting Manual for repayment to the student organization.

"Parking services," as used in this section, means the purchase, construction, and operation and maintenance of parking facilities for vehicles and motor vehicles as defined by Sections 415 and 670 of the Vehicle Code, and the reduction of costs to students and faculty of using public transportation to and from the college.

In no event may the fee required pursuant to this section exceed the actual cost of providing parking services.

SEC. 5.5. Section 72250.5 of the Education Code is repealed.

SEC. 5.7. Section 72250.5 is added to the Education Code, to read:

72250.5. The governing board of a community college district may impose a fee, not to exceed one dollar ($1), for the actual pro rata cost for services relative to a program change consisting of adding one or more courses any time after two weeks from the commencement of instruction in any term. Such fee shall not be charged for changes initiated or required by the community college.

This section shall become operative January 1, 1988.

SEC. 6. Section 72251 of the Education Code is repealed.

SEC. 6.5. Section 72251 is added to the Education Code, to read:

72251. The governing board of any community college district may impose a late application fee of not to exceed two dollars ($2) for any application for admission or readmission which is filed after the date established by the governing board for the filing of applications for admission or readmission to the community college.

This section shall become operative January 1, 1988.

SEC. 7. Section 72252 is added to the Education Code, to read:

72252. (a) Commencing with the semester, term, or quarter which begins after July 31, 1984, the governing board of each community college district shall charge each student a fee, pursuant to the provisions of this section.

(b) The fee prescribed by this section shall equal fifty dollars ($50) per semester for students enrolled in classes totaling six or more credit semester units, and five dollars ($5) per unit per semester for students enrolled in classes totaling less than six credit semester units.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system or other alternative system approved pursuant to Section 78002.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from reimbursements received for fees exempted pursuant to subdivision (f) shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district which does not collect the fees prescribed by this section.

(e) The fee requirement shall not apply to students enrolled in the noncredit courses designated by Section 84711.

(f) The fee requirements of this section shall not apply to a student who, at the time of enrollment, is a recipient of benefits

under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary program, or the General Assistance Program.

(g) The board of governors shall adopt regulations implementing the provisions of this section as regulations in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(h) This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

SEC. 8. Section 72640 of the Education Code is amended to read:

72640. The governing board of a community college district may:

(a) Conduct field trips or excursions in connection with courses of instruction or school-related social, educational, cultural, athletic, or college band activities to and from places in the state, any other state, the District of Columbia, or a foreign country for students enrolled in a college. A field trip or excursion to and from a foreign country may be permitted to familiarize students with the language, history, geography, natural sciences, and other studies relative to the district's course of study for such pupils.

(b) Engage such instructors, supervisors, and other personnel as desire to contribute their services over and above the normal period for which they are employed by the district, if necessary, and provide equipment and supplies for such field trip or excursion.

(c) Transport by use of district equipment, contract to provide transportation, or arrange transportation by the use of other equipment, of students, instructors, supervisors or other personnel to and from places in the state, any other state, the District of Columbia, or a foreign country where such excursions and field trips are being conducted; provided that, when district equipment is used, the governing board shall secure liability insurance, and if travel is to and from a foreign country, such liability insurance shall be secured from a carrier licensed to transact insurance business in such foreign country.

(d) Provide supervision of students involved in field trips or excursions by certificated employees of the district.

No student shall be required to pay a fee to participate in an instructionally related field trip or excursion within the state.

No student shall be prevented from making the field trip or excursion because of lack of sufficient funds. To this end, the governing board shall coordinate efforts of community service groups to supply funds for students in need of them.

No group shall be authorized to take a field trip or excursion authorized by this section if any student who is a member of such an identifiable group will be excluded from participation in the field trip or excursion because of lack of sufficient funds.

No expenses of students participating in a field trip or excursion to any other state, the District of Columbia, or a foreign country authorized by this section shall be paid with district funds. Expenses of instructors, chaperons, and other personnel participating in a field

trip or excursion authorized by this section may be paid from district funds, and the district may pay from district funds all incidental expenses for the use of district equipment during a field trip or excursion authorized by this section.

The attendance or participation of a student in a field trip or excursion authorized by this section shall be considered attendance for the purpose of crediting attendance for apportionments from the State School Fund in the fiscal year. Credited attendance resulting from such field trip or excursion shall be limited to the amount of attendance which would have accrued had the students not been engaged in the field trip or excursion. No more contact hours shall be generated by a field trip or excursion than if the class were held on campus.

All persons making the field trip or excursion shall be deemed to have waived all claims against the district or the State of California for injury, accident, illness, or death occurring during or by reason of the field trip or excursion. All adults taking out-of-state field trips or excursions and all parents or guardians of students taking out-of-state field trips or excursions shall sign a statement waiving such claims.

This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1988, deletes or extends that date. If that date is not deleted or extended, then, on and after January 1, 1988, pursuant to Section 9611 of the Government Code, Section 72640 of the Education Code, as amended by Section 76 of Chapter 797 of the Statutes of 1979, shall have the same force and effect as if this temporary provision had not been enacted.

SEC. 9. Section 72641 of the Education Code is amended to read:

72641. The governing board of any community college district conducting excursions and field trips pursuant to this article shall provide, or make available, medical or hospital service, or both, through nonprofit membership corporations defraying the cost of medical service or hospital service, or both, or through group, blanket or individual policies of accident insurance from authorized insurer, for students of the district injured while participating in such excursions and field trips under the jurisdiction of, or sponsored or controlled by, the district or the authorities of any college of the district. The cost of the insurance or membership shall be paid from the funds of the district.▽

The insurance may be purchased from, or the membership may be taken in, only such companies or corporations as are authorized to do business in this state.

This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1988, deletes or extends that date. If that date is not deleted or extended, then, on and after January 1, 1988, pursuant to Section 9611 of the Government Code, Section 72641 of the Education Code, as added by Section 2 of Chapter 1010 of the Statutes of 1976, shall have the same force and effect as if this temporary provision had not been enacted.

symbol ▽ indicates text deletion

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SEC. 10. Section 78930 of the Education Code is repealed.

SEC. 10.5. Section 78930 is added to the Education Code, to read:

78930. (a) The governing board of a community college district may charge a reasonable fee for instructional materials provided to any student enrolled in its college or colleges. Fees for instructional materials shall be established so as to not exceed the actual cost to the district in providing such materials, and the materials themselves shall be tangible personal property which is owned or controlled by the student.

(b) "Instructional materials" means all material designed for use by students and their instructors as a learning resource and which help students to acquire facts, skills, or opinions or to develop cognitive processes. Instructional materials may be printed or nonprinted and may include textbooks and educational materials, but not tests. Educational materials are defined to mean any audiovisual or manipulative device including, but not limited to, films, tapes, flashcards, kits, phonograph records, study prints, graphs, charts, and multimedia systems.

(c) This section shall become operative January 1, 1988.

SEC. 11. Section 81458 of the Education Code is repealed.

SEC. 11.5. Section 81458 is added to the Education Code, to read:

81458. The governing board of a community college district may sell to persons enrolled in classes for adults maintained by the district such materials as may be necessary for the making of articles by such persons in such classes. The materials shall be sold at not less than the cost thereof to the district and any article made therefrom shall be the property of the person making it.

This section shall become operative January 1, 1988.

SEC. 12. Section 82305.6 of the Education Code is repealed.

SEC. 12.5. Section 82305.6 is added to the Education Code, to read:

82305.6. When the governing board of a community college district provides for the transportation of students to and from community colleges, the governing board of the district may require the parents and guardians of all or some of the students transported, to pay a portion of the cost of such transportation in an amount determined by the governing board. The amount determined by the board shall be no greater than that paid for transportation on a common carrier or municipally owned transit system by other students in the district who do not use the transportation provided by the district. The governing board shall exempt from such charges students of parents and guardians who are indigent as set forth in rules and regulations adopted by the board. No charge under this section shall be made for the transportation of handicapped students. Nothing in this section shall be construed to sanction, perpetuate, or promote the racial or ethnic segregation of students in the community colleges.

This section shall become operative January 1, 1988.

SEC. 13. Section 84700 of the Education Code is amended to read:

84700. For the 1983–84 fiscal year, and each fiscal year thereafter, the chancellor shall apportion state aid to community college districts according to the following procedure:

(a) The fiscal year revenues for each community college district shall be its base revenues as defined in Section 84701, plus or minus the average daily attendance adjustments based on incremental cost adjustments prescribed in Sections 84702 and 84702.5, plus the equalization adjustment specified in Section 84703, plus the inflation adjustment specified in Section 84704, plus the equalization adjustment specified in Section 84705.

(b) For each community college district, the chancellor shall subtract from the revenues determined pursuant to subdivision (a), the local property tax revenue specified by law for general operating support, exclusive of bond interest and redemption and including 98 percent of the fee revenues collected pursuant to Section 72252 and of reimbursements received for fees exempted pursuant to subdivision (f) of Section 72252, and motor vehicle license fees received pursuant to Section 11003.4 of the Revenue and Taxation Code, and timber yield tax revenue received pursuant to Section 38905 of the Revenue and Taxation Code. The remainder shall be the state general apportionment for each district.

(c) The chancellor shall adjust the amount determined pursuant to subdivision (b) to provide for prior year adjustments required pursuant to Section 84330.

(d) The chancellor may, upon the demonstrated need of any community college district for increased levels of allocations of state funds in any month based on district expenditure patterns and cash flow needs, adjust the allocations provided in subdivision (e), provided that the total of the allocations to be made between July 1 and February 1 shall not exceed 70 percent.▽

(e) Warrants shall be drawn on the State Treasury by the Controller in favor of the treasurer of each county for the allocations certified by the Chancellor of the California Community Colleges for the period of July through January in accordance with the following schedule, as may be adjusted by the chancellor in accordance with provisions of subdivision (d):

(1) 8 percent of district eligibility shall be allocated in July.

(2) 8 percent of district eligibility shall be allocated in August.

(3) 12 percent of district eligibility shall be allocated in September.

(4) 10 percent of district eligibility shall be allocated in October.

(5) 9 percent of district eligibility shall be allocated in November.

(6) 5 percent of district eligibility shall be allocated in December.

(7) 8 percent of district eligibility shall be allocated in January.

SEC. 14. Section 84701 of the Education Code is amended to read:

84701. (a) The base 1983–84 fiscal year revenues for each community college district shall be the revenue computed for the 1982–83 fiscal year pursuant to Article 3 (commencing with Section 84620) less the adjustments made pursuant to paragraphs (2), (3), and (4) of subdivision (b) of Section 84630.5 and the adjustments made pursuant to Provisions 4 and 11 of Item 6870-101-001 of the Budget Act of 1982.

(b) For the 1984–85 fiscal year the base revenues for each community college district shall be the sum of revenues computed for the 1983–84 fiscal year pursuant to subdivision (a) of Section

84701, and Sections 84703, 84704, and 84705 provided that for any district the sum of the amounts computed pursuant to Sections 84703 and 84705 shall not exceed the amount computed pursuant to Section 84704. For the 1985–86 fiscal year and each fiscal year thereafter, the base revenues for each community college district shall be the revenues received for the preceding fiscal year in accordance with Section 84700, plus any unfunded shortage in local revenues identified pursuant to the provisions of Section 84712.

(c) The base fiscal year average daily attendance for each community college district shall be the lesser of the average daily attendance of the preceding fiscal year computed pursuant to Section 84500 as adjusted by Section 84895, if applicable, or the level of average daily attendance which, pursuant to the Budget Act or any other act, received full funding, consistent with provisions of Section 84702.5, in the preceding fiscal year.

(d) The noncredit base revenues for each community college district shall be equal to the units of funded noncredit average daily attendance within the base fiscal year average daily attendance determined pursuant to subdivision (c), multiplied by one thousand one hundred dollars ($1,100) plus applicable inflation adjustments for preceding years subsequent to the 1982–83 fiscal year.

(e) The credit base revenues for each community college district shall be equal to the district's base revenues determined pursuant to subdivision (a) or (b) as appropriate, less the district's noncredit base revenue determined pursuant to subdivision (d).

(f) (1) Funded noncredit average daily attendance for a community college district, for a fiscal year, shall be the lesser of the actual number of noncredit average daily attendance generated for that year or the sum of the noncredit average daily attendance funded for the preceding fiscal year plus allowable increases in noncredit average daily attendance based on the percentage of increase allowance provided for the district through provisions of Section 84706.

(2) However, if the actual number of credit average daily attendance for the district is less than the sum of the number of credit average daily attendance funded for the preceding fiscal year plus allowable increases in credit average daily attendance based on the percentage of increase allowance provided in Section 84706, then the difference, represented in numbers of average daily attendance, shall be added to the number of funded noncredit average daily attendance determined pursuant to paragraph (1).

The number of funded noncredit average daily attendance so increased shall be greater than the sum of the number of noncredit average daily attendance funded for the preceding fiscal year plus allowable increases in noncredit average daily attendance based on the percentage of increase allowance provided for the district through provisions of Section 84706 but not greater than the actual number of noncredit average daily attendance generated.

(g) In establishing a district's funded credit and noncredit base average daily attendance for the 1983–84 fiscal year, the chancellor shall do both of the following:

(1) Calculate the ratios of total actual credit and noncredit average daily attendance generated to total actual average daily attendance generated in the 1982–83 fiscal year for the district.

(2) Apply the ratios calculated pursuant to paragraph (1) to the district's total average daily attendance for which the district received funding in the 1982–83 fiscal year.

(h) For fiscal year 1983–84, upon request of any district with credit and noncredit average daily attendance and which in the 1982–83 fiscal year generated a total average daily attendance exceeding 110 percent of its total funded average daily attendance, the chancellor may authorize an increase in the total base funded average daily attendance of the district by an amount not to exceed 5 percent of the district's 1982–83 fiscal year funded average daily attendance. The authorized adjustment shall be further limited by an amount of average daily attendance not greater than that average daily attendance for the district that exceeded 110 percent of the district's funded average daily attendance.

(i) For purposes of determining each district's revenues per unit of funded credit average daily attendance, each district's base revenues determined pursuant to subdivision (a) or (b) of this section shall be reduced by the amount of the adjustment in base revenues to be made in subsequent years for declining average daily attendance in that district pursuant to subdivision (b) of Section 84702 and by the amount of noncredit base revenues of that district determined pursuant to subdivision (d) of Section 84701.

SEC. 15. Section 84702 of the Education Code is amended to read:

84702. The base revenues for each community college district shall be adjusted for changes in average daily attendance, subject to the funded growth limitations in Section 84706, according to the following procedure:

(a) The chancellor shall determine the net increase or net decrease in the number of actual units of average daily attendance of the district between the preceding fiscal year and the current fiscal year.

(b) In the event that the total actual average daily attendance of any community college district for the 1983–84 fiscal year is less than the district's fully funded average daily attendance for the 1982–83 fiscal year, the district shall be allowed to increase its average daily attendance in the 1984–85 fiscal year up to, but not in excess of, the level of its 1982–83 fully funded average daily attendance. The chancellor shall determine the extent to which each of these districts has increased its average daily attendance pursuant to these provisions and shall adjust the base revenues for the 1984–85 fiscal year by the appropriate incremental cost rate specified in Section 84702.5 to the extent of the difference between the average daily attendance generated by the district in the 1984–85 fiscal year and the level of the district's 1982–83 fiscal year fully funded average daily attendance.

For the 1984–85 fiscal year and each fiscal year thereafter, in the event that the total actual average daily attendance for the current

fiscal year is less than the base average daily attendance, the chancellor shall adjust the base revenues for the community college district for the subsequent year by the appropriate incremental cost rates specified in Section 84702.5.

(c) Except as provided in subdivision (b) with regard to the 1984–85 fiscal year, in the event that the total actual average daily attendance for the current fiscal year is greater than the base average daily attendance, the chancellor shall adjust the base revenues for the community college district for the current year by the appropriate incremental cost rate specified in Section 84702.5.

SEC. 16. Section 84706 of the Education Code is amended to read:

84706. (a) For the purpose of this article, average daily attendance shall include only the attendance of state residents, except as provided in Section 78462, attending within the district. All attendance of all students shall be reported in accordance with instructions provided by the chancellor.

(b) Community college districts shall be allowed to increase their funded average daily attendance over the prior year as determined by the chancellor in accordance with the following procedures:

(1) For the 1983–84 fiscal year, districts may be allowed to increase their funded average daily attendance to the level funded in the 1981–82 fiscal year less the adjustments made pursuant to Provision 11 of Item 6870-101-001 of the Budget Act of 1982. Increases for each district provided by this paragraph shall be in addition to the increases provided by paragraphs (2) and (4) and shall be allowed only to the extent that increases in statewide average daily attendance provided by this section, exclusive of paragraph (4), does not exceed the rate of change of the adult population of the state as determined by the Department of Finance, or funds remain available statewide pursuant to paragraph (3).

(2) Increases in statewide average daily attendance shall be based on the rate of change of the adult population of the state as determined by the Department of Finance. The allocation of changes on a district-by-district basis shall be determined by the chancellor, based on such factors as the rate of change in the adult population, as determined by the Department of Finance, unemployment, refugee population, and adult participation in the district. The chancellor shall allocate at least 0.01 times the base average daily attendance of the district or 100 units of average daily attendance, whichever is greater, unless adjusted pursuant to paragraph (5) of this subdivision.

The statewide adult population percentage change reported by the Department of Finance shall be based on the resident adult population 18 years of age and older and shall be consistent with actual and projected adult population data reported for like purposes. The percentage change of the adult population of the community college districts shall be compatible with the changes reported for the statewide adult population and shall be determined within the geographic boundaries of the district which shall be consistent with the geographic boundaries used to determine the assessed valuation of property within the district.

The allocation of allowable increases in average daily attendance on a district-by-district basis shall not exceed a reasonable anticipated normal growth for any district, based on information that the chancellor may receive from the district.

(3) The level of funding available for increases in average daily attendance for each district, based on increases specified in paragraph (2), shall be the sum of the following:

(A) The percentage of allowable increase in average daily attendance specified in paragraph (2) times the level of funded noncredit average daily attendance of the preceding fiscal year times the incremental cost rate specified in subdivision (a) of Section 84702.5.

(B) The percentage of allowable increase in average daily attendance specified in paragraph (2) times the level of funded credit average daily attendance of the preceding fiscal year times the incremental cost rate specified in subdivision (b) of Section 84702.5.

(4) The chancellor shall allocate additional increases in average daily attendance for program growth in areas of statewide concern that are funded in the annual Budget Act or any other act of the Legislature, based on criteria adopted for those allocations.

(5) In the event of a deficit in funding for workload increases, all allowable increases in average daily attendance provided by this section shall be reduced proportionally.

(c) All increases in funded credited average daily attendance shall be accounted for in the following categories of the course classification system of the community colleges, as determined by the chancellor:

(1) Units of average daily attendance in courses that provide transfer credit to a baccalaureate-awarding institution.

(2) Units of average daily attendance in occupational education and vocational and technical programs and courses.

(3) Units of average daily attendance which prepare students for courses identified in paragraphs (1) and (2).

SEC. 17. (a) It is the intent of the Legislature to ensure that the imposition of a mandatory fee does not impair access to, or the quality of, California community colleges. To achieve this purpose, the Chancellor of the California Community Colleges, in consultation with the California Postsecondary Education Commission, shall conduct a study of the impact of the mandatory fee upon California community colleges. The study shall determine the fee's impact upon all of the following:

(1) Student enrollments.

(2) Ethnic distribution of students.

(3) Income distribution of students.

(4) The distribution of full-time and part-time students.

(5) Changes in the staffing requirements and costs of administration.

(6) The availability of federal, state, and other sources of financial aid to community college districts.

(7) The administration and distribution of the financial aid prescribed by this act by the chancellor's office and at the district level.

The chancellor may collect from community college districts any data necessary to conduct the study.

Based upon the study, the chancellor shall submit his or her findings and recommendations to the Joint Legislative Budget Committee and the California Postsecondary Education Commission in a progress report on or before January 1, 1987, and in a final report on or before July 1, 1987.

(b) The chancellor shall conduct the study pursuant to subdivision (a) in consultation with an advisory committee appointed by the chancellor and composed of representatives from community college districts, the Department of Finance, and the Office of the Legislative Analyst. District representatives on the advisory committee may include students, faculty members, administrators, and governing board members.

(c) The California Postsecondary Education Commission shall submit to the Legislature its written comments and recommendations regarding the progress report and the final report filed by the chancellor pursuant to subdivision (a).

(d) The chancellor shall conduct a study on the level of noncredit courses, enrollments, and average daily attendance offered at the community colleges.

The study shall include information on the following:

(1) The number of students enrolled in noncredit courses offered at the community colleges pursuant to the categories specified in Section 84711 of the Education Code.

(2) The impact a mandatory fee would have on student enrollments in the community colleges and on enrollments in adult education programs which offer similar courses in programs operated by school districts and in regional occupational centers and programs.

The study shall be submitted to the legislative fiscal committees by no later than March 15, 1985.

SEC. 18. Notwithstanding subdivision (b) of Section 84701 of the Education Code, for the 1985–86 fiscal year only, the base revenues for each community college district shall be the revenues received for the preceding fiscal year in accordance with Section 84700 of the Education Code plus any unfunded shortage in local revenues identified pursuant to the provisions of Section 84712 of the Education Code and any shortage in revenues computed pursuant to subdivision (e) of Section 84704 and Section 84705 of the Education Code.

SEC. 19. (a) There is hereby appropriated the following sums to the Board of Governors of the California Community Colleges for the purpose of providing financial aid funds directly to low-income students who cannot afford to pay the fee specified in Section 72252 of the Education Code, and for the purpose of reimbursing districts for the amount of fees lost due to the exemption provided to students pursuant to subdivision (f) of Section 72252:

Period	Amount
July 1, 1984 to June 30, 1985	$15,000,000
July 1, 1985 to June 30, 1986	15,000,000
July 1, 1986 to June 30, 1987	15,000,000
July 1, 1987 to January 1, 1988	7,500,000

(b) The chancellor shall allocate the funds appropriated by subdivision (a) to community college districts. In prescribing the manner of allocation, the chancellor shall endeavor to ensure that students with similar characteristics shall be treated similarly with respect to the provision of financial aid pursuant to this section, regardless of the community college they attend.

In allocating funds pursuant to this section, the chancellor shall consider the number of financial aid recipients in each district and the availability of federal and other state financial aid resources.

(c) Financial aid shall be provided pursuant to this section only to those students required to pay the fee specified in Section 72252 of the Education Code, and only in an amount equal to the fee actually charged the student pursuant to that section. In addition, the chancellor shall reimburse districts for the amount of fees lost due to the exemption provided to students pursuant to subdivision (f) of Section 72252.

(d) Districts which receive an allocation of funds pursuant to this section shall utilize appropriate financial need criteria for the distribution of the funds. These criteria may include, but are not limited to, nationally accepted needs analysis methodologies, evidence of need based upon the receipt of public assistance, or other reasonable methods.

(e) The chancellor shall submit a plan made pursuant to subdivision (b) to the California Postsecondary Education Commission, the Legislative Analyst, and to the fiscal and education policy committees of each house of the Legislature by June 15, 1984.

The California Postsecondary Education Commission shall review the plan and submit its recommendations to the fiscal and education policy committees of each house of the Legislature.

(f) If the amount appropriated pursuant to this section exceeds the need for financial aid to students who cannot afford to pay the fee charged pursuant to Section 72252, the excess shall revert to the General Fund.

(g) If the amount needed for financial aid to students who cannot afford to pay the fee charged pursuant to Section 72252 and to reimburse districts for the amount of fees lost due to the exemption provided to students pursuant to subdivision (f) of Section 72252 is greater than the amount appropriated by this section, the chancellor shall certify to the Department of Finance the amount of the additional funds which are required. Upon receipt of this certification, the Director of Finance shall take any administrative action available to him or her to transfer the additional funds, pursuant to the Budget Act or otherwise.

SEC. 20. There is hereby transferred from the unencumbered balance of the Capital Outlay Fund for Public Higher Education to

the General Fund the sum of twenty-eight million dollars ($28,000,000).

SEC. 21. There is hereby appropriated from the General Fund the sum of one hundred thousand dollars ($100,000) to the Chancellor of the California Community Colleges for the purpose of carrying out the study required by Section 17 of this act.

The chancellor shall enter into an interagency agreement with the California Postsecondary Education Commission to reimburse the commission for the cost of carrying out the duties imposed upon the commission by Section 17 of this act.

SEC. 22. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

SEC. 23. Sections 1 to 18, inclusive, and Sections 21 and 22 of this act shall become operative July 1, 1984. Sections 19 and 20 of this act shall become operative on the effective date of this act.

Appeals Fund.

(b) A party in a case on appeal to the Appeals Board who, in 1983 or 1984, has paid that portion of the transcript fee in excess of the fee specified in Section 69950 of the Government Code shall be refunded that excess by payment from the Alcoholic Beverage Control Appeals Fund, providing the Appeals Board has not issued a dismissal or other final decision in the case on appeal.

SEC. 4. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 5. For the purpose of Section 24310 of the Business and Professions Code, as added by Section 3 of this act, the sum of thirty-five thousand dollars ($35,000) is hereby appropriated from the Alcoholic Beverage Control Appeals Fund to the Alcoholic Beverage Control Appeals Board in augmentation of Item 2120-001-117 of the 1983 Budget Act (Chapter 324, Statutes of 1983), and the sum of forty-nine thousand three hundred dollars ($49,300) is hereby appropriated from the Alcoholic Beverage Control Appeals Fund to the Alcoholic Beverage Control Appeals Board in augmentation of Item 2120-001-117 of the 1984 Budget Act.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Since the Legislature has declared in Section 23001 of the Business and Professions Code that the subject matter of the Alcoholic Beverage Control Act involves, in the highest degree, the economic, social, and moral well-being and the safety of the state and all of its people, it is necessary that the appeals process involved in cases brought under the act be expeditious and, in order for the provisions of this act to become operative during the 1983–84 fiscal year, it is therefore necessary that this act take effect immediately.

CHAPTER 274

An act to to amend Sections 32033, 72247, 72252, 72640, 82305.6, 84700, 84701, 84704, 84705, and 84706 of, to amend and repeal Section 84362 of, and to repeal and add Section 82305.5 of, the Education Code, and to amend Sections 19 and 21 of Chapter 1 of the 1983–84 Second Extraordinary Session, relating to community colleges, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

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[Approved by Governor July 2, 1984. Filed with Secretary of State July 3, 1984.]

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

SECTION 1. Section 32033 of the Education Code, as amended by Chapter 1 of the 1983–84 Second Extraordinary Session, is amended to read:

32033. The eye protective devices may be sold to the pupils and teachers at a price which shall not exceed the actual cost of the eye protective devices to the school or governing board.

This section shall not apply to the governing board of a community college district; however, this section shall not be construed as prohibiting the governing board of a community college district from offering eye protective devices for sale to students and employees who voluntarily choose to purchase those devices from the district.

This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1988, deletes or extends that date. If that date is not deleted or extended, then, on and after January 1, 1988, pursuant to Section 9611 of the Government Code, Section 32033 of the Education Code, as added by Section 2 of Chapter 1010 of the Statutes of 1976, shall have the same force and effect as if this temporary provision had not been enacted.

SEC. 2. Section 72247 of the Education Code, as amended by Chapter 55 of the Statutes of 1984, is amended to read:

72247. (a) The governing board of a community college district may require of students in attendance in grades 13 and 14 and employees of the district, the payment of a fee, in an amount not to exceed twenty dollars ($20) per semester or forty dollars ($40) per regular school year to be fixed by the board, for parking services.

The fee shall only be required of students and employees using parking services.

(b) The governing board of a community college district may also require the payment of a fee, to be fixed by the governing board, for the use of parking services by persons other than students and employees.

(c) All parking fees collected shall be deposited in the designated fund of the district in accordance with the California Community Colleges Budget and Accounting Manual and shall be expended only for parking services or for purposes of reducing the costs to students and employees of the college of using public transportation to and from the college.

Fees collected for use of parking services provided for by investment of student body funds under the authority of Section 76064 shall be deposited in a designated fund in accordance with the California Community Colleges Budget and Accounting Manual for repayment to the student organization.

"Parking services," as used in this section, means the purchase, construction, and operation and maintenance of parking facilities for vehicles and motor vehicles as defined by Sections 415 and 670 of the Vehicle Code, and the reduction of costs to students and employees of using public transportation to and from the college.

In no event may the fee required pursuant to this section exceed the actual cost of providing parking services.

SEC. 3. Section 72252 of the Education Code, as added by Chapter 1 of the 1983–84 Second Extraordinary Session, is amended to read:

72252. (a) Commencing with the semester, term, or quarter which begins after July 31, 1984, the governing board of each community college district shall charge each student a fee, pursuant to the provisions of this section.

(b) The fee prescribed by this section shall equal fifty dollars ($50) per semester for students enrolled in classes totaling six or more credit semester units, and five dollars ($5) per unit per semester for students enrolled in classes totaling less than six credit semester units.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system or other alternative system approved pursuant to Section 78002, and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivision (f) shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district which does not collect the fees prescribed by this section.

(e) The fee requirement shall not apply to students enrolled in the noncredit courses designated by Section 84711.

(f) The fee requirements of this section shall be defrayed pursuant to Section 19 of Chapter 1 of the 1983–84 Second Extraordinary Session for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary program, or the General Assistance Program.

(g) The requirements of Section 69534 shall apply to financial aid applicants enrolling in six or more credit semester units, but shall not apply to financial aid applicants who seek aid only for the fees required by this section and who enroll for less than six credit semester units. The chancellor shall prescribe a financial aid application for students enrolling in less than six credit semester units.

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(h) The board of governors shall adopt regulations implementing the provisions of this section as regulations in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(i) This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

SEC. 4. Section 72640 of the Education Code, as amended by Chapter 1 of the 1983–84 Second Extraordinary Session, is amended to read:

72640. The governing board of a community college district may:

(a) Conduct field trips or excursions in connection with courses of instruction or school-related social, educational, cultural, athletic, or college band activities to and from places in the state, any other state, the District of Columbia, or a foreign country for students enrolled in a college. A field trip or excursion to and from a foreign country may be permitted to familiarize students with the language, history, geography, natural sciences, and other studies relative to the district's course of study for such pupils.

(b) Engage such instructors, supervisors, and other personnel as desire to contribute their services over and above the normal period for which they are employed by the district, if necessary, and provide equipment and supplies for such field trip or excursion.

(c) Transport by use of district equipment, contract to provide transportation, or arrange transportation by the use of other equipment, of students, instructors, supervisors or other personnel to and from places in the state, any other state, the District of Columbia, or a foreign country where such excursions and field trips are being conducted; provided that, when district equipment is used, the governing board shall secure liability insurance, and if travel is to and from a foreign country, such liability insurance shall be secured from a carrier licensed to transact insurance business in such foreign country.

(d) Provide supervision of students involved in field trips or excursions by certificated employees of the district.

No student shall be required to pay a fee to participate in an instructionally related field trip or excursion within the state.

No student shall be prevented from making the field trip or excursion because of lack of sufficient funds. To this end, the governing board shall coordinate efforts of community service groups to supply funds for students in need of them.

No group shall be authorized to take a field trip or excursion authorized by this section if any student who is a member of such an identifiable group will be excluded from participation in the field trip or excursion because of lack of sufficient funds.

No expenses of students participating in a field trip or excursion to any other state, the District of Columbia, or a foreign country authorized by this section shall be paid with district funds. Expenses of instructors, chaperons, and other personnel participating in a field

(b) Sections 8 and 15 of this act shall become operative on May 18, 1984, or on the effective date of this act, whichever is later.

SEC. 19. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify the law at the earliest possible time, and so facilitate the orderly administration of community colleges, it is necessary that this act take effect immediately.

CHAPTER 275

An act to add Section 1799.107 to the Health and Safety Code, relating to emergency services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 2, 1984. Filed with Secretary of State July 3, 1984.]

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

SECTION 1. Section 1799.107 is added to the Health and Safety Code, to read:

1799.107. (a) The Legislature finds and declares that a threat to the public health and safety exists whenever there is a need for emergency services and that public entities and emergency rescue personnel should be encouraged to provide emergency services. To that end, a qualified immunity from liability shall be provided for public entities and emergency rescue personnel providing emergency services.

(b) Except as provided in Article 1 (commencing with Section 17000) of Chapter 1 of Division 9 of the Vehicle Code, neither a public entity nor emergency rescue personnel shall be liable for any injury caused by an action taken by the emergency rescue personnel acting within the scope of their employment to provide emergency services, unless the action taken was performed in bad faith or in a grossly negligent manner.

(c) For purposes of this section, it shall be presumed that the action taken when providing emergency services was performed in good faith and without gross negligence. This presumption shall be one affecting the burden of proof.

(d) For purposes of this section, "emergency rescue personnel" means any person who is an officer, employee, or member of a fire department or fire protection or firefighting agency of the federal government, the State of California, a city, county, city and county, district, or other public or municipal corporation or political subdivision of this state, whether such person is a volunteer or partly paid or fully paid, while he or she is actually engaged in providing

CHAPTER 1401

An act to amend Sections 72252, 81370, 84313, and 87010 of, and to add Sections 72034, 72252.3, and 84313.5 to, the Education Code, to amend Section 4 of Chapter 343 of the Statutes of 1982, and to amend Section 19 of Chapter 1 of the 1983–84 Second Extraordinary Session, relating to community colleges, and making an appropriation therefor.

[Approved by Governor September 25, 1984. Filed with Secretary of State September 26, 1984.]

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

SECTION 1. Section 72034 is added to the Education Code, to read:

72034. Notwithstanding any provision of Chapter 366 of the Statutes of 1982, the terms of office of the members of the governing board of the Santa Monica Community College District whose terms were scheduled to expire in April 1985, expired in November 1984, and the terms of office of those members whose terms were scheduled to expire in April 1987, shall expire in November 1986.

The terms of the members elected in November of even-numbered years shall commence on the first Tuesday following that election, and those elected shall serve for a term of four years. Each member shall continue to serve until his or her successor in office is elected and qualified.

This section is declaratory of existing law.

SEC. 2. Section 72252 of the Education Code is amended to read:

72252. (a) Commencing with the semester, term, or quarter which begins after July 31, 1984, the governing board of each community college district shall charge each student a fee, pursuant to this section.

(b) The fee prescribed by this section shall equal fifty dollars ($50) per semester for students enrolled in classes totaling six or more credit semester units, and five dollars ($5) per unit per semester for students enrolled in classes totaling less than six credit semester units.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system or other alternative system approved pursuant to Section 78002, and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivision (f) shall be deemed to be local property tax

revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district which does not collect the fees prescribed by this section.

(e) The fee requirement shall not apply to students enrolled in the noncredit courses designated by Section 84711, or to California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The fee requirements of this section shall be defrayed pursuant to Section 19 of Chapter 1 of the 1983–84 Second Extraordinary Session for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(g) The requirements of Section 69534 shall apply to financial aid applicants enrolling in six or more credit semester units, but shall not apply to financial aid applicants who seek aid only for the fees required by this section and who enroll for less than six credit semester units. The chancellor shall prescribe a financial aid application for students enrolling in less than six credit semester units.

(h) The board of governors shall adopt regulations implementing this section as regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(i) This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

SEC. 3. Section 72252.3 is added to the Education Code, to read:

72252.3. The governing board of a community college district may authorize a person to audit a community college course and may charge that person a fee pursuant to this section.

(a) If a fee for auditing is charged, it shall not exceed fifteen dollars ($15) per unit per semester.

The governing board shall proportionately adjust the amount of the fee for term lengths based upon a quarter system or other alternative system approved pursuant to Section 76002, and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the governing board may round the per unit fee and the per term or per session fee to the nearest dollar.

(b) Students enrolled in classes to receive credit for six or more semester credit units shall not be charged a fee to audit three or fewer semester units per semester.

(c) No student auditing a course shall be permitted to change his

or her enrollment in that course to receive credit for the course.

(d) Priority in class enrollment shall be given to students desiring to take the course for credit towards a degree or certificate.

(e) Classroom attendance of students auditing a course shall not be included in computing the apportionment due a community college district.

(f) The board of governors shall adopt any necessary regulations implementing this section as regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 4. Section 81370 of the Education Code is amended to read:

81370.(a) At the time and place fixed in the resolution for the meeting of the governing body, all sealed proposals which have been received shall, in public session, be opened, examined, and declared by the board. Except as provided in subdivision (b), of the proposals submitted which conform to all terms and conditions specified in the resolution of intention to sell or to lease and which are made by responsible bidders, the proposal which is the highest, after deducting therefrom the commission, if any, to be paid a licensed real estate broker in connection therewith, shall be finally accepted, unless a higher oral bid is accepted or the board rejects all bids.

(b) Notwithstanding subdivision (a), the governing board of any community college district may apply to the Board of Governors of the California Community Colleges for a waiver of the requirement that the governing board accept the highest responsible bid for the sale or lease of real property. The board of governors may grant a waiver pursuant to this subdivision if it determines that the waiver is in the best interests of the community college district.

SEC. 5. Section 84313 of the Education Code is amended to read:

84313. For each of three fiscal years, the Controller shall deduct from apportionments paid to a community college district pursuant to law, an amount not less than one-third of the amount actually allocated to the district pursuant to this article, together with amounts representing interest at a rate based on the most current investment rate of the Pooled Money Investment Account as of the date of the disbursement of funds to the district.

For each of three fiscal years, the amount deducted by the Controller pursuant to this section shall be reapportioned to Section B of the State School Fund for apportionment by the Chancellor of the California Community Colleges to community college districts to alleviate any deficits in state funding in the year in which the loan is made or during the period of repayment. Unless otherwise determined pursuant to Section 84313.5, the three year repayment period shall consist of three consecutive fiscal years commencing with the fiscal year following the year in which the emergency apportionment is made.

SEC. 6. Section 84313.5 is added to the Education Code, to read:

84313.5. Any community college district which has received an emergency apportionment pursuant to this article may request a

revision of the repayment schedule. The request shall be submitted to the Chancellor of the California Community Colleges with copies submitted to the county superintendent of schools within whose jurisdiction the district is located, the Joint Legislative Audit Committee, the Joint Legislative Budget Committee, and the Director of Finance. The request shall be accompanied by appropriate justification for any deferral of repayment, including a revision to the plan adopted by the district's governing board as specified in subdivision (a) of Section 84310, together with specified identification of the reasons that the actions taken by the district to correct the financial problems, as specified in subdivision (d) of Section 84310, will no longer accomplish their intended purpose.

The chancellor shall consult with representatives of the county superintendent of schools within whose jurisdiction the district is located, the Joint Legislative Audit Committee, the Joint Legislative Budget Committee, the Director of Finance, and representatives which the chancellor may select from the superintendents and presidents of the other community colleges and districts throughout the state. After consulting with these representatives, the chancellor may revise the repayment schedule, may forgive the interest payments otherwise compounded as a result of any deferral of payments, and may specify any conditions the chancellor determines are necessary to assure the repayment of the emergency apportionment. The chancellor shall report his or her actions to the Director of Finance, the Controller, and the Joint Legislative Budget Committee. The Controller shall deduct amounts from the apportionment schedule in accordance with the revised repayment plan.

SEC. 7. Section 87010 of the Education Code is amended to read:

87010. "Sex offense," as used in Sections 87290, 87335, 87405, 88022, and 88123, means any one or more of the offenses listed below:

(a) Any offense defined in Section 261.5, 266, 267, 285, 286, 288, 288a, or 647a, subdivision 2 or 3 of Section 261, or subdivision (a) or (d) of Section 647 of the Penal Code.

(b) Any offense defined in former subdivision 5 of former Section 647 of the Penal Code repealed by Chapter 560 of the Statutes of 1961, or any offense defined in former subdivision 2 of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961, if the offense defined in those sections was committed prior to September 15, 1961, to the same extent that such an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(c) Any offense defined in Section 314 of the Penal Code committed on or after September 15, 1961.

(d) Any offense defined in former subdivision 1 of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961 committed on or after September 7, 1955, and prior to September 15, 1961.

(e) Any offense involving lewd and lascivious conduct under

Period	Amount
July 1, 1984 to June 30, 1985	$15,000,000
July 1, 1985 to June 30, 1986	15,000,000
July 1, 1986 to June 30, 1987	15,000,000
July 1, 1987 to January 1, 1988	7,500,000

(b) The chancellor shall allocate the funds appropriated by subdivision (a) to community college districts. In prescribing the manner of allocation, the chancellor shall endeavor to ensure that students with similar characteristics shall be treated similarly with respect to the provision of financial aid pursuant to this section, regardless of the community college they attend.

In allocating funds pursuant to this section, the chancellor shall consider the number of financial aid recipients in each district and the availability of federal and other state financial aid resources.

(c) Financial aid shall be provided pursuant to this section only to those students required to pay the fee specified in Section 72252 of the Education Code, and only in an amount equal to the fee actually charged the student pursuant to that section. In addition, the chancellor shall pay districts the amount of fees defrayed pursuant to subdivision (f) of Section 72252.

(d) Districts which receive an allocation of funds pursuant to this section shall utilize appropriate financial need criteria for the distribution of the funds. These criteria may include, but are not limited to, nationally accepted needs analysis methodologies, evidence of need based upon the receipt of public assistance, or other reasonable methods.

(e) The chancellor shall submit a plan made pursuant to subdivision (b) to the California Postsecondary Education Commission, the Legislative Analyst, and to the fiscal and education policy committees of each house of the Legislature by June 15, 1984.

The California Postsecondary Education Commission shall review the plan and submit its recommendations to the fiscal and education policy committees of each house of the Legislature.

(f) If the amount appropriated pursuant to this section exceeds the need for financial aid to students who cannot afford to pay the fee charged pursuant to Section 72252, the excess shall revert to the General Fund.

(g) If the amount needed for financial aid to students who cannot afford to pay the fee charged pursuant to Section 72252 and to pay districts for the total amount of fees defrayed pursuant to subdivision (f) of Section 72252 is greater than the amount appropriated by this section, the chancellor shall certify to the Department of Finance the amount of the additional funds which are required. Upon receipt of this certification, the Director of Finance shall take any administrative action available to him or her to transfer the additional funds, pursuant to the Budget Act or otherwise.

(h) If additional funds are needed to administer the financial aid

funds provided by this section for the 1984–85 fiscal year, the chancellor shall certify to the Department of Finance the amount of additional funds which are required. Upon receipt of this certification, the Director of Finance shall certify to the Controller the necessity for the additional funds. Upon receipt of the director's certification, the Controller shall transfer to the chancellor the additional amount needed, not to exceed two hundred thousand dollars ($200,000), from the amount appropriated by this section for the period of July 1, 1984, to June 30, 1985.

SEC. 10. (a) Consistent with subdivision (a) of Section 151.3 of Chapter 323 of the Statutes of 1983, the working drawings and site development phases of construction of the Los Angeles Mission College campus shall ultimately be funded with proceeds from the sale, lease, trade, or encumbrance of the surplus property held by the Los Angeles Community College District and known as the Northwest Valley site.

(b) The Legislature recognizes, however, that the Los Angeles Community College District may not be able to secure funds for that development from the Northwest Valley site during the 1984–85 fiscal year. It is therefore the intent of the Legislature to provide the Los Angeles Community College District with a loan from the Capital Outlay Fund for Public Higher Education to begin development of the campus in the 1984–85 fiscal year. It is further the intent of the Legislature that the loan be repaid by the district during the 1985–86 fiscal year.

(c) The sum of one million seven hundred thousand dollars ($1,700,000) is hereby appropriated from the Capital Outlay Fund for Public Higher Education to the Chancellor of the California Community Colleges for allocation to the Los Angeles Community College District as a loan for the development of Los Angeles Mission College. This loan amount, together with an amount representing interest at a rate equal to the most current investment rate of the Pooled Money Investment Account as of the date of disbursement of the funds to the district, shall be repaid to the Capital Outlay Fund for Public Higher Education not later than June 30, 1986. The chancellor shall withhold from the regular apportionment due the Los Angeles Community College District any unpaid balance remaining from this loan after June 30, 1986.

CHAPTER 1402

An act to amend Section 25402 of the Public Resources Code, relating to energy appliance standards.

[Approved by Governor September 25, 1984. Filed with Secretary of State September 26, 1984.]

[Approved by Governor September 23, 1985. Filed with Secretary of State September 24, 1985.]

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

SECTION 1. Section 60200.5 is added to the Education Code, to read:

60200.5. Instructional materials adopted under this chapter shall where appropriate, be designed to impress upon the minds of the pupils the principles of morality, truth, justice, patriotism, and a true comprehension of the rights, duties, and dignity of American citizenship, and to instruct them in manners and morals and the principles of a free government. The State Board of Education shall endeavor to see that this objective is accomplished in the evaluation of instructional materials for educational content in appropriate subject areas.

CHAPTER 919

An act relating to Alzheimer's disease.

[Approved by Governor September 23, 1985. Filed with Secretary of State September 24, 1985.]

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

SECTION 1. Recognizing that maintaining victims having Alzheimer's disease or related disorders in the home environment with the support of family members provides the most humane and cost-effective method of caring for the neurologically disabled, the Alzheimer's Disease Task Force established pursuant to Chapter 1c (commencing with Section 171) of Part 1 of Division 1 of the Health and Safety Code shall conduct, as its first priority, a study to determine the feasibility of insurance coverage for respite care services that make it possible to maintain the disabled person in the home for as long as possible. The task force shall report its findings and recommendations to the Legislature by January 1, 1987.

CHAPTER 920

An act to amend Section 72252 of the Education Code, and to amend Section 19 of Chapter 1 of the 1983–84 Second Extraordinary Session, relating to community colleges.

[Approved by Governor September 23, 1985. Filed with Secretary of State September 24, 1985.]

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

SECTION 1. Section 72252 of the Education Code is amended to read:

72252. (a) Commencing with the semester, term, or quarter which begins after July 31, 1984, the governing board of each community college district shall charge each student a fee, pursuant to this section.

(b) The fee prescribed by this section shall equal fifty dollars ($50) per semester for students enrolled in classes totaling six or more credit semester units, and five dollars ($5) per unit per semester for students enrolled in classes totaling less than six credit semester units.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system or other alternative system approved pursuant to Section 78002, and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivision (f) shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district which does not collect the fees prescribed by this section.

(e) The fee requirement shall not apply to students enrolled in the noncredit courses designated by Section 84711, or to California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The fee requirements of this section shall be defrayed pursuant to Section 19 of Chapter 1 of the 1983–84 Second Extraordinary Session for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(g) Student financial aid funds appropriated for the purpose of assisting students to pay the fee required by this section may be awarded without regard to the requirements of Chapter 2 (commencing with Section 69500) of Part 42.

(h) The board of governors shall adopt regulations implementing this section as regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2

of the Government Code.

(i) This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

SEC. 2. Section 19 of Chapter 1 of the 1983–84 Second Extraordinary Session is amended to read:

Sec. 19. (a) There is hereby appropriated the following sums to the Board of Governors of the California Community Colleges for the purpose of providing financial aid funds directly to low-income students who cannot afford to pay the fee specified in Section 72252 of the Education Code, and for the purpose of defraying fees pursuant to subdivision (f) of Section 72252:

Period	Amount
July 1, 1984 to June 30, 1985	$15,000,000
July 1, 1985 to June 30, 1986	15,000,000
July 1, 1986 to June 30, 1987	15,000,000
July 1, 1987 to January 1, 1988	7,500,000

(b) The chancellor shall allocate the funds appropriated by subdivision (a) to community college districts. In prescribing the manner of allocation, the chancellor shall endeavor to ensure that students with similar characteristics shall be treated similarly with respect to the provision of financial aid pursuant to this section, regardless of the community college they attend.

In allocating funds pursuant to this section, the chancellor shall consider the number of financial aid recipients in each district and the availability of federal and other state financial aid resources.

The chancellor may allocate up to 7 percent of the total amount appropriated by subdivision (a) to community college districts for delivery of student financial aid services required as a result of this section. Funds so allocated for delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1983–84 fiscal year.

(c) Financial aid shall be provided pursuant to this section only to those students required to pay the fee specified in Section 72252 of the Education Code, and only in an amount equal to the fee actually charged the student pursuant to that section. In addition, the chancellor shall pay districts the amount of fees defrayed pursuant to subdivision (f) of Section 72252.

(d) Districts which receive an allocation of funds pursuant to this section shall utilize appropriate financial need criteria for the distribution of the funds. These criteria may include, but are not limited to, nationally accepted needs analysis methodologies, evidence of need based upon the receipt of public assistance, or other reasonable methods.

(e) The chancellor shall submit a plan made pursuant to subdivision (b) to the California Postsecondary Education Commission, the

Legislative Analyst, and to the fiscal and education policy committees of each house of the Legislature by June 15, 1984.

The California Postsecondary Education Commission shall review the plan and submit its recommendations to the fiscal and education policy committees of each house of the Legislature.

(f) If the amount appropriated pursuant to this section exceeds the need for financial aid to students who cannot afford to pay the fee charged pursuant to Section 72252, the excess shall revert to the General Fund.

(g) If the amount needed for financial aid to students who cannot afford to pay the fee charged pursuant to Section 72252 and to pay districts for the total amount of fees defrayed pursuant to subdivision (f) of Section 72252 is greater than the amount appropriated by this section, the chancellor shall certify to the Department of Finance the amount of the additional funds which are required. Upon receipt of this certification, the Director of Finance shall take any administrative action available to him or her to transfer the additional funds, pursuant to the Budget Act or otherwise.

(h) If additional funds are needed to administer the financial aid funds provided by this section for the 1984–85 fiscal year, the chancellor shall certify to the Department of Finance the amount of additional funds which are required. Upon receipt of this certification, the Director of Finance shall certify to the Controller the necessity for the additional funds. Upon receipt of the director's certification, the Controller shall transfer to the chancellor the additional amount needed, not to exceed two hundred thousand dollars ($200,000), from the amount appropriated by this section for the period of July 1, 1984, to June 30, 1985.

CHAPTER 921

An act to amend Sections 19850.1, 19850.3, 20022.1, and 20022.2 of, and to add Section 20022.05 to, the Government Code, relating to state employees, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 23, 1985. Filed with Secretary of State September 24, 1985.]

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

SECTION 1. Section 19850.1 of the Government Code is amended to read:

19850.1. (a) State employees shall be responsible for the purchase of uniforms required as a condition of employment. The state shall provide for an annual uniform allowance to state employees for the replacement of uniforms worn on a full-time basis, and an annual uniform allowance to state employees for the

(a) The sum of two hundred thousand dollars ($200,000) for the acquisition and installation of an Automated Local Evaluation in Real Time (ALERT) flood warning system in locations to be determined by the department. Because of the imminent threat of severe, wildfire-induced flood damage during the 1985–86 flood season, the department may use urgency purchasing and contracting procedures as determined to be necessary to acquire and install this warning system.

(b) The sum of two million dollars ($2,000,000) for assistance to local agencies in preventing further wildfire-induced damage during the 1985–86 flood season. Among other purposes, this appropriation may be utilized by the department (1) to evaluate the probable effectiveness of protective works proposed by local agencies, (2) to meet the requirements for nonfederal financial participation under flood prevention programs of the federal government, provided local agencies expend at least 10 percent of the total cost of federally assisted protective work, and (3) to meet the requirements for flood prevention programs not eligible for federal funds, provided local agencies extend at least 25 percent of the total cost for state assisted protective work. For the purposes of this subdivision, the Juncal Dam Watershed of Santa Barbara County and the Lexington Dam Watershed of Santa Clara County are eligible for state assistance.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Widespread wildfires have stripped protective vegetation away from many areas, exposing the state to potentially severe flooding problems in major burn areas. In order for the flood warning system and funding provided for by this act to be effective during the 1985–86 flood season, it is necessary that this act take effect immediately. In addition, in order for the Department of Water Resources to perform necessary river studies and river bank protection work in as timely a manner as possible, it is necessary that this act take effect immediately.

CHAPTER 1454

An act to amend Section 72252 of the Education Code, relating to community colleges.

[Approved by Governor October 1, 1985. Filed with Secretary of State October 1, 1985.]

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

SECTION 1. Section 72252 of the Education Code is amended to read:

72252. (a) Commencing with the semester, term, or quarter which begins after July 31, 1984, the governing board of each community college district shall charge each student a fee, pursuant to this section.

(b) The fee prescribed by this section shall equal fifty dollars ($50) per semester for students enrolled in classes totaling six or more credit semester units, and five dollars ($5) per unit per semester for students enrolled in classes totaling less than six credit semester units.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system or other alternative system approved pursuant to Section 78002, and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivision (f) shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district which does not collect the fees prescribed by this section.

(e) The fee requirement shall not apply to students enrolled in the noncredit courses designated by Section 84711, or to California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be defrayed pursuant to Section 19 of Chapter 1 of the 1983–84 Second Extraordinary Session for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(h) The requirements of Section 69534 shall apply to financial aid applicants enrolling in six or more credit semester units, but shall not apply to financial aid applicants who seek aid only for the fees required by this section and who enroll for less than six credit semester units. The chancellor shall prescribe a financial aid application for students enrolling in less than six credit semester

units.

(i) The board of governors shall adopt regulations implementing this section as regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(j) This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

SEC. 2. Section 72252 of the Education Code is amended to read:

72252. (a) Commencing with the semester, term, or quarter which begins after July 31, 1984, the governing board of each community college district shall charge each student a fee, pursuant to this section.

(b) The fee prescribed by this section shall equal fifty dollars ($50) per semester for students enrolled in classes totaling seven or more credit semester units, and five dollars ($5) per unit per semester for students enrolled in classes totaling less than seven credit semester units.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system or other alternative system approved pursuant to Section 78002, and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivision (f) shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district which does not collect the fees prescribed by this section.

(e) The fee requirement shall not apply to students enrolled in the noncredit courses designated by Section 84711, or to California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be defrayed pursuant to Section 19 of Chapter 1 of the 1983–84 Second Extraordinary Session for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State

Supplementary Program, or a general assistance program.

(h) The requirements of Section 69534 shall apply to financial aid applicants enrolling in seven or more credit semester units, but shall not apply to financial aid applicants who seek aid only for the fees required by this section and who enroll for less than seven credit semester units. The chancellor shall prescribe a financial aid application for students enrolling in less than seven credit semester units.

(i) The board of governors shall adopt regulations implementing this section as regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(j) This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

SEC. 3. Sections 1 and 2 of this act shall become operative on July 1, 1986, except as otherwise provided in Section 4.

SEC. 4. Section 2 of this bill incorporates amendments to Section 72252 of the Education Code proposed by both this bill and AB 979. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1986, (2) each bill amends Section 72252 of the Education Code, and (3) this bill is enacted after AB 979, in which case Section 72252 of the Education Code, as amended by Section 1 of AB 979, shall remain operative only until July 1, 1986, at which time Section 2 of this bill shall become operative, and Section 1 of this bill shall not become operative.

CHAPTER 1455

An act to amend the heading of Article 8 (commencing with Section 60110) of Chapter 1 of Part 33 of, and to add Sections 51220.1 and 60115 to, the Education Code, and to amend Sections 1660.5, 11113, and 27360 of the Vehicle Code, relating to vehicles, and making an appropriation therefor.

[Approved by Governor October 1, 1985. Filed with Secretary of State October 1, 1985]

I am deleting the $262,750 General Fund appropriation contained in Section 10 of Senate Bill No. 127.

I am supportive of this legislation which would ensure that young people are informed of the hazards of drinking or the use of drugs while driving a vehicle. However, I am not convinced of the need for the additional funding called for by this bill.

The demands placed on budget resources require all of us to set priorities. The budget enacted in July of 1985 appropriated over $28 billion (from the General Fund) to essential services provided by State government as determined by the Legislature and this Administration. This represents an 11.5% increase in expenditures over the budget enacted in July of 1984. That increase was for the purpose of funding priority programs while at the same time maintaining our reserve and preserving our fiscal integrity. It is imperative that the State of California continues to live within its means.

With this deletion, I approve Senate Bill No. 127.

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Article 10. Classified School Employee Week

88270. The third full week in May is designated as Classified School Employee Week.

All community colleges shall annually observe that week in recognition of classified school employees and the contributions they make to the educational community. The observances required by this section shall be integrated into the regular community college program.

This section shall apply to all colleges under the jurisdiction of any community college district that has adopted the merit system in the same manner and effect as if it were a part of Article 3 (commencing with Section 88060), as well as to colleges under the jurisdiction of any district that has not adopted the merit system.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to have the third full week in May of 1986 designated as Classified School Employee Week, it is necessary that this act take effect immediately.

CHAPTER 46

An act to amend Section 72252 of the Education Code, relating to community colleges.

[Approved by Governor April 9, 1986. Filed with Secretary of State April 9, 1986.]

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

SECTION 1. Section 72252 of the Education Code is amended to read:

72252. (a) Commencing with the semester, term, or quarter that begins after July 31, 1984, the governing board of each community college district shall charge each student a fee, pursuant to this section.

(b) The fee prescribed by this section shall equal fifty dollars ($50) per semester for students enrolled in classes totaling six or more credit semester units, and five dollars ($5) per unit per semester for students enrolled in classes totaling less than six credit semester units.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system or other alternative system approved pursuant to Section 78002, and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these

adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivision (f) shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement shall not apply to students enrolled in the noncredit courses designated by Section 84711, or to California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be defrayed pursuant to Section 19 of Chapter 1 of the 1983–84 Second Extraordinary Session for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(h) Student financial aid funds appropriated for the purpose of assisting students to pay the fee required by this section may be awarded without regard to the requirements of Chapter 2 (commencing with Section 69500) of Part 42.

(i) The board of governors shall adopt regulations implementing this section as regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(j) This section shall remain in effect only until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

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evaluation.

(b) In the case of a certificated noninstructional employee, who is employed on a 12-month basis, the evaluation and assessment made pursuant to this article shall be reduced to writing and a copy thereof shall be transmitted to the certificated employee no later than June 30 of the year in which the evaluation and assessment is made. A certificated noninstructional employee, who is employed on a 12-month basis shall have the right to initiate a written reaction or response to the evaluation. This response shall become a permanent attachment to the employee's personnel file. Before July 30 of the year in which the evaluation and assessment takes place, a meeting shall be held between the certificated employee and the evaluator to discuss the evaluation and assessment.

SEC. 2. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

CHAPTER 394

An act to amend Section 72252 of the Education Code, relating to community colleges, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 16, 1986. Filed with Secretary of State July 17, 1986.]

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

SECTION 1. It is the Legislature's intent, in enacting this act, to cause the provisions in Section 72252 of the Education Code, as amended by Chapter 46 of the Statutes of 1986, to become operative in time for implementation for the 1986–87 school year.

SEC. 2. Section 72252 of the Education Code is amended to read:

72252. (a) Commencing with the semester, term, or quarter that begins after July 31, 1984, the governing board of each community college district shall charge each student a fee, pursuant to this section.

(b) The fee prescribed by this section shall equal fifty dollars ($50) per semester for students enrolled in classes totaling six or more credit semester units, and five dollars ($5) per unit per semester for students enrolled in classes totaling less than six credit semester units.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system or other alternative

system approved pursuant to Section 78002, and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivision (f) shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement shall not apply to students enrolled in the noncredit courses designated by Section 84711, or to California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be defrayed pursuant to Section 19 of Chapter 1 of the 1983–84 Second Extraordinary Session for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(h) Student financial aid funds appropriated for the purpose of assisting students to pay the fee required by this section may be awarded without regard to the requirements of Chapter 2 (commencing with Section 69500) of Part 42.

(i) The board of governors shall adopt regulations implementing this section as regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(j) This section shall remain in effect only until January 1, 1955, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that a streamlined community college student application process be implemented prior to the 1986 fall term, it is necessary that this act take effect immediately.

SEC. 4. If this act is enacted prior to July 1, 1986, Sections 1 and

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42

2 shall become operative on July 1, 1986.

CHAPTER 395

An act to amend Section 58844 of the Food and Agricultural Code, relating to marketing orders.

[Approved by Governor July 16, 1986. Filed with Secretary of State July 17, 1986.]

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

SECTION 1. Section 58844 of the Food and Agricultural Code is amended to read:

58844. A member of an advisory board is entitled to actual expenses which are incurred while engaged in performing duties that are authorized by this chapter and, with the approval of the advisory board concerned, may receive compensation not to exceed fifty dollars ($50) per day for each day spent in actual attendance at, or traveling to and from, meetings of the board or on special assignment for the board.

CHAPTER 396

An act to add Section 65940.5 to the Government Code, relating to development projects.

[Approved by Governor July 16, 1986. Filed with Secretary of State July 17, 1986.]

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

SECTION 1. Section 65940.5 is added to the Government Code, to read:

65940.5. (a) No list compiled pursuant to Section 65940 shall include a waiver of the time periods prescribed by this chapter within which a state or local agency shall act upon an application for a development project.

(b) No application shall be deemed incomplete for lack of a waiver of time periods prescribed by this chapter within which a state or local government agency shall act upon the application.

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43

and wastewater disposal problems of those communities at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1118

An act to amend Sections 32033, 72245, 72246, 72250.5, 72251, 72252, 72640, 72641, 78930, 81458, and 82305.5 of, and to add and repeal Section 72252.1 of, the Education Code, relating to education.

[Approved by Governor September 24, 1967. Filed with Secretary of State September 25, 1967.]

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

SECTION 1. Section 32033 of the Education Code, as amended by Chapter 274 of the Statutes of 1984, is amended to read:

32033. The eye protective devices may be sold to the pupils and teachers at a price that shall not exceed the actual cost of the eye protective devices to the school or governing board.

This section shall not apply to the governing board of a community college district; however, this section shall not be construed as prohibiting the governing board of a community college district from offering eye protective devices for sale to students and employees who voluntarily choose to purchase those devices from the district.

This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 2. Section 32033 of the Education Code, as added by Section 2 of Chapter 1010 of the Statutes of 1976, is amended to read:

32033. The eye protective devices may be sold to the pupils and teachers or instructors at a price that shall not exceed the actual cost of the eye protective devices to the school or governing board.

This section shall become operative January 1, 1992.

SEC. 3. Section 72245 of the Education Code is amended to read:

72245. The governing board of a community college district may impose a fee on a participating student for the additional expenses incurred when physical education courses are required to use nondistrict facilities.

This section shall become operative January 1, 1992.

SEC. 4. Section 72246 of the Education Code is amended to read:

72246. (a) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than seven dollars and fifty cents ($7.50) for each semester, and five dollars ($5) for summer school, or five dollars ($5) for each quarter for health supervision and services, including direct or indirect medical and hospitalization

72251. The governing board of any community college district may impose a late application fee, not to exceed two dollars ($2), for any application for admission or readmission that is filed after the date established by the governing board for the filing of applications for admission or readmission to the community college.

This section shall become operative January 1, 1992.

SEC. 7. Section 72252 of the Education Code is amended to read:

72252. (a) Commencing with the semester, term, or quarter that begins after January 1, 1988, the governing board of each community college district shall charge each student a fee, pursuant to this section.

(b) The fee prescribed by this section shall be five dollars ($5) per unit per semester up to a maximum of fifty dollars ($50) per semester.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system or other alternative system approved pursuant to Section 78002, and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivision (f) shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement shall not apply to students enrolled in the noncredit courses designated by Section 84711, or to California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be defrayed pursuant to Section 72252.1 for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(h) Student financial aid funds appropriated for the purpose of assisting students to pay the fee required by this section may be awarded without regard to the requirements of Chapter 2

(commencing with Section 69500) of Part 42.

(i) The board of governors shall adopt regulations implementing this section as regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(j) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1992, deletes or extends that date.

SEC. 8. Section 72252.1 is added to the Education Code, to read:

72252.1. (a) It is the intent of the Legislature to provide adequate funding for the purpose of providing financial aid funds directly to low-income students who cannot pay the fee specified in subdivision (b) of Section 72252 and for the purpose of defraying fees pursuant to subdivision (g) of Section 72252, to be provided as follows:

Period	Amount
July 1, 1988, to June 30, 1989	15,000,000
July 1, 1989, to June 30, 1990	15,000,000
July 1, 1990, to June 30, 1991	15,000,000
July 1, 1991, to January 1, 1992	7,500,000

(b) It is the intent of the Legislature that all funds provided pursuant to subdivision (a) be allocated to community college districts. In prescribing the manner of allocation, the board shall endeavor to ensure that students with similar characteristics shall be treated similarly with respect to the provision of financial aid pursuant to this section, regardless of the community college they attend.

In allocating funds pursuant to this section, the board shall consider the number of students eligible for such assistance in the prior academic year and other factors that may have bearing on the amount of these funds required by each community college district.

The board may allocate up to 7 percent of the total amount of funds provided pursuant to subdivision (a) to community college districts for delivery of student financial aid services required as a result of this section. Funds so allocated to a district for delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1983–84 fiscal year, adjusted annually in accordance with the cost-of-living adjustment to the general apportionments.

The board shall be provided adequate resources through the annual Budget Act to support state administration of this financial aid program.

(c) Financial aid shall be provided pursuant to this section only to those students required to pay the fee specified in Section 72252, and only in an amount equal to the fee actually charged the student pursuant to that section. In addition, the chancellor shall pay districts

the district in providing the materials, and the materials themselves shall be tangible personal property that is owned or controlled by the student.

(b) "Instructional materials" means all material designed for use by students and their instructors as a learning resource and which help students to acquire facts, skills, or opinions or to develop cognitive processes. Instructional materials may be printed or nonprinted and may include textbooks and educational materials, but not tests. Educational materials are defined to mean any audiovisual or manipulative device including, but not limited to, films, tapes, flashcards, kits, phonograph records, study prints, graphs, charts, and multimedia systems.

(c) This section shall become operative January 1, 1992.

SEC. 14. Section 81458 of the Education Code is amended to read:

81458. The governing board of a community college district may sell to persons enrolled in classes for adults maintained by the district materials that may be necessary for the making of articles by those persons in the classes. The materials shall be sold at not less than the cost thereof to the district and any article made therefrom shall be the property of the person making it.

This section shall become operative January 1, 1992.

SEC. 15. Section 82305.5 of the Education Code is amended to read:

82305.5. The governing board of a community college district may contract for the transportation of matriculated or enrolled adults, or provide transportation to adults in district-owned equipment for educational purposes other than to and from school.

Any district which contracts to provide or provides transportation to adults pursuant to this section may charge adults all or part of the costs of contracting for or providing those transportation services.

This section shall become operative January 1, 1992.

SEC. 16. No reimbursement is required by Section 4 of this act pursuant to Section 6 of Article XIII B of the California Constitution because this act provides the local agency or school district with the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of services mandated by Section 4 of this act.

SEC. 17. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that the provisions of this act other than Section 4 contain costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), reimbursement shall be made from the State Mandates Claims Fund.

Board of Supervisors of Fresno County, and insufficient time now remains, prior to the originally scheduled November 7, 1989, governing board election, for that approval process to occur.

(d) Under the circumstances set forth above, the waiver provided under Section 4 of this act is necessary in order to further the objectives of Section 5000.5 of the Education Code, namely, to facilitate the consolidation of elections in order to increase voter participation and to reduce local election costs. Moreover, the Fresno County Board of Supervisors is aware of the circumstances set forth above, and consents to the proposal to waive the requirement that the resolution to consolidate elections, as described above, be submitted for its approval.

SEC. 4. Notwithstanding Section 5000.5 of the Education Code, the resolution described in Section 3 of this act, which was adopted by the governing board of Cutler-Orosi Unified School District to postpone the governing board election of November 7, 1989, for that district, for the purpose of consolidation with the statewide general election, commencing on November 6, 1990, shall not be required to be submitted to, or approved by, the Board of Supervisors of Fresno County as a condition of that consolidation.

SEC. 5. Due to the unique circumstances specified in Section 3 of this act concerning the Cutler-Orosi Unified School District, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to permit school district governing boards to adequately meet school facilities needs commencing in the 1989–90 school year, and to enable the Cutler-Orosi Unified School District to postpone its governing board election of November 7, 1989, for purposes of consolidation with the statewide general election of November 6, 1990, it is necessary that this act take effect immediately.

CHAPTER 136

An act to amend Sections 32320, 72252, and 72252.1 of, and the heading of Article 3 (commencing with Section 32320) of Chapter 3 of Part 19 of, the Education Code, relating to education.

[Approved by Governor July 13, 1989. Filed with Secretary of State July 13, 1989.]

18280

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

SECTION 1. The heading of Article 3 (commencing with Section 32320) of Chapter 3 of Part 19 of the Education Code is amended to read:

Article 3. Tuition and Fee Exemptions

SEC. 2. Section 32320 of the Education Code is amended to read:

32320. No state-owned college, university, or other school shall charge any tuition, or incidental fees to any of the following:

(a) Any dependent receiving assistance under Article 2 (commencing with Section 890) of Chapter 4 of Division 4 of the Military and Veterans Code.

(b) Any child of any veteran of the United States military service who has a service-connected disability, and whose annual income not including governmental compensation for the service-connected disability, does not exceed five thousand dollars ($5,000).

(c) Any child of any veteran who has been killed in service or has died of a service-connected disability, where the annual income of the child, including the value of any support received from a parent, and the annual income of a surviving parent, does not exceed five thousand dollars ($5,000).

(d) Any dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty, and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

Nothing contained in this section shall prevent the Regents of the University of California from charging to and collecting from nonresident students an admission fee and rate of tuition nor shall anything in this section prevent the charging and collecting of fees required of nonresident students admitted to schools under the jurisdiction of the State Department of Education or the Director of Education or to a state university under the jurisdiction of the Trustees of the California State University.

This section shall not apply to a dependent of a veteran within the meaning of paragraph (4) of subdivision (a) of Section 890 of the Military and Veterans Code.

SEC. 3. Section 72252 of the Education Code is amended to read:

72252. (a) Commencing with the semester, term, or quarter that begins after January 1, 1988, the governing board of each community college district shall charge each student a fee, pursuant to this section.

(b) The fee prescribed by this section shall be five dollars ($5) per

unit per semester up to a maximum of fifty dollars ($50) per semester.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system or other alternative system approved pursuant to Section 78002, and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivision (f) shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement shall not apply to students enrolled in the noncredit courses designated by Section 84711, or to California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be defrayed pursuant to Section 72252.1 for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(h) The fee requirements of this section shall be defrayed pursuant to Section 72252.1 for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) Student financial aid funds appropriated for the purpose of assisting students to pay the fee required by this section may be awarded without regard to the requirements of Chapter 2 (commencing with Section 69500) of Part 42.

18320

(j) The board of governors shall adopt regulations implementing this section as regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(k) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1992, deletes or extends that date.

SEC. 4. Section 72252.1 of the Education Code is amended to read:

72252.1. (a) It is the intent of the Legislature to provide adequate funding for the purpose of providing financial aid funds directly to low-income students who cannot pay the fee specified in subdivision (b) of Section 72252 and for the purpose of defraying fees pursuant to subdivisions (g) and (h) of Section 72252, to be provided as follows:

Period	Amount
July 1, 1988, to June 30, 1989	$15,000,000
July 1, 1989, to June 30, 1990	15,000,000
July 1, 1990, to June 30, 1991	15,000,000
July 1, 1991, to January 1, 1992	7,500,000

(b) It is the intent of the Legislature that all funds provided pursuant to subdivision (a) be allocated to community college districts. In prescribing the manner of allocation, the board shall endeavor to ensure that students with similar characteristics shall be treated similarly with respect to the provision of financial aid pursuant to this section, regardless of the community college they attend.

In allocating funds pursuant to this section, the board shall consider the number of students eligible for assistance in the prior academic year and other factors that may have bearing on the amount of these funds required by each community college district.

The board may allocate up to 7 percent of the total amount of funds provided pursuant to subdivision (a) to community college districts for delivery of student financial aid services required as a result of this section. Funds so allocated to a district for delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1983–84 fiscal year, adjusted annually in accordance with the cost-of-living adjustment to the general apportionments.

The board shall be provided adequate resources through the annual Budget Act to support state administration of this financial aid program.

(c) Financial aid shall be provided pursuant to this section only to those students required to pay the fee specified in Section 72252, and only in an amount equal to the fee actually charged the student pursuant to that section. In addition, the chancellor shall pay districts

the amount of fees defrayed pursuant to subdivisions (g) and (h) of Section 72252.

(d) Districts that receive an allocation of funds pursuant to this section shall administer and award the funds in accordance with regulations adopted by the board of governors.

(e) If the amount of funds provided pursuant to subdivision (a) exceeds the need for financial aid to students who cannot afford to pay the fee charged pursuant to Section 72252, the excess shall revert to the General Fund.

(f) If the amount needed for financial aid to students who cannot afford the fee charged pursuant to Section 72252 and to pay districts for the total amount of fees defrayed pursuant to subdivisions (g) and (h) of Section 72252 is greater than the amount of funds provided pursuant to subdivision (a), the chancellor shall certify to the Department of Finance the amount of the additional funds that are required. Upon receipt of this certification, the Director of Finance shall take any administrative action available to him or her to transfer the additional funds, pursuant to the Budget Act or as otherwise provided by the Legislature.

(g) This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

SEC. 5. No provision of this act shall apply to the University of California unless the Regents of the University of California, by resolution, makes that provision applicable.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17550 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

11340) of Part 1 of Division 3 of Title 2 of the Government Code, these regulations shall not be repealed by the Office of Administrative Law and shall remain in effect until revised or repealed by the department adopting the regulations.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to facilitate implementation of the Title XIX Personal Care program, and bridge the gap between the current In-Home Supportive Service Program and the Personal Care Option program and remaining in-home supportive services programs as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 8

An act to amend Sections 66602, 66606, 66901, 66904, 67143, 67350, 68052, 68076, 68077, 69513, 69612.5, 70011, 71092, 76064, 76221, 76222, 87615, 89006, 89009, 89011, 89034, 89230, 89705, 92612, 92620, 94020, 94021, 94362, 94380, and 94385 of, to amend and renumber Section 69033.1 of, to amend and renumber the heading of Chapter 15.5 (commencing with Section 67380) of Part 40 of, the heading of Chapter 9 (commencing with Section 92690) of Part 57 of, the heading of Article 6.5 (commencing with Section 69612) of Chapter 2 of Part 42 of, the heading of Article 6.6 (commencing with Section 69618) of Chapter 2 of Part 42 of, the heading of Article 6.7 (commencing with Section 69619) of Chapter 2 of Part 42 of, the heading of Article 4 (commencing with Section 71090) of Chapter 1 of Part 44 of, the heading of Article 6 (commencing with Section 72330) of Chapter 3 of Part 45 of, and the heading of Article 1.5 (commencing with Section 78210) of Chapter 2 of Part 48 of, to add Sections 72029 and 72205 to, and to add Chapter 2 (commencing with Section 76300) to Part 47 of, to repeal Sections 66907, 67381, 67382, 69506.6, 69619.3, 69702, 76300, 76330, 87356, 89010, 89033, and 92583 of, to repeal Article 2 (commencing with Section 66910) of Chapter 11 of Part 40 of, Article 2.5 (commencing with Section 66914) of Chapter 11 of Part 40 of, Article 3 (commencing with Section 66915) of Chapter 11 of Part 40 of, Article 2 (commencing with Section 72241) of Chapter 3 of Part 45 of, Article 2.5 (commencing with Section

89050) of Chapter 1 of Part 55 of, Article 3 (commencing with Section 89730) of Chapter 6 of Part 55 of, Chapter 9 (commencing with Section 85410) of Part 50 of, and Chapter 4 (commencing with Section 99170) of Part 65 of, and to repeal the heading of Chapter 15.6 (commencing with Section 67385) of Part 40 of, and the heading of Chapter 3.8 (commencing with Section 94385) of Part 59 of, the Education Code, and to amend Section 50330 of the Government Code, relating to postsecondary education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 15, 1993. Filed with Secretary of State April 15, 1993.]

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

SECTION 1. Section 66602 of the Education Code is amended to read:

66602. (a) The board shall be composed of the following four ex officio members: the Governor, the Lieutenant Governor, the Superintendent of Public Instruction, and the person named by the trustees to serve as the Chancellor of the California State University; a representative of the alumni associations of the state university and colleges, selected for a two-year term by the alumni council, California State University, which representative shall not be an employee of the California State University during the two-year term; and 16 appointive members appointed by the Governor and subject to confirmation by two-thirds of the Senate.

(b) There shall also be appointed by the Governor for a two-year term, a student from a California state university or college who shall have at least a junior year standing at the institution he or she attends, and shall remain in good standing as a student for the two-year term. In the selection of a student as a member of the board, the Governor shall appoint the student from a list of names of not more than five persons furnished by student representatives of each of the universities and colleges of the California State University. The student representative of a university or college shall be the elected student body president or, in the case of a university or college not having an elected student body president, the person receiving the highest number of votes cast at a student body election held to select the student representative. Any appointment to fill a vacancy of a student member shall be effective only for the remainder of the term of the person's office that became vacated.

The term of office of the student member of the board shall commence on July 1 and expire on June 30 two years thereafter.

(c) The Speaker of the Assembly shall be an ex officio member, having equal rights and duties with nonlegislative members.

(d) There shall also be appointed by the Governor for a two-year term, a faculty member from the California State University who shall be tenured at the California state university or college at which

72029. The governing board of a community college district may by resolution limit campaign expenditures or contributions in elections to district offices.

SEC. 28. Section 72205 is added to the Education Code, to read:

72205. The approval of any state agency shall not be a prerequisite to acceptance by the governing board of any community college district of a gift, donation, bequest, or devise. No real or personal property, including money, accepted by a governing board pursuant to this section shall be considered in determining the eligibility of the district for an apportionment from the State School Fund nor in determining the amount thereof.

SEC. 29. Article 2 (commencing with Section 72241) of Chapter 5 of Part 45 of the Education Code is repealed.

SEC. 30. The heading of Article 6 (commencing with Section 72330) of Chapter 5 of Part 45 of the Education Code is amended and renumbered to read:

Article 2. College Police

SEC. 31. Section 76064 of the Education Code is amended to read:

76064. In addition to deposit or investment pursuant to Section 76063, the funds of a student body organization may be loaned or invested in any of the following ways:

(a) Loans, with or without interest, to any student body organization established in another community college of the district for a period not to exceed three years.

(b) Invest money in permanent improvements to any community college district property including, but not limited to, buildings, automobile parking facilities, gymnasiums, swimming pools, stadia and playing fields where those facilities, or portions thereof, are used for conducting student extracurricular activities or student spectator sports, or when those improvements are for the benefit of the student body. The investment shall be made on condition that the principal amount of the investment plus a reasonable amount of interest thereon shall be returned to the student body organization as provided herein. Any community college district approving the investment shall establish a fund in accordance with the California Community Colleges Budget and Accounting Manual in which moneys derived from the rental of community college district property to student body organizations shall be deposited. Moneys collected by the governing board for automobile parking facilities as authorized by Section 76360 shall be deposited in the fund designated by the California Community Colleges Budget and Accounting Manual if the parking facilities were provided for by investment of student body funds under this section. Moneys shall be returned to the student body organization as contemplated by this section exclusively from the special fund and only to the extent that there are moneys in the special fund. Whenever there are no outstanding obligations against the special fund, all moneys therein may be

transferred to the general fund of the school district by action of the local governing board.

Two or more student body organizations of the same community college district may join together in making the investments in the same manner as is authorized herein for a single student body. Nothing herein shall be construed so as to limit the discretion of the local governing board in charging rental for use of community college district property by student body organizations as provided in Section 76060.

SEC. 32. Section 76221 of the Education Code is amended to read:

76221. Community college districts shall notify students in writing of their rights under this chapter upon the date of the student's enrollment and at least annually thereafter. The notice shall take a form that reasonably notifies students of the availability of the following specific information:

(a) The types of student records and information contained therein that are directly related to students and maintained by the institution.

(b) The official responsible for the maintenance of each type of record.

(c) The location of the log or record required to be maintained pursuant to Section 76222.

(d) The criteria to be used by the institution in defining "officials and employees" and in determining "legitimate educational interest" as used in Section 76222 and subdivision (a) of Section 76243.

(e) The policies of the institution for reviewing and expunging those records.

(f) The right of the student to have access to his or her records.

(g) The procedures for challenging the content of student records.

(h) The cost if any that will be charged for reproducing copies of records.

(i) The categories of information that the institution has designated as directory information pursuant to Section 76240.

(j) Any other rights and requirements set forth in this chapter and the right of the student to file a complaint with the United States Department of Education concerning an alleged failure by the institution to comply with Section 438 of the General Education Provisions Act (20 U.S.C.A. 1232g).

SEC. 33. Section 76222 of the Education Code is amended to read:

76222. A log or record shall be maintained for each student's record which lists all persons, agencies, or organizations requesting or receiving information from the record and the legitimate interests therefor. The listing need not include any of the following:

(a) Students to whom access is granted pursuant to Section 76230.

(b) Parties to whom directory information is released pursuant to Section 76240.

(c) Parties for whom written consent has been executed by the

student pursuant to Section 76242.

(d) Officials or employees having a legitimate educational interest pursuant to subdivision (a) of Section 76243.

The log or record shall be open to inspection only by the student and the community college official or his or her designee responsible for the maintenance of student records, and to the Comptroller General of the United States, the Secretary of Education, an administrative head of an education agency as defined in Public Law 93-380, and state educational authorities as a means of auditing the operation of the system.

SEC. 34. Chapter 2 (commencing with Section 76300) is added to Part 47 of the Education Code, to read:

CHAPTER 2. FEES

Article 1. Enrollment Fees and Financial Aid

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) The fee prescribed by this section shall be ten dollars ($10) per unit per semester.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivisions (g) and (h) shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84711.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be defrayed pursuant to Section 72252.1 for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(h) The fee requirements of this section shall be defrayed pursuant to Section 72252.1 for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) Student financial aid funds appropriated for the purpose of assisting students to pay the fee required by this section may be awarded without regard to the requirements of Chapter 2 (commencing with Section 69500) of Part 42.

(j) The board of governors shall adopt regulations implementing this section.

(k) This section shall remain in effect only until January 1, 1995, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1995, deletes or extends that date.

76310. (a) It is the intent of the Legislature to provide adequate funding for the purpose of providing financial aid funds directly to low-income students who cannot pay the fees specified in subdivision (b) of Section 76300, and for the purpose of defraying fees pursuant to subdivisions (g) and (h) of Section 76300.

(b) It is the intent of the Legislature that all funds provided pursuant to subdivision (a) be allocated to community college districts. In prescribing the manner of allocation, the board shall endeavor to ensure that students with similar characteristics are treated similarly with respect to the provision of financial aid pursuant to this section, regardless of the community college they attend.

In allocating funds pursuant to this section, the board shall consider the number of students eligible for assistance in the prior academic year and other factors that may have bearing on the amount of these funds required by each community college district.

The board may allocate up to 7 percent of the total amount of funds provided pursuant to subdivision (a) to community college districts for delivery of student financial aid services required as a result of this section. Funds so allocated to a district for delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1983–84 fiscal year, adjusted annually in

accordance with the cost-of-living adjustment to the general apportionments.

The board shall be provided adequate resources through the annual Budget Act to support state administration of this financial aid program.

(c) Financial aid shall be provided pursuant to this section only to those students required to pay the fee specified in subdivision (b) of Section 76300, and only in an amount equal to the fee actually charged the student pursuant to those sections. In addition, the chancellor shall pay districts the amount of fees defrayed pursuant to subdivisions (g) and (h) of Section 76300.

(d) Districts that receive an allocation of funds pursuant to this section shall administer and award the funds in accordance with regulations adopted by the board of governors.

(e) If the amount of funds provided pursuant to subdivision (a) exceeds the need for financial aid to students who cannot afford to pay the fee charged pursuant to subdivision (b) of Section 76300, the excess shall revert to the General Fund.

(f) If the amount needed for financial aid to students who cannot afford the fee charged pursuant to subdivision (b) of Section 76300 and to pay districts for the total amount of fees defrayed pursuant to subdivisions (g) and (h) of Section 76300 is greater than the amount of funds provided pursuant to subdivision (a), the chancellor shall certify to the Department of Finance the amount of the additional funds that are required. Upon receipt of this certification, the Director of Finance shall take any administrative action available to him or her to transfer the additional funds, pursuant to the Budget Act or as otherwise provided by the Legislature.

76320. The fee requirements of Section 76300 shall be defrayed pursuant to Section 19 of Chapter 1 of the 1953–54 Second Extraordinary Session for any student who, at the time of enrollment, is a child or dependent of a veteran, as specified in subdivision (a), (b), or (c) of Section 32320.

76330. (a) The governing board of each community college district shall charge a fee of fifty dollars ($50) per semester unit, or the quarter unit equivalent, to each student who previously has been awarded a baccalaureate or graduate degree from any public or private postsecondary educational institution.

(b) The governing board shall exempt from subdivision (a), and charge the fees specified in Section 72252 to, a student who is any of the following:

(1) A dislocated worker, as certified by a state agency in accordance with Subchapter III of the federal Job Training Partnership Act (29 U.S.C. Sec. 1651 et seq.).

(2) A displaced homemaker, as defined in accordance with the Higher Education Act of 1965, as amended (20 U.S.C. Sec. 1001 et seq.).

(3) A recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security

helping the victim deal with academic difficulties that may arise because of the victimization and its impact.

(7) Procedures for guaranteeing confidentiality and appropriately handling requests for information from the press, concerned students, and parents.

(8) Each victim of sexual assault should receive information about the existence of at least the following options: criminal prosecutions, civil prosecutions, the disciplinary process through the college, the availability of mediation, alternative housing assignments, and academic assistance alternatives.

(c) For the purposes of this section, "sexual assault" includes, but is not limited to, rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of sexual assault.

SEC. 56. Chapter 4 (commencing with Section 99170) of Part 65 of the Education Code is repealed.

SEC. 56.5. Section 50330 of the Government Code is amended to read:

50330. Whether governed under general laws or charter, a local agency may donate and grant to the Regents of the University of California, the Trustees of the California State University, or the governing board of a community college district real property that it owns as a site for university buildings and grounds, state university buildings and grounds, or community college buildings and grounds, as the case may be. A local agency may expend funds, incur indebtedness, and issue bonds for the acquisition of a site within or without its boundaries for the purposes of this section.

SEC. 57. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the technical changes made by this act to take effect as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 9

An act to amend Section 798.17 of the Civil Code, relating to mobilehomes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 28, 1993. Filed with Secretary of State April 29, 1993.]

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

SECTION 1. Section 798.17 of the Civil Code is amended to read:

798.17. (a) (1) Rental agreements meeting the criteria of subdivision (b) shall be exempt from any ordinance, rule, regulation,

The amount per acre in subdivision (a) may be increased by the Secretary of the Resources Agency to a figure which would offset any savings due to a more restrictive determination by the secretary as to what land is devoted to open-space use of statewide significance.

SEC. 2. The sum of twenty million nine hundred two thousand two hundred ninety dollars ($20,902,290) is hereby appropriated from the General Fund in augmentation of schedule (e) of Item 9100-101-001 of the Budget Act of 1993 for the purpose of increasing subventions to counties and cities for open space pursuant to Section 16142 of the Government Code.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide fiscal management authority as soon as possible for the urgent needs of the state and local governments in light of the current shortfall in state revenues, it is necessary that this act take effect immediately.

CHAPTER 66

An act to amend Sections 40043, 41203.1, 41204.5, 41206, 41339, 42243.6, 42243.9, 42246, 42247, 42247.2, 42249.2, 51216, 51226, 66161.5, and 76300 of, to amend and repeal Section 14022.3 of, and to add Sections 1983.5, 2558.4, 2558.45, 2558.6, 14002.1, 41204.6, 41206.1, 41601.3, 42238.14, 42238.145, 42238.16, 42238.17, 42238.18, 42238.19, 46010.3, 46015, 46300.2, 46300.6, 46300.7, 51747.3, and 84751 to, the Education Code, to amend Section 97.5 of the Revenue and Taxation Code, and to amend Sections 18, 19, 20, and 28 of, and to repeal Sections 22, 23, 26, and 27 of, Chapter 703 of the Statutes of 1992, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 30, 1993. Filed with Secretary of State June 30, 1993.]

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

SECTION 1. Section 1983.5 is added to the Education Code, to read:

1983.5. (a) Notwithstanding any other provision of law, community school apportionments may be claimed only for pupils enrolled in grades 7 to 12, inclusive.

(b) Notwithstanding any other provision of law, apportionments claimed by a county office of education for units of average daily attendance for pupils enrolled pursuant to subdivision (c) of Section 1981 in excess of the number claimed by that county office in the 1991–92 fiscal year shall be funded at the statewide average revenue

limit per unit of average daily attendance for that category of enrollment.

SEC. 2. Section 2558.4 is added to the Education Code, to read:

2558.4. For the purposes of this article, the revenue limit for the 1993–94 fiscal year for each county superintendent of schools determined pursuant to this article and adjusted pursuant to Section 2558.6 shall be reduced by a 9.77 percent deficit factor.

SEC. 3. Section 2558.45 is added to the Education Code, to read:

2558.45. (a) For the purposes of this article, the revenue limit for the 1994–95 fiscal year for each county superintendent of schools determined pursuant to this article and adjusted pursuant to Section 2558.6 shall be reduced by a deficit factor calculated as follows:

$$100 - \frac{(90.23 \times 100)}{(100 + C)}$$

For purposes of this calculation, "C" is the percentage determined pursuant to subdivision (b) of Section 42238.1 for the 1994–95 fiscal year.

(b) Notwithstanding subdivision (a), the revenue limit for each county superintendent of schools for the 1995–96 fiscal year and each fiscal year thereafter shall be determined as if the revenue limit for that county superintendent of schools had been determined for the 1994–95 fiscal year without being reduced by that deficit factor.

SEC. 4. Section 2558.6 is added to the Education Code, to read:

2558.6. (a) Notwithstanding any other provision of law, the county superintendent of schools shall increase or decrease, as appropriate, the total revenue limit computed pursuant to paragraph (2) of subdivision (c) of Section 2550 and subdivision (b) of Section 14054 by the amount of the increased or decreased employer contributions to the Public Employees' Retirement System resulting from the enactment of the act adding this section, adjusted for any changes in those contributions resulting from subsequent changes in employer contribution rates, excluding rate changes due to the direct transfer of the state-mandated portion of the employer contributions to the Public Employees' Retirement System, through the current fiscal year.

(b) For the 1993–94 fiscal year, the amount per average daily attendance for each county office of education computed pursuant to paragraph (2) of subdivision (c) of Section 2550 and subdivision (b) of Section 14054 shall be reduced by the 1992–93 Public Employees' Retirement System reduction computed pursuant to Provision 3 of Item 6110-106-001 of Section 2.00 of the Budget Act of 1992, excluding Investment Dividend Disbursement Account (IDDA) and Extraordinary Performance Dividend Account (EPDA) credits, divided by the 1992–93 "other purpose average daily attendance" computed pursuant to paragraph (2) of subdivision (c) of Section 2550 and subdivision (b) of Section 14054.

amount of the fee increase for the 1992–93 academic year shall be included in the base fee for the 1993–94 academic year, and each academic year thereafter.

SEC. 34. Section 76300 of the Education Code, as added by Chapter 8 of the Statutes of 1993, is amended to read:

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) The fee prescribed by this section shall be fifteen dollars ($15) per unit per semester up to a total not to exceed one hundred fifty dollars ($150) per student per semester.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivisions (g) and (h) shall be deemed to be local property tax revenue within the meaning of Section 84751.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84711.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be defrayed pursuant to Section 76310 for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(h) The fee requirements of this section shall be defrayed pursuant to Section 76310 for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the

active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) Student financial aid funds appropriated for the purpose of assisting students to pay the fee required by this section may be awarded without regard to the requirements of Chapter 2 (commencing with Section 69500) of Part 42.

(j) The board of governors shall adopt regulations implementing this section.

(k) This section shall remain in effect only until July 1, 1995, and as of that date is repealed, unless a later enacted statute, which is chaptered before July 1, 1995, deletes or extends that date.

SEC. 35. Section 84751 is added to the Education Code, to read:

84751. In calculating each community college district's revenue level for each fiscal year pursuant to subdivision (a) of Section 84750, the chancellor shall subtract, from the total revenues owed, all of the following:

(a) The local property tax revenue specified by law for general operating support, exclusive of bond interest and redemption.

(b) Ninety-eight percent of the fee revenues collected pursuant to Section 76300 and moneys received for fees defrayed pursuant to subdivisions (g) and (h) of that section.

(c) Motor vehicle license fees received pursuant to Section 11003.4 of the Revenue and Taxation Code.

(d) Timber yield tax revenue received pursuant to Section 38905 of the Revenue and Taxation Code.

SEC. 35.5. Section 97.5 of the Revenue and Taxation Code is amended to read:

97.5. Except as otherwise provided in Section 97.51 or 97.52, for the purpose of apportioning property tax revenues each fiscal year:

(a) The amount of property tax revenue allocated pursuant to subdivisions (a) and (b) of Section 96 or subdivision (a) of Section 97, modified by any adjustments made pursuant to Section 99 or 99.4, and subdivision (e) of Section 98, shall be combined to compute the total amount of property tax revenue allocated to the jurisdiction with respect to the tax rate area.

(b) The total amount of property tax revenue allocated to each jurisdiction with respect to all tax rate areas as determined pursuant to subdivision (a) shall be added to compute a total amount of property tax revenue for a jurisdiction in all tax rate areas.

(c) Each amount determined pursuant to subdivision (b) shall be divided by the total of all such amounts computed. The quotient determined shall be used to apportion actual property tax collections and shall be known as the "property tax apportionment factors."

(d) (1) Notwithstanding any other provision of law, for the 1990–91 fiscal year and each fiscal year thereafter, the auditor shall divide the sum of the amounts calculated with respect to each

services, shall not exceed the total amount appropriated for those education programs for the 1993–94 fiscal year.

(a) A loan payment is made pursuant to Section 61 of this act.

(b) The aggregate sum of funds appropriated for the purposes of Section 8 of Article XVI of the California Constitution for education programs for K-12, is less than four thousand two hundred seventeen dollars ($4,217) per 'enrollment' as defined in subdivision (a) of Section 14022.3 of the Education Code. For the purposes of this subdivision, "the aggregate sum of funds appropriated for the purposes of Section 8 of Article XVI of the California Constitution for education programs for K-12" is General Fund revenues and allocated local proceeds of taxes provided to programs for K-12 pursuant to Section 8 of Article XVI of the California Constitution, adjusted for loans and shifts between fiscal years in a manner that reflects actual funding available for education programs for kindergarten and grades 1 to 12, inclusive, for the fiscal year in which this subdivision applies.

SEC. 64. Notwithstanding any provision of law to the contrary, for the 1993–94 and 1994–95 fiscal years, the Superintendent of Public Instruction shall certify to the Controller for purposes of Sections 14002, 14004, and 41301 of the Education Code amounts that do not exceed the amounts needed to fund school district revenue limits pursuant to Section 42238 of the Education Code, as adjusted pursuant to Sections 42238.14 and 42238.145 of the Education Code, and county office of education revenue limits pursuant to Section 2558 of the Education Code, as adjusted pursuant to Section 2558.4 and 2558.45 of the Education Code. In determining the amounts to be certified to the Controller, the Superintendent of Public Instruction shall include and reflect the emergency loan made and distributed pursuant to Section 48.

SEC. 65. Any judicial action or proceeding to challenge, review, set aside, void, or annul the provisions of Sections 18, 19, 20, and 25, of Chapter 703 of the Statutes of 1992, as amended by Sections 36, 37, 38, and 43, respectively, of Senate Bill 399 of the 1993–94 Regular Session or any other provision of this act, shall proceed by application or complaint filed within 45 days of the effective date of this act.

SEC. 66. If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 67. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 68. (a) Subdivision (b) shall be operative in the event that any appellate court of this state determines that any of Sections 9, 36, 37, 38, 43, 48, or 49 of this act are unconstitutional, unenforceable, or otherwise invalid.

(b) (1) Subject to subdivision (a), and pursuant to the authority set forth in subdivision (h) of Section 8 of Article XVI of the California Constitution, the Legislature hereby suspends for the 1993–94 fiscal year subdivision (b) of Section 8 of Article XVI of the California Constitution, excepting subparagraph (B) of paragraph (3) of subdivision (b) of that section.

(2) The Legislature finds and declares that the state is faced with an unprecedented fiscal crisis and that successive years of declining revenue and increasing program costs have strained state resources to the maximum. The Legislature further finds and declares that, if the condition set forth in subdivision (a) occurs, the suspension of subdivision (b) of Section 8 of Article XVI, as set forth in paragraph (1), would be necessary in order to avoid substantial reductions in other state services, including health care and subsistence programs.

(3) It is the intent of the Legislature that the amount of General Fund revenues appropriated for the support of school districts and community college districts that would otherwise be considered to be appropriated for the purposes of subdivision (b) of Section 8 of Article XVI not exceed thirteen billion five hundred two million seven hundred ninety-three thousand dollars ($13,502,793,000) for the 1993–94 fiscal year. It is further the intent of the Legislature that any amount appropriated in excess of that amount shall not be considered, for any fiscal year, to be either "General Fund revenues appropriated for school districts and community college districts" or any part of "total allocations to school districts and community college districts from General Fund proceeds of taxes" for the purposes of Section 8 of Article XVI of the California Constitution.

SEC. 69. Under no circumstances shall the State Department of Education interpret or use Section 15 of Chapter 703 of the Statutes of 1992 as an appropriation.

SEC. 70. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make certain essential changes in education-related financing at the earliest possible opportunity, it is necessary that this act take effect immediately.

16260

CHAPTER 67

An act to amend Section 76300 of the Education Code, relating to postsecondary education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 30, 1993. Filed with Secretary of State June 30, 1993.]

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

SECTION 1. Section 76300 of the Education Code is amended to read:

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) The fee prescribed by this section shall be thirteen dollars ($13) per unit per semester.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section or from fees defrayed pursuant to subdivisions (g) and (h) shall be deemed to be local property tax revenue within the meaning of Section 84751.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84711.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be defrayed pursuant to Section 76310 for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance

program.

(h) The fee requirements of this section shall be defrayed pursuant to Section 76310 for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) Student financial aid funds appropriated for the purpose of assisting students to pay the fee required by this section may be awarded without regard to the requirements of Chapter 2 (commencing with Section 69500) of Part 42.

(j) The board of governors shall adopt regulations implementing this section.

(k) This section shall remain in effect only until July 1, 1995, and as of that date is repealed, unless a later enacted statute, which is chaptered before July 1, 1995, deletes or extends that date.

SEC. 2. Notwithstanding any other provision of law, Section 66156 of the Education Code shall not apply to the imposition of student fees by the Trustees of the California State University for the 1993–94 academic year.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the provisions of this act regarding student fees to take effect for the fall 1993 semester, it is necessary that this act take effect immediately.

CHAPTER 68

An act to amend Sections 33020, 33680, 33681, 33682, and 33683 of, and to add Sections 33681.5 and 33682.5 to, the Health and Safety Code, and to amend Sections 95.1 and 97.04 of, to add Sections 97.02, 97.035, 11005.4, and 11005.7 to, and to repeal Sections 98.6, 98.65, 98.66, 98.67, and 98.68 of, the Revenue and Taxation Code, relating to local government finance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

discrimination compliance activities required pursuant to subdivision (b) of Section 253 of the Education Code be provided annually in the Budget Act.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1124

An act to amend Section 76300 of, and to repeal Section 76310 of, the Education Code, relating to postsecondary education, and making an appropriation therefor.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 76300 of the Education Code, as amended by Chapter 67 of the Statutes of 1993, is amended to read:

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) The fee prescribed by this section shall be thirteen dollars ($13) per unit per semester.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts, 98 percent of the revenues received by districts from charging a fee pursuant to this section shall be deemed to be local property tax revenue within the meaning of subdivision (b) of Section 84700.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84711.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. The governing board of a community college district may also waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) and (h).

From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) and (h). From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 7 percent of the fee waivers provided pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and

delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992–93 fiscal year.

(j) The board of governors shall adopt regulations implementing this section.

(k) This section shall remain in effect only until July 1, 1995, and as of that date is repealed, unless a later enacted statute, which is chaptered before July 1, 1995, deletes or extends that date.

SEC. 2. Section 76310 of the Education Code, as added by Chapter 8 of the Statutes of 1993, is repealed.

SEC. 3. The Board of Governors of the California Community Colleges shall allocate funds appropriated for the Board Financial Aid Program pursuant to subdivision (i) of Section 76300 of the Education Code.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 5. Ninety-one percent of the funds allocated for the Board Financial Aid Program in Provision 5(b) of Item 6870-101-001 of the Budget Act of 1993 is hereby reappropriated to Schedule (a) of Item 6870-101-001 of the Budget Act of 1993.

CHAPTER 1125

An act to amend Section 186.22 of, to amend, repeal, and add Sections 166.2, 487, and 666.5 of, to add and repeal Sections 457h, 499, and 666.7 of, and to repeal Section 499b.1 of, the Penal Code, to amend, repeal, and add Section 10851 of the Vehicle Code, and to amend, repeal, and add Section 653.5 of the Welfare and Institutions Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 10, 1993. Filed with Secretary of State October 11, 1993.]

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

SECTION 1. Section 186.2 of the Penal Code is amended to read:

186.2. For purposes of the application of this chapter, the

Assembly Bill No. 2480

CHAPTER 153

An act to amend Sections 2558, 2558.45, 41203.1, 41205, 42238.145, 76300, 76330, and 84751 of, and to add Sections 2558.6, 42238.11, 42238.12, and 54761.1 to, the Education Code, and to amend Sections 15816 and 15820.21 of, to add Sections 7550.6 and 15817.1 to, and to repeal Section 15820.62 of, the Government Code, relating to education finance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 9, 1994. Filed with Secretary of State July 11, 1994.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2480, Vasconcellos. Education finance.

(1) Existing law requires the county superintendent of schools to reduce the revenue limit computed for school districts and county offices of education, as specified, by the amount of the decreased employer contributions to the Public Employees' Retirement System, and sets forth a method for calculating that decrease for the 1993–94 fiscal year (hereafter the PERS reduction).

This bill, in addition, would apply these provisions to the 1994–95 fiscal year and would require the county superintendents of schools, in the 1995–96 fiscal year and each fiscal year thereafter, to adjust the total revenue limits by the amount of increased or decreased employer contributions to the Public Employees' Retirement System and would set forth a method for calculating the adjustment.

(2) Existing law, as set forth in the California Constitution, requires the state to apply a minimum amount of funding for each fiscal year for the support of school districts, as defined, and community college districts.

Existing law directs that the amount of state funding appropriated in each fiscal year, to comply with the minimum state school funding obligation set forth in Section 8 of Article XVI of the California Constitution (Proposition 98), be distributed to school districts, as defined, to community college districts, and to state-operated schools in proportion to the enrollment in each of those segments of public education, as specified.

This bill would specify that this provision does not apply to the 1994–95 fiscal year.

(3) For purposes of Proposition 98, existing law defines school districts to include direct elementary and secondary level instructional services provided by the State of California, and further finds that the only state agencies that provide direct elementary and secondary level instructional services for purposes of that definition are those agencies that receive educational funding under the

than 10% of the amount apportioned to any school district, county office of education, or other agency under Item 6110-230-001 of Section 2.00 of the Budget Act of 1994 for any program may be expended by that recipient for the purposes of any other program for which the recipient is eligible for funding under that item. However, the bill would also specify that the total amount of funding allocated to the recipient under that item that is expended by the recipient for the purposes of any program funded pursuant to that item shall not exceed 115% of the amount of state funding allocated to that recipient for that program for the 1994–95 fiscal year.

(15) Under existing law, the Superintendent of Public Instruction is required to allocate to county superintendents of schools or school districts that maintain schools or classes for adults in correctional facilities an amount equal to the actual current expense of the district or county superintendent of schools of maintaining those classes. This amount allocated per unit of average daily attendance may not exceed the statewide average revenue limit for adults multiplied by 0.80.

This bill would require that funds allocated to each county superintendent of schools and each school district in the 1994–95 fiscal year for adults in correctional facilities not exceed the amount of funds received by each county superintendent of schools or each school district in the 1993–94 fiscal year, and would further require that the total amount allocated to those entities not exceed $13,400,000. In certain situations, the amount to be allocated to each county superintendent of schools and each school district would be reduced to reflect any reduction to, or elimination of, its adults in correctional facilities program in the 1994–95 fiscal year.

(16) Existing law authorizes a county board of education to enroll in community schools pupils who are probation-referred, as specified, who are on probation or parole and are not in attendance in any school, or who are expelled for specified reasons, including any pupil found to be possessing a firearm at school or at a school activity off school grounds. Existing law provides for apportionments from the State School Fund and for purposes of those apportionments, pupils so placed are deemed to be enrolled in county juvenile halls or camps.

This bill would require the Superintendent of Public Instruction, for the 1994–95 fiscal year to apportion not more than $88,525,000 from all sources for purposes of funding the average daily attendance of the aforementioned pupils enrolled in community schools. The bill would provide that it would not apply to those pupils who are enrolled in community schools because of expulsion for specified reasons, including possession in a firearm at school or at a school activity off school grounds.

(17) Existing law provides for an apportionment computed according to a specified formula, to be provided as an incentive to school districts to offer a longer instructional year.

This bill would specify that certain advanced placement classes conducted on evenings and weekends be counted for purposes of that funding formula.

(18) Existing law requires that mandatory systemwide student fees at the California State University, the University of California, and the Hastings College of the Law be fixed at least 10 months prior to the fall term in which the fees become effective.

This bill would specify that this requirement does not apply to the imposition of student fees by the Trustees of the California State University for the 1994–95 academic year.

(19) As specified above, existing law, as set forth in Proposition 98, requires the state to apply a minimum amount of funding for each fiscal year for the support of school districts, as defined, and community college districts.

This bill would specify that for purposes of determining the minimum amount of funding for the 1995–96 fiscal year the total allocation to school districts and community colleges shall be the sum of the actual amounts allocated from specified sources for the 1994–95 fiscal year plus $75,000,000.

(20) This bill would also make a statement of legislative intent.

(21) Funds appropriated by this bill may be applied toward the minimum funding requirements for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution.

(22) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

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

SECTION 1. Section 2558 of the Education Code is amended to read:

2558. Notwithstanding any other provision of law, for the 1979–80 fiscal year and each fiscal year thereafter, the Superintendent of Public Instruction shall apportion state aid to county superintendents of schools pursuant to the provisions of this section.

(a) The Superintendent of Public Instruction shall total the amounts computed for the fiscal year pursuant to Sections 2550, 2551, 2551.3, 2554, 2555, and 2557. For the 1979–80 fiscal year and for purposes of calculating the 1979–80 fiscal year base amounts in succeeding fiscal years, the amounts in Sections 2550, 2551, 2552, 2554, 2555, and 2557, as they read in the 1979–80 fiscal year, shall be multiplied by a factor of 0.994. For the 1981–82 fiscal year and for purposes of calculating the 1981–82 fiscal year base amounts in succeeding fiscal years, the amount in this subdivision shall be multiplied by a factor of 0.97.

(b) For the 1995–96 fiscal year and each fiscal year thereafter, the county superintendent of schools shall adjust the total revenue limit

limits made by this provision may be reflected as an expenditure from appropriate sources of revenue as directed by the Superintendent of Public Instruction.

(f) The amount of the increase or decrease to the revenue limits of school districts computed pursuant to subdivision (c) for the 1995–96 fiscal year shall not be adjusted by the deficit factor calculated pursuant to Section 42238.145 for that fiscal year.

SEC. 8. Section 42238.145 of the Education Code is amended to read:

42238.145. For the purposes of this article, the revenue limit for the 1994–95 and 1995–96 fiscal years for each school district determined pursuant to this article shall be reduced by a deficit factor calculated as follows:

$$100 - \frac{(91.86 \times 100)}{(100 + C)}$$

For purposes of this calculation, "C" is the percentage determined pursuant to subdivision (b) of Section 42238.1 for the 1994–95 fiscal year.

The revenue limit for the 1994–95 fiscal year for each school district shall be determined as if the revenue limit for each school district had been determined for the 1993–94 fiscal year without being reduced by the deficit factor required pursuant to Section 42238.14.

The revenue limit for each school district for the 1995–96 fiscal year shall be determined as if the revenue limit for that school district had been determined for the 1994–95 fiscal year without being reduced by the deficit factor specified in this section.

The revenue limit for each school district for the 1996–97 fiscal year, and each fiscal year thereafter, shall be determined as if the revenue limit for that school district had been determined for the 1995–96 fiscal year without being reduced by the deficit factor specified in this section.

SEC. 9. Section 54761.1 is added to the Education Code, to read:

54761.1. (a) The sum of one hundred seventy-eight million eight hundred sixty-six thousand dollars ($178,866,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for allocation to school districts for purposes of this article for the 1994–95 fiscal year. The funds appropriated pursuant to this subdivision shall be allocated pursuant to subdivision (c) of Section 12.32 of the Budget Act of 1994.

(b) Any action by a school district to change, or any decision by the school district to maintain, the 1993–94 designation of supplemental grant funds in the 1994–95 fiscal year pursuant to subdivision (c) of Section 12.32 of the Budget Act of 1994 shall be considered a new designation and shall be applicable in the 1994–95 fiscal year and each fiscal year thereafter.

(c) For purposes of computing the base revenue limit per unit of

average daily attendance of a school district for the 1995–96 fiscal year, the base revenue limit per unit of average daily attendance of the school district for the 1994–95 fiscal year shall be increased by an amount equal to the amount of supplemental grant funds added to the total revenue limit in the 1994–95 fiscal year divided by the school district's revenue limit average daily attendance for the 1994–95 fiscal year determined pursuant to Section 42238.5 and Article 4 (commencing with Section 42280) of Chapter 7 of Part 24. This increase shall be subject to any other adjustments applicable to the base revenue limit.

(d) For the purpose of computing the entitlement of any school district for any of the categorical programs described in Section 54760.1 and clause (i) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 54761, the following adjustments shall be made:

(1) For programs that base the current fiscal year entitlement on the prior fiscal year entitlement, in whole, or in part, for the 1995–96 fiscal year, and each fiscal year thereafter, the entitlement under each of those programs for the 1994–95 fiscal year shall be deemed to include the amount of supplemental grant funds allocated by the school district to the program pursuant to subdivision (b) in the 1994–95 fiscal year.

(2) For programs that base the current fiscal year entitlement on factors other than the prior fiscal year entitlement, the entitlement under each of those programs shall be increased in the 1995–96 fiscal year and each fiscal year thereafter by the amount of the supplemental grant funds allocated by the school district to the program pursuant to subdivision (b) in the 1994–95 fiscal year.

The increases described in paragraphs (1) and (2) are subject to any applicable adjustments to the relevant categorical program for the 1995–96 fiscal year and each fiscal year thereafter.

SEC. 10. Section 76300 of the Education Code is amended to read:

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) The fee prescribed by this section shall be thirteen dollars ($13) per unit per semester.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and shall also proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

(d) The chancellor shall reduce apportionments by up to 10

percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84711.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. The governing board of a community college district may also waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) and (h).

From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) and (h). From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 7 percent of the fee waivers provided pursuant to

subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992–93 fiscal year.

(j) The board of governors shall adopt regulations implementing this section.

(k) This section shall remain in effect only until July 1, 1995, and as of that date is repealed, unless a later enacted statute, which is chaptered before July 1, 1995, deletes or extends that date.

SEC. 11. Section 76330 of the Education Code is amended to read:

76330. (a) The governing board of each community college district shall charge a fee of fifty dollars ($50) per semester unit, or the quarter unit equivalent, to each student who previously has been awarded a baccalaureate or graduate degree from any public postsecondary educational institution or any private postsecondary educational institution approved to operate by the Council for Private Postsecondary and Vocational Education, accredited by an agency recognized by the United States Department of Education, or operated pursuant to Section 94303. Any student charged a fee pursuant to this section shall be exempt from the fees required pursuant to Section 76300.

(b) The governing board shall exempt from subdivision (a), and charge the fees specified in Section 76300 to, a student who is any of the following:

(1) A dislocated worker, as certified by a state agency in accordance with Subchapter III of the federal Job Training Partnership Act (29 U.S.C. Sec. 1651 et seq.).

(2) A displaced homemaker, as defined in accordance with the Higher Education Act of 1965, as amended (20 U.S.C. Sec. 1001 et seq.).

(3) A recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program.

(4) An enrollee in a course offered pursuant to a contract between the community college and a public or private entity if (A) the contract provides for the payment by the public or private entity of all costs associated with the course and (B) full-time equivalent student enrollment in the course is not counted for the purpose of determining district or statewide apportionment.

(5) A student who demonstrates, pursuant to Chapter 2 (commencing with Section 69500) of Part 42 or Section 76310, financial need in excess of the amount of the fee specified in subdivision (a).

(c) Nonresident students who pay nonresident tuition shall be

for purposes of the Education Code.

SEC. 29. Notwithstanding any other provision of law, Section 66156 of the Education Code shall not apply to the imposition of student fees by the Trustees of the California State University for the 1994–95 academic year.

SEC. 30. Notwithstanding former Section 15820.62 of the Government Code, as it read on June 30, 1994, a new project may be authorized pursuant to Chapter 3.8 (commencing with Section 15820.50) of Part 10b of Division 3 of Title 2 of the Government Code on and after July 1, 1994.

SEC. 31. Notwithstanding any other provision of law, the total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes, as calculated pursuant to paragraphs (2) and (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution, for purposes of determining the minimum state school funding obligation under that constitutional provision for the 1995–96 fiscal year, shall be deemed to be the sum of the actual amounts allocated from these sources for the 1994–95 fiscal year plus seventy-five million dollars ($75,000,000).

SEC. 32. The Legislature hereby finds and declares that the total resources per pupil available for expenditure by school districts and county offices of education for the 1994–95 fiscal year is not less than the total resources per pupil available for expenditure by those entities for the 1993–94 fiscal year, estimated to be approximately four thousand two hundred seventeen dollars ($4,217) per unit of average daily attendance. The Legislature further finds and declares that Sections 3 and 6 of this act reflect reductions in revenue limits for county superintendents of schools and school districts in amounts not to exceed the reductions in costs experienced by those entities as a result of the decrease in their required employer contributions to the Public Employees' Retirement System in the 1994–95 fiscal year.

SEC. 33. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to effectuate the necessary statutory changes to implement the Budget Act of 1994, it is necessary that this act take effect immediately.

O

94 770

CHAPTER 422

An act to amend Sections 32320, 76300, 76330, 76355, 94302, 94310, 94311, 94311.1, 94311.4, 94312, 94312.2, and 94330 of, to add Section 94311.8 to, and to repeal Section 94319.7 of, the Education Code, and to amend Sections 11011.21, 11126, and 15814.21 of the Government Code, relating to postsecondary education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 6, 1994. Filed with Secretary of State September 7, 1994.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2589, Bornstein. Postsecondary education.

(1) Existing law prohibits community colleges, among other educational institutions, from charging any tuition or fees to certain dependents of veterans. Under existing law, nothing contained in those provisions prevents the charging and collecting of fees required of nonresident students admitted to the University of California, at schools under the jurisdiction of the State Department of Education or the Director of Education, or to a state university under the jurisdiction of the Trustees of the California State University.

This bill, instead, would provide that nothing in these provisions prevents the charging and collecting of fees required of nonresident students admitted to the University of California, to a community college, or to a state university under the jurisdiction of the trustees.

(2) Existing law requires the governing board of each community college district to charge each student a fee in the amount of $13 per unit per semester, as specified. Existing law requires that the fee be waived for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need, as specified. Existing law authorizes the governing board also to waive the fee for any student who demonstrates eligibility according to specified income standards established by the Board of Governors of the California Community Colleges.

This bill would require, rather than authorize, the governing board of each community college to waive the fee for any student who demonstrates eligibility according to specified income standards established by the board of governors. To the extent increased duties would be imposed on the governing boards of community college districts, the bill would impose a state-mandated local program.

(3) Existing law requires the governing board of each community college district to charge a fee of $50 per semester unit, or the quarter

or to a state university under the jurisdiction of the Trustees of the California State University.

This section shall not apply to a dependent of a veteran within the meaning of paragraph (4) of subdivision (a) of Section 890 of the Military and Veterans Code.

(e) This section shall become operative on July 1, 1994.

SEC. 2. Section 76300 of the Education Code, as amended by Section 10 of Chapter 153 of the Statutes of 1994, is amended to read:

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) The fee prescribed by this section shall be thirteen dollars ($13) per unit per semester.

The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and also shall proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84711.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. The governing board of a community college district also shall waive the fee requirements of this section

for any student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) and (h).

From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) and (h). From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 7 percent of the fee waivers provided pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992–93 fiscal year.

(j) The board of governors shall adopt regulations implementing this section.

(k) This section shall remain in effect only until July 1, 1995, and as of that date is repealed, unless a later enacted statute, which is chaptered before July 1, 1995, deletes or extends that date.

SEC. 3. Section 76330 of the Education Code, as amended by Section 11 of Chapter 153 of the Statutes of 1994, is amended to read:

76330. (a) The governing board of each community college district shall charge a fee of fifty dollars ($50) per semester unit, or the quarter unit equivalent, to each student who previously has been awarded a baccalaureate or graduate degree from any public postsecondary educational institution or any private postsecondary educational institution approved to operate by the Council for Private Postsecondary and Vocational Education, accredited by an agency recognized by the United States Department of Education, or operated pursuant to Section 94303. Any student charged a fee pursuant to this section shall be exempt from the fees required

service obligation for the bonds sold to finance the projects.

SEC. 16. The Legislature hereby finds and declares that the amendment made to Section 94330 of the Education Code by Section 14 of this act is not a change of, but is declaratory of, the law as it existed immediately prior to the effective date of the Private Postsecondary and Vocational Education Reform Act of 1989.

SEC. 17. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 18. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to effectuate changes in California's public postsecondary institutions at the earliest possible time and particularly in order to limit the scope of a certain surplus property inventory required to be completed by January 1, 1995, it is necessary that this act take effect immediately.

O

Assembly Bill No. 825

CHAPTER 308

An act to amend Sections 2557.5, 2558, 2558.45, 41202, 41203.1, 42238, 42238.4, 42238.12, 42238.145, 42241.7, 42243.7, 42247.3, 42249.2, 56728.8, 66171, and 84751 of, to add Article 3.5 (commencing with Section 2560) to Chapter 12 of Part 2 of, to add Sections 14002.7, 54761.2, and 76300 to, and to add Chapter 3.65 (commencing with Section 44776.1) and Chapter 3.66 (commencing with Section 44777.1) to Part 25 of, the Education Code, to amend Sections 96102, 96103, 96109, and 96110 of, to amend and repeal Section 20750.94 of, and to repeal Section 96108 of, the Government Code, and to amend Sections 97.2, 97.3, and 97.38 of, the Revenue and Taxation Code, relating to education finance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 3, 1995. Filed with Secretary of State August 3, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

AB 825, W. Brown. Education finance.

(1) Existing law increases the revenue limits of school districts and county superintendents of schools in an amount sufficient to provide additional revenue equal to a specified expenditure for the costs of complying with provisions pertaining to unemployment insurance. Existing law requires that in certain fiscal years the revenue limits of school districts and county superintendents be reduced by a specified deficit factor.

This bill would provide that the amount of the increase to the revenue limits of school district and county superintendents of schools is not subject to the deficit factor that otherwise applies to the revenue limits of school districts and county superintendents of schools.

(2) Existing law requires the county superintendent of schools to increase or decrease the revenue limits computed for school districts and county offices of education, as specified, by the amount of the decreased employer contributions to the Public Employees' Retirement System, and sets forth a method for calculating that increase or decrease for the 1993–94 fiscal year. Existing law requires that the amount of that increase or decrease not be adjusted by the deficit factor described in (1) for the 1995–96 fiscal year.

This bill would require that the amount of the increase or decrease to the revenue limits computed for school districts and county superintendent of schools not be adjusted by the deficit factor

the current entitlement for each educational agency. Notwithstanding any other provisi law, no funds shall be allocated pursuant to Section 56726 for the 1995-96 fiscal year services provided to children with exceptional needs who are younger than three years of

SEC. 19. Section 66171 of the Education Code is amended to read:

66171. (a) Each governing board shall charge duplicate degree tuition to a student t has earned a degree equivalent to or higher than the degree awarded by the program which he or she is enrolled or who has earned a baccalaureate degree or postbaccalaur degree and is enrolled without a declared degree objective.

(b) No duplicate degree tuition shall be charged to a student who is any of the follow

(1) A dislocated worker, as certified by a state agency in accordance with Title 3 of federal Job Training Partnership Act.

(2) A displaced homemaker, as defined in accordance with the Higher Education Ac 1965, as amended (20 U.S.C. Sec. 1001 et seq.).

(3) A person who is an enrollee in any program leading to a credential or certificate t has been approved by the Commission on Teacher Credentialing.

(4) A recipient of benefits under the Aid to Families with Dependent Children prog the Supplemental Security Income or State Supplementary Program, or a general assist program.

(5) A participant in the Executive Fellow Program, the Jesse M. Unruh Asser Fellowship Program, or the California Senate Associates Program, administered by Center for California Studies of California State University, Sacramento.

(c) For purposes of this article, the following shall apply:

(1) A degree earned in a joint degree or double-major program shall not be considere equivalent degree earned prior to any other degree awarded by the joint degree or dou major program.

(2) A program that awards a master's degree as part of a course of study leading doctorate shall not be considered a program that awards the master's degree, unless stated objective of the student is to earn the master's degree.

SEC. 20. Section 76300 is added to the Education Code, to read:

76300. (a) The governing board of each community college district shall charge a student a fee pursuant to this section.

(b) The fee prescribed by this section shall be thirteen dollars ($13) per unit per seme

The chancellor shall proportionately adjust the amount of the fee for term lengths b upon a quarter system and also shall proportionately adjust the amount of the fee for sum sessions, intersessions, and other short-term courses. In making these adjustments, chancellor may round the per unit fee and the per term or per session fee to the nea dollar.

(c) For the purposes of computing apportionments to community college districts purs to Section 84750, the chancellor shall subtract from the total revenue owed to each district percent of the revenues received by districts from charging a fee pursuant to this sect

(d) The chancellor shall reduce apportionments by up to 10 percent to any district does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84711.

(2) California State University or University of California students enrolled in reme classes provided by a community college district on a campus of the University of Califo or a campus of the California State University, for whom the district claims an attenda apportionment pursuant to an agreement between the district and the California S University or the University of California.

(f) The governing board of a community college district may exempt special part-t students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. The governing board of a community college district also shall waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) and (h).

From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) and (h). From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 7 percent of the fee waivers provided pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992–93 fiscal year.

(j) The board of governors shall adopt regulations implementing this section.

SEC. 21. Section 84751 of the Education Code is amended to read:

84751. In calculating each community college district's revenue level for each fiscal year pursuant to subdivision (a) of Section 84750, the chancellor shall subtract, from the total revenues owed, all of the following:

(a) The local property tax revenue specified by law for general operating support, exclusive of bond interest and redemption.

(b) Ninety-eight percent of the fee revenues collected pursuant to Section 76300 and 76330.

(c) Motor vehicle license fees received pursuant to Section 11003.4 of the Revenue and Taxation Code.

(d) Timber yield tax revenue received pursuant to Section 38905 of the Revenue and Taxation Code.

(e) Any amounts received pursuant to Section 33492.15, 33607.5, or 33607.7 of the Health and Safety Code, and Section 33676 of the Health and Safety Code as amended by Section 2 of Chapter 1368 of the Statutes of 1990, that are considered to be from property tax revenues pursuant to those sections for the purposes of community college revenue levels, except those amounts that are allocated exclusively for educational facilities.

(f) Ninety-eight percent of the revenues received through collection of a student fee from a student enrolled in the district who registered or enrolled between July 1, 1995 and the date this act becomes operative.

SEC. 22. Section 20750.94 of the Government Code is amended to read:

20750.94. The contribution of a school employer to the retirement fund with respect to school members and local members employed by a school district or a county superintendent of schools, and the contribution of any employer of a school member, as defined in Section

school districts made pursuant to Section 32235 of the Education Code, from asset forfeiture revenues are not "General Fund revenue proceeds of tax moneys to be applied by the state for the support of school districts and community college districts," as defined in subdivision (f) of Section 41202 of the Education Code.

SEC. 45. Notwithstanding any other provision of law, for the purposes of Sections 14002, 14004, and 41301, for the 1996–97 fiscal year, the Superintendent of Public Instruction shall certify to the Controller amounts that do not exceed the amounts needed to fund the revenue limits of school districts as determined pursuant to Section 42238, and as adjusted by the deficit factor specified for the fiscal year in Section 42238.145, and the revenue limits of county superintendents of schools as determined pursuant to Section 2558 and as adjusted by the deficit factor specified in for the fiscal year in to Section 2558.45.

SEC. 46. Item 6110-230-001 of Section 2.00 of the Budget Act of 1995 provides funding to school agencies that qualify for desegregation funding. The San Francisco Unified School District has been approved to receive funding in the amount of five million four hundred forty-eight five hundred forty-six dollars ($5,448,546) as a result of claims for desegregation costs in the 1984–85, 1985–86, 1986–87, 1988–89, and 1989–90 fiscal years. Audits identified that the San Francisco Unified School District received overpayments for desegregation programs in the 1991–92 fiscal year in the amount of two million forty-eight thousand six hundred thirty-five dollars ($2,048,635). This latter amount that the San Francisco Unified School District received in overpayment for the 1991–92 fiscal year shall constitute full and complete payment for all claims for desegregation costs in the 1984–85, 1985–86, 1986–87, 1987–88, 1988–89, and 1989–90 fiscal years.

SEC. 47. The governing board of a community college district shall charge the fee described in Section 76300 of the Education Code, as added by this act, to a student enrolled in the community college district who registered or enrolled between July 1, 1995, and the date upon which this act becomes operative.

SEC. 48. The sum of five million dollars ($5,000,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for purposes of allocating funds for social tolerance resource centers, established pursuant to Chapter 3.65 (commencing with Section 44776.1) of Part 25 of the Education Code, as added by this act. For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by this section shall be deemed to be "General Fund revenues appropriated to school districts" as defined in subdivision (c) of Section 41202 of the Education Code, for the 1994–95 fiscal year and included within the "total allocations to school districts and community college districts from General Fund

94

proceeds of taxes appropriated pursuant to Article XIII B" as defined in subdivision (e) of Section 41202 of the Education Code, for the 1994–95 fiscal year.

SEC. 49. The sum of six hundred thousand dollars ($600,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for purposes of allocating funds for Latino heritage resource centers, established pursuant to Chapter 3.66 (commencing with Section 44777.1) of Part 25 of the Education Code, as added by this act. For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by this section shall be deemed to be "General Fund revenues appropriated to school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1994–95 fiscal year and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1994–95 fiscal year.

SEC. 50. Notwithstanding Sections 61 and 62 of Chapter 66 of the Statutes of 1993, the sum of fifty million dollars ($50,000,000) is hereby appropriated from the General Fund in partial discharge of the emergency loans to school districts and community college districts made in Sections 21 and 25 of Chapter 703 of the Statutes of 1992, and Sections 48 and 49 of Chapter 66 of the Statutes of 1993. For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by this section shall be deemed to be "General Fund revenues appropriated to school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1994–95 fiscal year and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1994–95 fiscal year.

SEC. 51. Notwithstanding Sections 61 and 62 of Chapter 66 of the Statutes of 1993, the sum of one hundred million dollars ($100,000,000) is hereby appropriated from the General Fund in partial discharge of the emergency loans to school districts and community college districts made in Sections 21 and 25 of Chapter 703 of the Statutes of 1992, and Sections 48 and 49 of Chapter 66 of the Statutes of 1993. For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by this section shall be deemed to be "General Fund revenues appropriated to school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1995–96 fiscal year and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined

SEC. 54. (a) The sum of two hundred seventy-nine million three hundred twenty-seven thousand dollars ($279,327,000) is hereby appropriated from the General Fund for transfer to Section A of the State School Fund for allocation to school districts and county offices of education on the basis of an equal amount per unit of average daily attendance for the 1994–95 second principal apportionment. That allocation shall be used for instructional materials, deferred maintenance, education technology, or any other non-recurring costs.

(b) Prior to the use of funds appropriated in subdivision (a), the governing board of the school district or county board of education shall hold a public hearing or hearings at which time the board shall report on the needs of, and resources for, instructional materials, deferred maintenance, education technology and any other non-recurring costs in the district or county office of education. The board shall encourage the participation of parents, teachers, members of the community interested in the affairs of the school district or county office of education, and bargaining unit leaders. The board shall provide 10 days' notice of the public hearing or hearings. The notice shall contain the time, place, and purpose of the hearing and shall be posted in three public places. The board may include the hearing specified in this section as part of any regularly scheduled meeting.

(c) Prior to the use of funds appropriated in subdivision (a) for non-recurring costs related to employee compensation, the governing board of the school district or the county board of education shall hold a public hearing or hearings, in addition to the hearing or hearings provided in subdivision (b), at which time the board shall report on the needs of and resources for instructional materials, deferred maintenance, and education technology. The board shall encourage the participation by parents, teachers, members of the community interested in the affairs of the school district or county office of education, and bargaining unit leaders. The board shall provide 10 days' notice of the public hearing or hearings. The notice shall contain the time, place, and purpose of the hearing. The board may include the hearing specified in this section as part of any regularly scheduled meeting.

(d) The appropriation made in subdivision (a) shall be deemed to be "General Fund revenues appropriated to school districts," as defined in subdivision (c) of Section 41202, for the 1994–95 fiscal year and "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 for that fiscal year, for purposes of Section 8 of Article XVI of the California Constitution.

SEC. 55. It is the intent of the Legislature that, in the event that this bill passes the Assembly and the Senate, this bill shall be

presented to the Governor for consideration at the same time that the Budget Bill is presented to the Governor for consideration.

SEC. 56. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to effectuate the necessary statutory changes to implement the Budget Act of 1995, it is necessary that this act take effect immediately.

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Assembly Bill No. 3031

CHAPTER 63

An act to amend Section 76300 of the Education Code, relating to postsecondary education.

[Approved by Governor June 11, 1996. Filed with Secretary of State June 12, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3031, Baca. Postsecondary education: community college districts: contract education courses.

Existing law requires the governing board of each community college district to charge each student a fee of $13 per unit per semester. Existing law exempts from this fee requirement students enrolled in specified noncredit courses and California State University and University of California students enrolled in remedial classes provided by a community college district under specified conditions.

This bill would also exempt from this fee requirement students enrolled in specified credit contract education courses, if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting and if these students are not included in the calculation of the average daily attendance of that district.

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

SECTION 1. Section 76300 of the Education Code is amended to read:

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) (1) The fee prescribed by this section shall be thirteen dollars ($13) per unit per semester.

(2) The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and also shall proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84711.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(3) Students enrolled in credit contract education courses pursuant to Section 78021, if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting and if these students are not included in the calculation of the average daily attendance of that district.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. The governing board of a community college district also shall waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) (1) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) and (h).

(2) From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) and (h). From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 7 percent of the fee waivers provided pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992–93 fiscal year.

(j) The board of governors shall adopt regulations implementing this section.

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96

POSTSECONDARY EDUCATION—ASSUMPTION PROGRAM OF LOANS FOR EDUCATION—GENERAL AMENDMENTS

CHAPTER 72

A.B. No. 1118

AN ACT to amend Sections 66025, 69615.6, 69618.1, 69618.2, 69618.3, and 76300 of the Education Code, relating to postsecondary education, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State July 6, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1118, Reyes. Postsecondary education: systemwide fees: Graduate Assumption Program of Loans for Education.

(1) Existing law provides for a public postsecondary educational system in this state, which consists of the University of California, the California State University, and the California Community Colleges.

Existing law requires systemwide fees charged to resident undergraduate students at the University of California and the California State University to be reduced for the 1998–99 fiscal year by 5% below the level charged during the 1997–98 fiscal year, and, for the 1999–2000 fiscal year, to be at the same level as for the 1998–99 fiscal year.

This bill would require systemwide education and registration fees charged to resident undergraduate students at the University of California and the California State University for the 1999–2000 fiscal year to be reduced by 5% below the level charged for those resident students for the 1998–99 fiscal year.

(2) Existing law establishes the Assumption Program of Loans for Education, under which an applicant enrolled in a participating institution of postsecondary education, or who agrees to participate in a qualifying teacher training program, is eligible to receive a loan assumption warrant upon completing a specified period of teaching in a public elementary or secondary school. Existing law provides that, for the 1998–99 school year, and each school year thereafter, the Student Aid Commission is required to issue warrants for the assumption of up to 4,500 loans under this program.

This bill would require the commission to issue warrants for the assumption of up to 5,500 loans each school year, commencing with the 1999–2000 school year. The bill would require, beginning with the 2000–01 school year, and each school year thereafter, the commission to issue up to 100 of those warrants for the assumption of student loans for applicants who agree to teach in school districts serving rural areas.

(3) Existing law establishes the Graduate Assumption Program of Loans for Education, under which an applicant enrolled in a participating institution of postsecondary education, and who agrees, upon graduation, to teach full-time at a California college or university, is eligible to receive a conditional warrant for loan assumption, to be redeemed pursuant to a prescribed procedure upon becoming employed as a full-time teacher at a California college or university.

The bill would make persons who render the equivalent of full-time service by teaching part-time at more than one California college or university eligible to participate in the program.

(4) Existing law establishes the fee charged per unit per semester charged to resident undergraduate students at the California Community Colleges at $13, except that for the 1998–99 and 1999–2000 academic years the fee per unit per semester is $12.

This bill would reduce this fee to $11 per unit per semester, effective with the fall term of the 1999–2000 academic year.

(5) The bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 66025 of the Education Code is amended to read:

66025. (a) * * * Systemwide fees charged to resident undergraduate students at the University of California and the California State University shall be reduced for the 1998–99 fiscal year by 5 percent below the level charged during the 1997–98 fiscal year, and the systemwide fees charged to those students for the 1999–2000 fiscal year shall be * * *reduced by 5 percent below the level charged during the 1998–99 fiscal year. Systemwide education and registration fees charged to resident graduate students at the University of California and the California State University for the 1999–2000 fiscal year shall be reduced by 5 percent below the level charged those resident students for the 1997–98 fiscal year. This subdivision does not apply to resident students pursuing a course of study leading to a professional degree who are subject to a supplemental fee pursuant to the policy of the University of California.

* * *

(b) No provision of this section shall apply to the University of California except to the extent that the Regents of the University of California, by appropriate resolution, make that provision applicable.

SEC. 2. Section 69615.6 of the Education Code is amended to read:

69615.6. (a) Beginning no later than the 1986–87 school year, and each school year thereafter * * *up to and including the 1997–98 school year, the commission shall issue warrants for the assumption of up to 500 student loans for program participants eligible under this article.

(b) For the 1998–99 school year, the commission shall issue warrants for the assumption of up to 4,500 student loans for program participants eligible under this article.

(c) For the 1999–2000 school year, and each school year thereafter, the commission shall issue warrants for the assumption of up to 5,500 student loans for program participants eligible under this article.

(d) Commencing with the 2000–01 school year, and each school year thereafter, up to 100 of the 5,500 warrants issued pursuant to subdivision (c), shall be issued for the assumption of student loans for applicants who agree to teach in school districts serving rural areas.

(e) The issuance of warrants shall be subject to funding to be provided in the Budget Act for each fiscal year. * * *

SEC. 3. Section 69618.1 of the Education Code is amended to read:

69618.1. (a) Program participants shall meet all of the following eligibility criteria prior to selection in the program and must continue to meet these criteria, as appropriate, during the payment periods:

(1) The participant shall be a United States citizen or eligible noncitizen.

(2) The participant shall be a California resident attending an eligible school or college in the state.

(3) The participant shall be making satisfactory academic progress.

(4) The participant shall have complied with United States Selective Service requirements.

(5) The participant shall not owe a refund on any state or federal educational grant or have delinquent or defaulted student loans.

(b) Any person enrolled in an institution of postsecondary education and participating in the loan assumption program set forth in this article may be eligible to receive a conditional warrant for loan assumption, to be redeemed pursuant to Section 69618.2 upon becoming employed as a full-time faculty member at a California college or university or the equivalent of full-time service as a faculty member employed part-time at two or more California colleges or universities.

(c)(1) The commission shall award warrants to students with demonstrated academic ability and financial need, as determined by the commission pursuant to Article 1.5 (commencing with Section 69503).

(2) The applicant shall have completed a baccalaureate degree program or be enrolled in an academic program leading to a graduate level degree.

(3) The applicant shall be currently enrolled in or admitted to a program in which he or she will be enrolled in a full-time course of study each academic term as defined by an eligible institution. The applicant shall agree to maintain * * *satisfactory academic progress.

(4) The applicant shall have been judged by his or her postsecondary institution to have outstanding ability on the basis of criteria that may include, but need not be limited to, any of the following:

(A) Grade point average.

(B) Test scores.

(C) Faculty evaluations.

(D) Interviews.

(E) Other recommendations.

(5) In order to meet the costs of obtaining a graduate degree, the applicant shall have received, or be approved to receive, a loan under one or more of the following designated loan programs:

(A) The Federal Family Education Loan Program (20 U.S.C. Sec. 1071 et seq.).

(B) Any loan program approved by the commission.

(6) The applicant shall have agreed to teach on a full-time basis at * * *one or more accredited California colleges or universities for at least three consecutive years after obtaining a graduate degree.

(d) A person participating in the program pursuant to this section shall not receive more than one warrant.

SEC. 4. Section 69618.2 of the Education Code is amended to read:

69618.2. The commission shall redeem an applicant's warrant and commence loan assumption payments as specified in Section 69618.3 upon verification that the applicant has fulfilled all of the following:

(a) The applicant has received a graduate degree from an accredited, participating California institution.

(b) The applicant has provided the equivalent of full-time instruction at * * *one or more regionally accredited California colleges or universities for one academic year or the equivalent.

(c) The applicant has met the requirements of the warrant and all other conditions of this article.

SEC. 5. Section 69618.3 of the Education Code is amended to read:

69618.3. The terms of the loan assumptions granted under this article shall be as follows, subject to the specific terms of each warrant:

(a) After a program participant has completed one academic year, or the equivalent of teaching, at * * *one or more regionally accredited, eligible California colleges or universities, the Student Aid Commission shall assume up to two thousand dollars ($2,000) of the participant's outstanding liability under one or more of the designated loan programs. The initial year of eligible teaching must begin within 10 years of receiving an initial conditional warrant from the commission.

(b) After the program participant has completed two consecutive academic years, or the equivalent of teaching, at * * *one or more regionally accredited California colleges or universities, the commission shall assume up to an additional two thousand dollars ($2,000) of the participant's outstanding liability under one or more of the designated loan programs, for a total loan assumption of up to four thousand dollars ($4,000).

(c) After a program participant has completed three consecutive academic years, or the equivalent of teaching, at * * *one or more regionally accredited California colleges or universities, the commission shall assume up to an additional two thousand dollars ($2,000) of the participant's outstanding liability under one or more of the designated loan programs, for a total loan assumption of up to six thousand dollars ($6,000).

SEC. 6. Section 76300 of the Education Code is amended to read:

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b)(1) The fee prescribed by this section shall be twelve dollars ($12) per unit per semester, effective with the fall term of the 1998-99 academic year, and eleven dollars ($11) per unit per semester effective with the fall term of the 1999-2000 academic year.

(2) The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and also shall proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84757.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(3) Students enrolled in credit contract education courses pursuant to Section 78021, if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting and if these students are not included in the calculation of the average daily attendance of that district.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. The governing board of a community college district also shall waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, * * *refers to a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i)(1) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) and (h).

(2) From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) and (h). From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 7 percent of the fee waivers provided pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992–93 fiscal year.

(j) The board of governors shall adopt regulations implementing this section.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary statutory changes to implement the Budget Act of 1999 with respect to the funding of higher education as soon as possible, it is necessary that this act take effect immediately.

SCHOOLS AND SCHOOL DISTRICTS—ENGLISH LANGUAGE AND INTENSIVE LITERACY PROGRAM—KINDERGARTEN TO GRADE TWELVE

CHAPTER 71

S.B. No. 1667

AN ACT to amend Sections 313, 2550, 8278, 10551, 10554, 10555, 32228, 32228.1, 33050, 41203.1, 47652, 48664, 49550.3, 54743, 54744, 54745, 54746, 54747, 54748, 54749, 54749.5, 76300, 87885, and 92820 of, to add Sections 2568, 42238.23, and 52052.3 to, to add and repeal Chapter 5 (commencing with Section 420) of Part 1 of, and to add Chapter 4 (commencing with Section 14550) to Part 9 of, the Education Code, to amend Section 6516.6 of, to add Chapter 3.10 (commencing with Section 15820.80) to Part 10b of Division 3 of Title 2 of, and to add and repeal Section 15820.84 of, the

Government Code, and to add Section 10299 to the Public Contract Code, relating to government, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State July 5, 2000.]

I am signing Senate Bill 1667. However, I am deleting Section 41,reducing the appropriations made in Section 42 by a total of $17,566,000, and reducing the appropriations made in Section 43 by a total of $3,626,000. These appropriations are being eliminated because I have specific concerns with the projects. The specific reductions are as follows:

I am deleting Section 41 of this bill, which appropriates $8.9 million for county office of education equalization. This augmentation is being eliminated because the 2000-01 Budget continues discretionary funding increases from previous years for county offices of education and provides an increase of $48,000,000 in discretionary funding by eliminating the county offices of education deficit factor.

I am also reducing Section 42 of this bill from $32,852,000 to $15,286,000. The specific reductions are as follows:

I am reducing the appropriation in Section 42 by eliminating paragraph (6) of subdivision (a), which allocates $300,000 to the San Francisco Unified School District for expansion of arts education in grades K-5. Grants for this purpose are available on a competitive basis through the Department of Education, and I am therefore deleting this appropriation to fund higher competing priorities.

I am reducing the appropriation in Section 42 by reducing paragraph (7) of subdivision (a) from $500,000 to $400,000, to the Culver City Unified School District to repair the track at Culver City High School, in order to fund higher competing priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph (8) of subdivision (a), which allocates $10,000 to the Los Angeles Unified School District for a school-based/school-linked health program at the Maclay Middle School. I am reducing this appropriation in order to fund competing higher priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph (9) of subdivision (a), which allocates $10,000 to the Los Angeles Unified School District for a school-based/school-linked health program at the Pacoima Middle School. I am reducing this appropriation in order to fund competing higher priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph (11) of subdivision (a), which allocates $20,000 to the Manhattan Beach Unified School District for the purchase of equipment for teaching aids to reduce diversity intensity and increase cultural awareness at Mira Costa High School, to fund higher competing priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph (15) of subdivision (a), which allocates $100,000 to Ligget Elementary for establishment of a Parent Education Center. Grants are already available for this purpose through the Department of Education, pursuant to the Parental Involvement Program established pursuant to Chapter 734 of the Statutes of 1999. Additionally, support for this purpose should be provided from local resources.

I am reducing the appropriation in Section 42 by eliminating paragraph (18) of subdivision (a), which allocates $200,000 to the Sunnyvale Elementary School District for Project H.E.L.P. I am reducing this appropriation in order to fund competing higher priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph (19) of subdivision (a), which allocates $250,000 to the Lamont Elementary School District for portable classrooms. Funding for this purpose should be sought through the State Allocation Board process.

I am reducing the appropriation in Section 42 by eliminating paragraph (22) of subdivision (a), which allocates $450,000 to the Los Angeles Unified School District for the San Fernando High School Health Clinic. I am reducing this appropriation in order to fund competing higher priorities.

I am sustaining the appropriation of $500,000 in paragraph (23) of subdivision (a) of Section 42 for the Baldwin Park Unified School District's Drama, Reading, English, and Mathematics

(DREAM) project, on a one-time basis only, thus any future support for this project should be provided from local resources.

I am reducing the appropriation in Section 42 by reducing paragraph (24) of subdivision (a) from $500,000 to $200,000, to the Montebello Unified School District for natural gas powered delivery trucks, in order to fund higher competing priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph (25) of subdivision (a), which allocates $150,000 to the Elk Grove Unified School District for a Japanese language academy. I am deleting this appropriation to fund higher competing priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph (26) of subdivision (a), which allocates $500,000 to the Oakland Unified School District for a reading training program. The Budget Bill already includes significant funding for reading staff development, reading programs, and remedial instruction in reading, and I am therefore unable to support this request.

I am reducing the appropriation in Section 42 by reducing the amount in paragraph (27) of subdivision (a), from $350,000 to $200,000 for allocation to the Burbank Unified School District to continue a literacy program on a one-time basis only, thus any future support for this project should be provided from local resources.

I am sustaining the appropriation of $300,000 in paragraph (28) of subdivision (a) of Section 42 for the Temple City Unified School District's Arts Academy, on a one-time basis only, future support for this project should be provided from local resources.

I am reducing the appropriation in Section 42 by eliminating paragraph (29) of subdivision (a), which allocates $400,000 to the Alum Rock Union Elementary School District for a mathematics/science center that would provide training and science/mathematics supplies to teachers. The 2000-01 Budget already contains $246 million for the Staff Development Day Buy-Out program and $108 million for a variety of Professional Development Institutes, including institutes in elementary mathematics and algebra, to help improve teacher's skills and expertise in classroom instruction.

I am reducing the appropriation in Section 42 by eliminating paragraph (30) of subdivision (a), which allocates $50,000 to the Santa Monica Malibu Unified School District for an after school youth program at Malibu High School. I am reducing this appropriation in order to fund competing higher priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph (32) of subdivision (a), which allocates $200,000 to the Tahoe-Truckee Unified School District for the North Tahoe Youth Center. I am reducing this appropriation in order to fund competing higher priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph (34) of subdivision (a), which allocates $675,000 to the Los Alamitos Unified School District for reimbursement for class size reduction costs. Funding for this purpose should be sought through the class size reduction facilities program.

I am reducing the appropriation in Section 42 by reducing the amount in paragraph (35) of subdivision (a), from $10,000,000 to $5,000,000 for allocation to the Alvord Unified School District for construction costs associated with the Center for Primary Education. The balance of funding required for this project should be sought through the School Facilities Program or from local resources.

I am reducing the appropriation in Section 42 by eliminating paragraph(36) of subdivision (a), which allocates $900,000 to the Riverside County Office of Education for the purpose of screening and diagnosing pupils for Scotopic Sensitivity Syndrome, to fund higher competing priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph(37) of subdivision (a), which allocates $500,000 to the Saugus Union Elementary School District for costs associated with testing air quality in portable classrooms. As indoor air quality in portable classrooms is an important issue, the Budget provides $1 million to the Air Resources Board and the State Department of Health Services for purposes of conducting a comprehensive study and review of the environmental health conditions, including air quality, in portable classrooms.

I am reducing the appropriation in Section 42 by eliminating paragraph (38) of subdivision (a), which allocates $275,000 to the Inyo County Office of Education for facilities costs. Funding for this project may be available through the School Facilities Program.

I am reducing the appropriation in Section 42 by eliminating paragraph (39) of subdivision (a), which allocates $500,000 to the Calaveras Unified School District for swimming pool renovations, in order to fund higher competing priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph(40) of subdivision (a), which allocates $27,000 to the Alta-Dutch Flat Union Elementary School District for Afternoon Transportation Services, in order to fund higher competing priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph(43) of subdivision (a), which allocates $469,000 to the Mariposa Unified School District for declining ADA. As current law provides sufficient provisions to cushion the loss of ADA for school districts, I am reducing this appropriation in order to fund competing higher priorities.

I am reducing the appropriation in Section 42 by reducing the amount in paragraph (44) of subdivision (a), from $568,000 to $285,000 for the Chatom Union Elementary School District. The original augmentation included funding for declining ADA and for the purchase of school buses. As current law provides sufficient provisions to cushion the loss of ADA for school districts, I am reducing this appropriation maintaining only the funding for the purchase of school buses.

I am reducing the appropriation in Section 42 by eliminating paragraph (45) of subdivision (a), which allocates $3,700,000 to the Clovis Unified School District for the Central Valley Applied Agriculture and Technology Center. I am deleting this appropriation to fund higher competing priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph (47) of subdivision (a), which allocates $112,000 to the Alameda County Office of Education for the Smart Kids, Safe Kids program. I am reducing this appropriation in order to fund competing higher priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph (48) of subdivision (a), which allocates $475,000 to the Millbrae Elementary School District for declining ADA. As current law provides sufficient provisions to cushion the loss of ADA for school districts, I am reducing this appropriation in order to fund competing higher priorities.

I am reducing the appropriation in Section 42 by eliminating paragraph (52) of subdivision (a), which allocates $160,000 to the Soledad Enrichment Charter School for Operation Y.E.S. I am reducing this appropriation in order to fund competing higher priorities.

I am reducing the appropriation in Section 42 by reducing the amount in paragraph (55) of subdivision (a), from $5,000,000 to $3,700,000 for the Clovis and Fresno Unified School Districts for the Center for Advanced Research and Technology. I am reducing this appropriation to fund higher competing priorities.

I am also reducing Section 43 of this bill by $3,626,000, from $8,576,000 to $4,950,000. The specific reductions are as follows:

I am reducing the appropriation in Section 43 by eliminating paragraph (1) of subdivision (a) which allocates $575,000 for preliminary plans, working drawings and construction for the Santa Clarita Community College District, College of the Canyons Welding Technology and Manufacturing Technology Lab. Funding for this project is premature as the project has circumvented the Chancellor's Office review and priority setting process, and has not been identified by the District as a priority on their five-year capital outlay plan.

I am reducing the appropriation in Section 43 by eliminating paragraph (2) of subdivision (a) which allocates $551,000 for the working drawings phase of the Victor Valley Community College District, Victor Valley College Advanced Technology Building. Funding for this project is premature as the funding of previous phases was predicated upon the commitment of the District that funding for subsequent phases would not be sought until the 2001-2002 fiscal year.

I am reducing the appropriation in Section 43 by eliminating paragraph (4) of subdivision (a), which allocates $1,500,000 to the Copper Mountain Community College District for transition and technology costs. Copper Mountain will be fully operational as a district and

receive local assistance apportionment funding in the 2000-01 fiscal year. Therefore, the need for additional district-specific funding is unclear.

I am reducing the appropriation in Section 43 by reducing the allocation in paragraph (7) for the acquisition of land for the future construction of the Los Angeles Community College District (LACCD), Los Angeles City College Satellite Center from $4,000,000 to $3,000,000. In addition, I am restricting expenditure of the remaining $3,000,000. The Los Angeles Community College District has not yet demonstrated the programmatic necessity of a satellite center. Prior to the expenditure of these funds the LACCD and the California Community Colleges (CCC) must receive the requisite approvals for the satellite center from the California Postsecondary Education Commission (CPEC). Further, the need for a satellite center must be justified and demonstrated to the Department of Finance (DOF). The proposal submitted to the DOF must identify and demonstrate the programmatic need for the satellite center, the annual enrollment and full time equivalents served, the costs of the center both during development and once fully developed, and the full scope and cost of the acquisition and construction proposal for the center. The submittal to DOF must demonstrate that the center will meet the programmatic needs of both the district and the CCC and additionally substantiate that the space needs for the new center cannot be accommodated in existing facilities and campuses in the district. Finally, the funds will only be available for expenditure upon certification from the seller that the site is an environmentally clean site and that the owner will accept liability for any hazardous waste on the site or ground water contamination. Current and future resources should not be allocated on an ad hoc basis, rather, allocated to projects that have been developed in the context of the Administration's overall priorities, cost standards, guidelines, instructional purposes, enrollment related needs, and scope standards and secured the appropriate programmatic and site review and approval.

LEGISLATIVE COUNSEL'S DIGEST

SB 1667, Alpert. Education and government.

(1) Existing law requires a school district that has one or more pupils who are English learners to assess each pupil's English language development in order to determine the pupil's level of proficiency. Existing law, commencing with the 2000–01 school year, requires the assessment to be conducted upon initial enrollment, and annually, thereafter, on the anniversary of the pupil's initial identification by the school district as being an English learner.

This bill would, instead, require that the annual assessment be conducted upon initial enrollment during a period of time determined by the Superintendent of Public Instruction and the State Board of Education.

(2) Existing law establishes the English Language Acquisition Program designed for pupils enrolled in grades 4 to 8, inclusive, under which a school district conducts an academic assessment of English language learners, provides a program for English language development instruction, provides supplemental instructional support, and coordinates services and funding sources available to English language learners.

This bill, in addition, would establish, until January 1, 2004, the English Language and Intensive Literacy Program for pupils in kindergarten and grades 1 to 12, inclusive. The bill would require the Superintendent of Public Instruction to develop, and the State Board of Education to approve guidelines for implementing the program. The bill would require that at least 90% of the funds received for the program be expended on direct services or materials for English language learners. The bill would require that an independent evaluation of the program be completed and submitted to the appropriate committees of the Legislature.

(3) Existing law requires the Superintendent of Public Instruction to make certain computations to determine the amount to be allocated for direct services and other purposes provided by county superintendents of schools and to determine each county superintendent's revenue limit for county superintendent responsibilities and direct services. Existing law requires the Superintendent of Public Instruction to apportion equalization funding for the 1999–2000 fiscal year to certain county offices of education in prescribed amounts.

This bill would require the Superintendent of Public Instruction to compute a rate per unit of average daily attendance for the 2000–01 fiscal year for certain county offices of education for purposes of equalizing funding for those county offices of education.

(4) Existing law requires child development appropriations to be available for expenditure for 3 years, except that funds remaining unencumbered at the end of the first fiscal year are required to revert to the General Fund.

This bill would exempt from the requirement that child development appropriations be available for 3 years appropriations for the After School Learning and Safe Neighborhoods Partnerships Program and for CalWORKs child care.

(5) Existing law requires the State Department of Education to convene an advisory committee to the governing board of the County Office Fiscal Crisis and Management Assistance Team on establishing telecommunication standards to support the efficient sharing of school business and administrative information and requires that the advisory committee be disbanded as of December 31, 1995. Existing law, until January 1, 2001, establishes the Educational Telecommunication Fund in order for the governing board to carry out its responsibilities regarding the telecommunication standards and requires that the amount of any offset made to the principal apportionments of school districts because the apportionments were not in accordance with law be deposited in the fund for a maximum deposit of $1,000,000. Existing law requires the governing board to make annual reports to the Governor, the Legislature, the State Board of Education, and the Superintendent of Public Instruction.

This bill would delete the date that the committee is required to be disbanded and would change to January 1, 2002, the date upon which the provisions regarding the Educational Telecommunication Fund become inoperative. The bill would also increase the maximum amount that may be annually deposited in the fund to $10,000,000 and require the annual report to be given also to the Department of Finance.

(6) Existing law authorizes the revenue limit of a school district to be reduced by the decreased employer contributions to the Public Employees' Retirement System resulting from the enactment of specified legislation and to offset that amount by any increase in those contributions resulting from subsequent changes in employer contribution rates.

This bill would, notwithstanding any other provision of law, prohibit excluding, from the calculations of the reduction described above, any persons providing services to local education agencies through use of a joint powers authority involving the local education agencies if those persons would otherwise be considered school employees and subject the local educational agency to the reduction described above.

(7) Existing law establishes the Carl Washington School Safety and Violence Prevention Act, which requires the Superintendent of Public Instruction to provide funds to school districts serving pupils in any of grades 8 to 12, inclusive, for the purpose for promoting school safety and reducing schoolsite violence.

This bill would expand the School Safety and Violence Prevention program to school districts that serve pupils in kindergarten or any of grades 1 to 12, inclusive.

(8) Existing law authorizes the governing board of a school district and a county board of education to request the State Board of Education to waive provisions of the Education Code and implementing regulations adopted by the State Board of Education except certain enumerated provisions and requires the State Board of Education to approve requests for waivers unless the board makes certain findings.

This bill, in addition, would prohibit the request for, and the granting of, a waiver of provisions of the Leroy F. Greene School Facilities Act of 1998.

(9) Existing law requires, for the 1990–91 fiscal year and each fiscal year thereafter, that moneys to be applied by the state for the support of school districts and community college districts be distributed in accordance with certain calculations. This provision does not apply to the fiscal years between the 1992–93 fiscal year and the 1999–2000 fiscal year, inclusive.

This bill would, instead, make this provision inapplicable to the fiscal years between the 1992–93 fiscal year and the 2000–01 fiscal year, inclusive.

(10) Existing law establishes the State School Fund, provides for the annual transfer from the fund for support of the public schools, and provides for related financial and compliance audits. Existing law authorizes formation of joint powers authorities for local educational purposes.

This bill would prohibit a local education agency from avoiding obligations, or from shifting financial obligations to the state through participation in a joint powers authority.

Existing law, regarding determination of the base revenue limit for funding public schools, requires prescribed computations to be made, including, but not limited to, computations regarding employer retirement contributions.

This bill would require employees providing services to a joint power authority to be considered school employees for the purposes of these retirement computations.

(11) Existing law provides for the establishment of charter schools if certain conditions are met, and establishes a method for funding charter schools. Existing law makes a charter school that is in its first year of operation eligible for certain advance apportionments during the 1999–2000 fiscal year.

This bill would make this provision applicable to a charter school in its first year of operation in any fiscal year.

(12) Existing law authorizes the governing board of a school district to establish one or more community day schools for expelled, probation referred, school attendance review board referred, or district referred pupils. A school district that operates a community day school receives $4 times the number of hours, not to exceed 2, per schoolday that a community day school pupil remains at the community day school under appropriate supervision.

This bill would adjust the $4 amount annually commencing in the 2000–01 fiscal year for inflation.

(13) Existing law requires the State Department of Education to provide information and limited financial assistance to encourage school breakfast program startup and expansion into all qualified schools. One eligibility criteria is that 30% of the school enrollment apply and qualify for free and reduced-price meals. Existing law limits the amount of a grant to $10,000 per schoolsite for nonrecurring expenses incurred in initiating school breakfast programs.

This bill would authorize the grants also to be awarded for the expansion of school breakfast programs and the initiation and expansion of summer food service programs. The bill would change the eligibility criteria to require that 20% of the school enrollment apply and qualify for free and reduced-price meals. The bill would allow grant funds to be used for computer point-of-service systems and the purchase of vehicles for transporting food.

(14) Existing law establishes the Public School Performance Accountability Program consisting of an Academic Performance Index, an Immediate Intervention/Underperforming Schools Program, and a Governor's High Achieving/Improving Schools Program. The Public School Performance Accountability Program requires the Superintendent of Public Instruction, with approval of the State Board of Education, to develop the Academic Performance Index (API), consisting of a variety of indicators, including pupil test scores, to be used to measure the performance of schools.

This bill would include in the API the test scores of pupils who are in the first year of enrollment in a high school, but who, in the prior year, were enrolled in an elementary school district that normally matriculates to the high school district.

(15) Existing law establishes the California School Age Families Education Program (Cal-SAFE), a comprehensive, continuous, and community linked school-based program that focuses on youth development and dropout prevention for pregnant and parenting pupils and on child care and development services for their children for the purpose of improving results for pupils and their children.

This bill would delay the transition to the Cal-SAFE program for one year.

Existing law requires a county service coordination plan that provides for educational and related support services to pregnant and parenting teens and their children to include certain information that is to be collected according to the zip codes of individuals.

This bill would replace tracking by zip code with a method to be determined by the State Department of Education and increase the time in which the county service coordination plan must be submitted to the department.

Existing law authorizes the governing board of a school district or county superintendent of schools, individually, or jointly as a consortium, to submit an application to establish and maintain a Cal-SAFE program.

This bill would eliminate this authorization as to a consortium of governing boards of school districts or county superintendents of schools, or both.

Existing law requires the State Department of Education to submit a report every 5 years to the Joint Legislative Budget Committee and appropriate policy and fiscal committees of the Legislature, commencing March 1, 2004.

This bill would require the reports to commence on March 1, 2005.

Existing law provides state funding for a school district or county superintendent of schools participating in Cal-SAFE pursuant to a formula based on units of average daily attendance generated by pupils served. Existing law provides for the maintenance and use of state funds received under the Cal-SAFE program.

This bill would revise the amount of state funds provided to school districts and county superintendents participating in the Cal-SAFE program and add other related provisions pertaining to the computation of average daily attendance. The bill would authorize school districts and county offices of education to submit claims for a one-time service level exemption from the initial allocation reserved for the program for startup costs for the opening of child care and development sites. The bill would authorize a charter school to participate in Cal-SAFE programs and be eligible for funding.

Existing law requires pregnant minors programs that continue to operate as Cal-SAFE programs to continue the actual enrollment and authorizes them to continue to receive certain levels of funding.

This bill would authorize those pregnant minors programs to continue to claim funding up to certain amounts and make provisions for county offices of education that choose to retain their pregnant minor program revenue limit rather than convert to Cal-SAFE revenue limits.

(16) Existing law requires the waiver of student fees charged by community college districts for students who demonstrate financial need or are otherwise eligible for the waiver. Existing law requires the Board of Governors of the California Community Colleges to allocate to community college districts for determining financial need and delivering student financial aid services an amount based on the amount of fees waived.

This bill would require the above allocation to be made based on the number of credit units for which fees are waived, as specified.

(17) Existing law requires the Chancellor of the California Community Colleges to apportion to each district that establishes a part-time faculty program, as specified, an amount equal up to 50% of the total costs of the compensation paid for office hours of part-time faculty.

This bill would instead require the Chancellor to apportion to each of these districts an amount equal to $1 for every $2 that the district provides in compensation under the program.

(18) Existing law established in the Neurology Department at the University of California, San Francisco, a research project on substance abuse that has as its major goal the identification of new pharmaceutical agents to prevent or treat alcohol and drug addiction. Existing law states the intent of the Legislature that dedicated state funding for this research shall be provided for 5 years and be appropriated in the annual Budget Act.

This bill would state that it is further the intent of the Legislature that the augmentation of $1,000,000 per year appropriated in the Budget Act of 2000 for this program be used for permanent ongoing support of the program.

(19) Existing law authorizes the State Public Works Board, subject to statutory approval, to finance the acquisition of equipment, or construction, renovation, and equipping of facilities, or both, on sites within the University of California, the California State University, the California Maritime Academy, or the community college districts, utilizing lease or lease-

purchase agreements. Existing law authorizes the State Public Works Board to finance these projects through the issuance of certificates, revenue bonds, negotiable notes, or bond anticipation notes.

This bill would authorize the Regents of the University of California to acquire, design, construct, or renovate acute care hospital buildings on a site or sites owned by, or subject to a lease or option to purchase held by, the regents to implement its seismic safety compliance plan. The bill would authorize, until June 30, 2010, the State Public Works Board to issue up to $600,000,000 in revenue bonds, negotiable notes, or negotiable bond anticipation notes pursuant to specified provisions of existing law to finance the acquisition, design, construction, or renovation of these acute care hospital buildings to implement the seismic safety compliance plan. The bill would authorize the State Public Works Board and the regents to borrow funds for project costs, excluding preliminary plans and working drawings, from the Pooled Money Investment Account. The bill would authorize the board and the regents, upon mutual agreement, to lease any properties of the regents to facilitate the financing authorized by these provisions.

(20) Existing law authorizes a joint powers authority to issue bonds in order to (1) purchase obligations of local agencies or make loans to local agencies to finance the local agencies' unfunded actuarial pension liability or to purchase or make loans to finance the purchase of delinquent assessments or taxes or (2) acquire any or all right, title, or interest of a local agency in and to the enforcement and collection of delinquent and uncollected property taxes, assessments, and other receivables placed for collection on the property tax rolls.

This bill would make the authority described in (2) above inoperative through June 30, 2001.

(21) Existing law authorizes the Department of General Services to establish the California Multiple Awards Schedule program, which permits state agencies to purchase information technology services from vendors that hold federal contracts.

This bill would authorize the Director of General Services to enter a variety of types of contracts for information technology services, including using master agreements, multiple award schedules, cooperative agreements, and other types of agreements.

(22) This bill would provide that, notwithstanding any other provision of law, the cost-of-living adjustment for certain education-related items of the Budget Act of 2000 is 3.17% and would provide that these funds are in lieu of the amounts that otherwise would be appropriated.

(23) This bill would appropriate $25,000,000 from the General Fund for transfer by the Controller to the Child Care Facilities Revolving Fund and would appropriate $175,000,000 from the General Fund to the Secretary of Education for the Education Technology Grant Program. These funds would be applied toward the minimum funding requirement for school districts and community college districts imposed by Section 8 of Article IV of the California Constitution for the 1999–2000 fiscal year.

(24) This bill would appropriate $100,000,000 to the Chancellor of the California Community Colleges to provide one-time grants to districts for the 2000–01 fiscal year. These funds would be applied toward the minimum funding requirement for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution for the 1999–2000 fiscal year.

(25) This bill would appropriate $250,000,000 to the Superintendent of Public Instruction for allocation to school districts, county offices of education, and charter schools on a competitive basis to carry out the English Language and Intensive Literacy Program. These funds would be applied toward the minimum funding requirement for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution for the 1999–2000 fiscal year.

(26) This bill would appropriate $139,000,000, as a contingency expenditure, to be authorized by the Department of Finance for transfer to the Controller as necessary for the reimbursement of state-mandated cost claims submitted by school districts and county offices of education. These funds would be applied toward the minimum funding requirement for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution for the 1999–2000 fiscal year.

(27) This bill would appropriate $425,000,000 from the General Fund for allocation by the Superintendent of Public Instruction for the purpose of providing funds to each regular public school in the state and for each school district, county office of education, and charter school. The allocation to regular public schools would be made on the basis of units of average daily attendance and used in accordance with proposals of schoolsite councils, schoolwide advisory groups, or school support groups, as approved by school district governing boards, as prescribed. The allocation to school districts, county offices of education, and charter schools would be required to be used for school safety, deferred maintenance, technology staff development, education technology connectivity, or facility improvements. These funds would be applied toward the minimum funding requirement for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution for the 1999–2000 fiscal year.

(28) The bill would appropriate $860,000,000 from the General Fund, for transfer by the Controller to Section A of the State School Fund, for allocation on a one-time basis by the Superintendent of Public Instruction to school districts, county offices of education, and charter schools for the Academic Performance Index Schoolsite Employees Performance Bonus.

As a condition of receiving these funds, a schoolsite would be required to expend 50% of the funds to provide one-time bonuses, to its employees, to be divided equally among all schoolsite employees on a full-time equivalent basis. The other 50% would be used at the discretion of the schoolsite for any one-time purposes. These funds would be applied toward the minimum funding requirements for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution for the 1999–2000 fiscal year.

(29) This bill would appropriate $8,900,000 from the General Fund to the Superintendent of Public Instruction for purposes of allocating funds to county offices of education pursuant to provisions relating to the equalization of revenue limits. These funds would be applied toward the minimum funding requirements for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution for the 2000–01 fiscal year.

(30) This bill would appropriate $32,852,000 from the General Fund to the Superintendent of Public Instruction for allocations in various amounts on a one-time basis to various county offices of education and school districts for specified purposes.

(31) This bill would appropriate $8,567,000 from the General Fund to the Chancellor of the California Community Colleges for allocations in various amounts on a one-time basis to various community college districts and community colleges for specified purposes. The funds appropriated in (30) and this paragraph would be applied toward the minimum funding requirement for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution for the 1999–2000 fiscal year.

(32) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

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

SECTION 1. Section 313 of the Education Code is amended to read:

313. (a) Each school district that has one or more pupils who are English learners shall assess each pupil's English language development in order to determine the level of proficiency for the purposes of this chapter.

(b) The State Department of Education, with the approval of the State Board of Education, shall establish procedures for conducting the assessment required pursuant to subdivision (a) and for the reclassification of a pupil from English learner to proficient in English.

(c) Commencing with the 2000–01 school year, the assessment shall be conducted upon initial enrollment, and annually, thereafter, * * * during a period of time determined by the Superintendent of Public Instruction and the State Board of Education. The annual assessments shall continue until the pupil is redesignated as English proficient. The assessment shall primarily utilize the English language development test identified or developed by the Superintendent of Public Instruction pursuant to Chapter 7 (commencing

with Section 60810) of Part 33. Prior to completion of the English language development test, a school district shall use either an assessment instrument developed by the school district or an assessment recommended by the State Department of Education.

(d) The reclassification procedures developed by the State Department of Education shall utilize multiple criteria in determining whether to reclassify a pupil as proficient in English, including, but not limited to, all of the following:

(1) Assessment of language proficiency using an objective assessment instrument, including but not limited to, the English language development test pursuant to Section 60810.

(2) Teacher evaluation, including, but not limited to, a review of the pupil's curriculum mastery.

(3) Parental opinion and consultation.

(4) Comparison of the pupil's performance in basic skills against an empirically established range of performance in basic skills based upon the performance of English proficient pupils of the same age, that demonstrates whether the pupil is sufficiently proficient in English to participate effectively in a curriculum designed for pupils of the same age whose native language is English.

(e) It is the intent of the Legislature that nothing in this section precludes a school district or county office of education from testing English language learners more than once in a school year if the school district or county office of education chooses to do so.

SEC. 2. Chapter 5 (commencing with Section 420) is added to Part 1 of the Education Code, to read:

Chapter 5. English Language and Intensive Literacy Program

420. This chapter shall be known and may be cited as the English Language and Intensive Literacy Program.

421. The English Language and Intensive Literacy Program is hereby established and shall be administered by the Superintendent of Public Instruction. The Superintendent of Public Instruction shall develop, and the State Board of Education shall approve, guidelines for implementing this chapter, including, but not limited to, guidelines for reviewing and approving English Learner Literacy grants.

422. (a) A school district, county office of education, or charter school that maintains kindergarten or any of kindergarten or grades 1 to 12, inclusive, may apply for a grant of four hundred dollars ($400) per pupil to operate a program that provides multiple, intensive English language and literacy opportunities for pupils in any one or combination of kindergarten and grades 1 to 12, inclusive, with an emphasis on mastery of English language and literacy skills that will allow pupils to significantly improve achievement in the classroom. Funding for the program established pursuant to this chapter shall be provided in Section 37 of the act adding this chapter.

(b) Pupils shall remain eligible for participation in the program established pursuant to this chapter for three calendar months after completing grade 12.

(c) The purposes of the program established pursuant to this chapter include, but are not limited to, both of the following:

(1) To provide pupils who are experiencing difficulty learning English and difficulty in reading with increased instructional opportunities.

(2) To provide stimulating and enriching opportunities for all pupils to increase their English and literacy skills.

(d)(1) Instruction provided pursuant to the program shall be consistent with the standards for a comprehensive English language development instruction program that is research-based, as described in subparagraphs (A) and (B) of paragraph (4) of subdivision (b) of Section 44259, and shall include all of the following components:

(A) The study of organized, systematic, explicit skills, including phonemic awareness, direct, systematic explicit phonics, and decoding skills.

(B) A strong literature, language, and comprehension component with a balance of oral and written language.

(C) Ongoing diagnostic techniques that inform teaching and assessment.

(D) Early intervention techniques.

(2) Instruction provided pursuant to the program shall be consistent with state-adopted academic content standards and with the curriculum framework on English language arts and the English language development standards adopted by the State Board of Education.

(3) As a condition of receiving funds for this program, participants shall use the English Language Development exam, developed pursuant to Section 60811, to evaluate pupil improvement toward becoming fully English proficient, if this assessment is available. To the extent that the English Language Development exam is not available, participants may use other assessment instruments that measure English language proficiency if the instruments have been proven to be valid and reliable.

423. (a) Except as provided in subdivision (b), intensive English and literacy instruction provided pursuant to this chapter shall be offered four hours per day for six continuous weeks during the summer or intersession.

(b) Due to facilities constraints or for other educational reasons, a school may offer intensive instruction before school, after school, on Saturdays, or during intersession, or in a combination of summer school, after school, Saturday, or intersession instruction. Schools that utilize an after-school program to provide these services may establish an age appropriate schedule that still provides 120 hours of instruction.

(c) It is the intent of the Legislature that school districts, county offices of education, or charter schools that operate the program established by this chapter utilize credentialed persons and, to the extent possible, persons holding appropriate authorization to teach limited-English pupils. Tutors and other assistants may provide services to English language learners, if they are working under the supervision of instructors who fulfill the requirements of Sections 44830 and 44831, and who may fulfill the requirements of Section 44253.7. Tutors and other assistants serving English language learners under this chapter shall also have appropriate training in the teaching of English language learners.

(d) Notwithstanding Section 49550 or any other provision of law, a school district, county office of education, or charter school that operates a program pursuant to this chapter is not required to provide a meal or snack to pupils participating in the program.

424. (a) Any school district, county office of education, or charter school that serves English language learners may apply for funding under this chapter if they submit an application and a plan that meets the requirements set forth in subdivision (b) and certifies the English language learners are participating in the program outlined in the school plan.

(b) The application submitted pursuant to subdivision (a) for program participation shall include a plan for a classroom-based program of intensive English language instruction that will provide 120 hours of language and literacy instruction to English language learners enrolled in kindergarten or any of grades 1 to 12, inclusive, that is modeled after the intensive reading program, as authorized by Article 1 (commencing with Section 53025) of Chapter 16 of Part 28, including:

(1) The number and percentage of English language learners in the participating schools.

(2) The proposed schedule for providing 120 hours of instruction. Class schedules should be offered during summer, intersession breaks, after school, Saturdays or during the evening.

(3) A proposed program budget and a proposal that specifies the type of information that will be provided to the State Department of Education to verify that services were provided to English language learners.

(c) School districts, county offices of education, or charter schools that receive funding pursuant to this chapter shall spend at least 90 percent of program funds received for direct services or instructional materials for English language learners.

(d) To the extent possible, the Superintendent of Public Instruction shall provide a mix of grants to elementary schools, middle schools, and high schools in order to ensure that the results of the evaluation are applicable to all grade levels.

(e) Applications from prospective program participants shall be received by October 1, 2000.

(f) To the extent funding is available in subsequent years, applications must be received by October 1, and annually thereafter.

425. (a) The Superintendent of Public Instruction, with input from the Legislative Analyst's office, the Office of the Secretary of Education, and the Department of Finance, shall contract with an independent evaluator for the purpose of determining the effectiveness of this program, including, but not limited to, improving English language proficiency and identifying the most effective practices for teaching English language learners. The evaluation shall be submitted to the appropriate legislative committees, on or before November 1, 2003. If funds are needed for this purpose, it is the intent of the Legislature that funds be appropriated for this purpose in the annual Budget Act.

(b) The State Department of Education shall provide interim reports to the Legislature that include, but are not limited to, the following:

(1) The amount of funding allocated.

(2) The number of schools participating in the program.

(3) The number of English language learners participating in this program.

(c) The first interim report is due March 1, 2001. The second interim report is due March 1, 2002. The final interim report is due March 1, 2003. However, these interim reports shall only be required if funds are available for allocation for this program.

426. (a) The State Librarian, with input from the Legislative Analyst's office, the Office of the Secretary of Education, and the Department of Finance, shall contract with an independent evaluator to evaluate the portion of the English Language and Intensive Literacy Program that is administered by the State Library, as listed in Item 6120–212–0001 of Section 2.00 of the Budget Act of 2000. The evaluation shall determine the effectiveness of this program, including, but not limited to, improving English language proficiency and identifying the most effective practices for teaching English language learners and their families in improving English language proficiency.

(b) The State Librarian shall provide interim reports to the Legislature that include, but are not limited to, the following:

(1) The amount of funding allocated.

(2) The number of libraries or schools participating in the program.

(3) The number of English language learners participating in this program.

(4) The number of parents participating in the program.

(c) The first report is due March 1, 2001. The second report is due March 1, 2002. The final interim report is due March 1, 2003. However, these reports shall be required only if funds are available for allocation for this program.

427. (a) It is the intent of the Legislature that data developed through the English Language and Intensive Literacy Program be used to inform curriculum, instruction, assessment, research, and teacher preparation programs regarding use of the most effective practices for teaching English language learners.

(b) It is the intent of the Legislature that, once the most effective programs and processes have been identified, schools be required to incorporate those effective practices into the regular classroom instruction as a condition of receiving funds pursuant to Section 404.

(c) It is further the intent of the Legislature that this program be administered consistent with research-based strategies for teaching English language learners, as well as the English language for immigrant children, set forth in Chapter 3 (commencing with Section 300), as applicable.

428. This chapter shall become inoperative on July 1, 2003, and as of January 1, 2004, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 2550 of the Education Code is amended to read:

2550. For each fiscal year, the Superintendent of Public Instruction shall make the following computations to determine the amount to be allocated for direct services and other purposes provided by county superintendents of schools:

(a) For programs operated pursuant to subdivision (a) of Section 14054, the Superintendent of Public Instruction shall:

(1) Determine the allowances that county superintendents received per unit of average daily attendance in the prior fiscal year. The Superintendent of Public Instruction shall increase each amount by a percentage equal to the inflation allowance calculated for the current fiscal year pursuant to Section 2557.

(2) Multiply each amount determined in paragraph (1) by the actual number of units of average daily attendance in the prior fiscal year for programs maintained by each county superintendent. For purposes of this paragraph, the number of units of average daily attendance shall include only units generated by elementary districts with less than 901 units of average daily attendance, high school districts with less than 301 units of average daily attendance, and unified school districts with less than 1,501 units of average daily attendance within each county superintendent's jurisdiction.

(b) For programs operated pursuant to subdivision (b) of Section 14054, the Superintendent of Public Instruction shall:

(1)(A) For the 1999–2000 fiscal year, determine the rate per unit of average daily attendance calculated for each county office of education pursuant to subdivision (b) of Section 2567 and increase each rate by a percentage equal to the inflation allowance calculated in Section 2557.

(B) For the 2000–01 fiscal year, determine the rate per unit of average daily attendance calculated for each county office of education pursuant to subdivision (b) of Section 2568 and increase each rate by a percentage equal to the inflation allowance calculated in Section 2557.

(C) For the 2001–02 fiscal year and each fiscal year thereafter, determine the allowances that county superintendents received per unit of average daily attendance in the prior fiscal year. The Superintendent of Public Instruction shall increase each amount by a percentage equal to the inflation allowance calculated for the current fiscal year pursuant to Section 2557.

(2) Multiply each amount determined in paragraph (1) by the units of average daily attendance in the current fiscal year for programs for kindergarten and grades 1 to 12, inclusive, maintained by each county superintendent. For the purposes of this paragraph, average daily attendance shall include only the total units of average daily attendance credited to all elementary, high school, and unified school districts within each county superintendent's jurisdiction and to the county superintendent.

SEC. 4. Section 2568 is added to the Education Code, to read:

2568. (a) To compute, pursuant to subdivision (b), a rate per unit of average daily attendance for county offices of education for the 2000–01 fiscal year, the Superintendent of Public Instruction shall use the amounts listed below, which amounts shall be used for the purposes of school accountability, pursuant to Chapter 3 of the Statutes of the 1999–2000 First Extraordinary Session; the high school exit examination, pursuant to Chapter 1 of the Statutes of the 1999–2000 First Extraordinary Session; peer assistance and review, pursuant to Chapter 4 of the Statutes of the 1999–2000 First Extraordinary Session; reading development and early intervention, pursuant to Chapter 2 of the Statutes of the 1999–2000 First Extraordinary Session; schoolsite safety, pursuant to Chapter 51 of the Statutes of 1999; education technology, pursuant to Chapter 650 of the Statutes of 1994; and fiscal accountability and oversight, pursuant to Chapter 1213 of the Statutes of 1991 and Chapter 650 of the Statutes of 1994:

Alameda	$ 214,455
Butte	40,092
Calaveras	37,078
Colusa	36,508
Contra Costa	534,659
El Dorado	44,037

Fresno	825,455
Glenn	12,847
Humboldt	47,121
Imperial	200,468
Kern	43,638
Kings	100,296
Lassen	18,138
Los Angeles	2,225,005
Madera	93,180
Merced	99,068
Nevada	51,991
Orange	553,780
Placer	906
Sacramento	749,990
San Benito	42,240
San Bernardino	767,187
San Joaquin	430,828
Shasta	70,202
Solano	355,421
Stanislaus	413,666
Sutter	99,896
Tehama	44,241
Trinity	5,715
Tulare	526,149
Tuolumne	30,811
Ventura	112,267
Yolo	47,383
Yuba	45,282
	$8,900,000

(b) For purposes of subparagraph (A) of paragraph (1) of subdivision (b) of Section 2550, the Superintendent of Public Instruction shall compute a rate per unit of average daily attendance for each county office of education as follows:

(1) For each county office of education, the sum of the following amounts:

(A) The amount, if any, listed for the county office of education in subdivision (a) to the extent an appropriation is provided for this purpose.

(B) The amounts received by the county office of education in the 1999–2000 fiscal year for the apportionments set forth in paragraph (1) of subdivision (c) of Section 2561.

(2) Divide the amount computed pursuant to paragraph (1) by the 1999–2000 countywide average daily attendance.

SEC. 5. Section 8278 of the Education Code is amended to read:

8278. (a) Notwithstanding any other provision of law, child development appropriations, with the exception of funds appropriated for the After School Learning and Safe Neighborhoods Partnerships Program pursuant to Article 22.5 (commencing with Section 8482) and for CalWORKs child care pursuant to Sections 8353 and 8354, shall be available for expenditure for three years, except that funds remaining unencumbered at the end of the first fiscal year shall revert to the General Fund.

(b) The Superintendent of Public Instruction shall establish criteria and procedures for the reallocation of unearned contract funds in the second and third years of availability, in accordance with the following priorities:

(1) First, for the accounts payable of the State Department of Education.

(2) Second, to reimburse alternative payment programs for the provision of additional services, in accordance with Section 8222.1.

(3) Third, for one-time expenditures that will benefit children in subsidized child care, which include, but are not limited to, the purchase of materials approved by the State Department of Education for deferred and major maintenance of existing facilities, respite care, and implementation of capacity building activities, which include new facilities, training, and technical assistance. Notwithstanding any other provision of law, the allocation for these one-time expenditures may not be made unless approved in the annual Budget Act.

SEC. 6. Section 10551 of the Education Code is amended to read:

10551. (a) For purposes of this chapter, "governing board" means the governing board set forth in subdivision (b) of Section 42127.8.

(b) It is the intent of the Legislature that Section 10550 be implemented by the governing board.

(c) The governing board shall be supported by a team of persons having extensive experience in the development of telecommunications systems, local and statewide area computer networks, as well as knowledge of the data and system needs of school business and administration. This team shall be operated under the immediate direction and supervision of an appropriate county superintendent of schools selected, in response to an application process, by the Superintendent of Public Instruction.

(d) The State Department of Education shall convene a committee of volunteers, to advise the governing board. This committee shall be composed of individuals who are school district or county office of education personnel and who have knowledge of financial and administrative data processing matters. Members of the committee shall assume their own expenses for service on the committee, and the state shall not provide reimbursement for either the time served by, or the expenses of, the committee members. Two individuals shall be appointed to the committee by each of the following:

(1) The president of the California Association of School Business Officials.

(2) The president of the Association of California School Administrators.

(3) The president of the California School Boards Association.

(4) The president of the California Educational Data Processing Association.

(5) The Superintendent of Public Instruction.

* * *

SEC. 7. Section 10554 of the Education Code is amended to read:

10554. (a) In order for the governing board to carry out its responsibilities pursuant to this chapter, there is hereby established the Educational Telecommunication Fund. The amount of moneys to be deposited in the fund shall be the amount of any offset made to the principal apportionments made pursuant to Sections 1909, 2558, 42238, 52616, Article 1.5 (commencing with Section 52335) of Chapter 9 of Part 28, and Chapter 7.2 (commencing with Section 56836) of Part 30, based on a finding that these apportionments were not in accordance with law. The maximum amount that may be annually deposited in the fund from the offset shall be ten million dollars ($10,000,000) * * *. The Controller shall establish an account to receive and expend moneys in the fund. The placement of the moneys in the fund shall occur only upon a finding by the Superintendent of Public Instruction and the Director of Finance that the principal apportionments made pursuant to Sections 1909, 2558, 42238, 52616, and Article 1.5 (commencing with Section 52335) of Chapter 9 of Part 28, and Chapter 7.2 (commencing with Section 56836) of Part 30 * * * were not in accordance with existing law * * * and were so identified pursuant to Sections 1624, 14506, 41020, 41020.2, 41320, 42127.2, and 42127.8, or an independent audit that was approved by the State Department of Education.

(b) Moneys in the fund established pursuant to subdivision (a) shall only be available for expenditure upon appropriation by the Legislature in the Budget Act.

(c) The moneys in the fund established pursuant to subdivision (a) may be expended by the governing board to carry out the purposes of this chapter, including for the following purposes:

(1) To support the activities of the team established pursuant to subdivision (c) of Section 10551.

(2) To assist the school districts and county superintendents of schools in purchasing both hardware and software to allow school districts, county superintendents of schools, and the State Department of Education to be linked for school business and administrative purposes. The governing board shall establish a matching share requirement that applicant school districts and county superintendents of schools must fulfill to receive those funds. It is the intent of the Legislature to encourage the distribution of grants to school districts and county superintendents of schools to the widest extent possible.

(3) To provide technical assistance through county offices of education to school districts in implementing the standards established pursuant to subdivision (a) of Section 10552.

(d) This section shall become inoperative as of January 1, 2002.

SEC. 8. Section 10555 of the Education Code is amended to read:

10555. By March 15 of each year, the governing board shall report to the Governor, the Legislature, the State Board of Education, * * * the Superintendent of Public Instruction, and the Department of Finance on the progress that has been made to meet the objectives of this chapter, the status of activities related to meeting the objectives of this chapter, and any plan of the governing board for subsequent fiscal years to meet the objectives of this chapter.

SEC. 9. Chapter 4 (commencing with Section 14550) is added to Part 9 of the Education Code, to read:

Chapter 4. Retention of Local Obligations

14550. (a) Notwithstanding any other provision of law, a local education agency's obligations pursuant to law may not be avoided through participation in a joint powers authority.

(b) A local education agency's financial obligations to the state may not be avoided through participation in a joint powers authority.

(c) A local education agency's participation in a joint powers authority may not relieve the local education agency of any financial obligation or responsibility in such a way as to shift costs or liability to the state unless the state entity undertaking the obligation is a party to the joint powers agreement and expressly agrees in the agreement to undertake the obligation.

(d) A local educational entity retains ultimate responsibility over its obligations in case of default by a joint powers authority in which it participates.

SEC. 10. Section 32228 of the Education Code is amended to read:

32228. (a) It is the intent of the Legislature that public schools serving pupils in kindergarten or any of grades 1 to 12, inclusive, have access to supplemental resources to establish programs and strategies that promote school safety and emphasize violence prevention among children and youth in the public schools.

(b) It is further the intent of the Legislature that schoolsites receiving funds pursuant to this article accomplish all of the following goals:

(1) Teach pupils techniques for resolving conflicts without violence.

(2) Train school staff and administrators to support and promote conflict resolution and mediation techniques for resolving conflicts between and among pupils.

(3) Reduce incidents of violence at the schoolsite.

SEC. 11. Section 32228.1 of the Education Code is amended to read:

32228.1. (a) The School Safety and Violence Prevention Act is hereby established. This statewide program shall be administered by the Superintendent of Public Instruction, who

shall provide funds to school districts serving pupils in kindergarten or any of grades 1 to 12, inclusive, for the purpose of promoting school safety and reducing schoolsite violence. As a condition of receiving funds pursuant to this article, an eligible school district shall certify, on forms and in a manner required by the Superintendent of Public Instruction, that the funds will be used as described in this section.

(b) From funds appropriated in the annual Budget Act or any other measure, funds shall be allocated to school districts on the basis of prior year enrollment, as reported by the California Basic Educational Data System, of pupils in kindergarten or any of grades 1 to 12, inclusive, for any one or more of the following purposes:

(1) Providing schools with personnel, including, but not limited to, licensed or certificated school counselors, school social workers, school nurses, and school psychologists, who are trained in conflict resolution. Any law enforcement personnel hired pursuant to this article shall be trained and sworn peace officers.

(2) Providing effective and accessible on-campus communication devices and other school safety infrastructure needs.

(3) Establishing an in-service training program for school staff to learn to identify at-risk pupils, to communicate effectively with those pupils, and to refer those pupils to appropriate counseling.

(4) Establishing cooperative arrangements with local law enforcement agencies for appropriate school-community relationships.

(5) For any other purpose that the school or school district determines that would materially contribute to meeting the goals and objectives of current law in providing for safe schools and preventing violence among pupils.

SEC. 12. Section 33050 of the Education Code is amended to read:

33050. (a) The governing board of a school district or a county board of education * * *, on a districtwide or countywide basis or on behalf of one or more of its schools or programs, after a public hearing on the matter, may request the State Board of Education to waive all or part of any section of this code or any regulation adopted by the State Board of Education that implements a provision of this code that may be waived, except:

(1) Article 1 (commencing with Section 15700) and Article 2 (commencing with Section 15780) of Chapter 4 of Part 10.

(2) Chapter 6 (commencing with Section 16000) * * * of Part 10.

(3) Chapter 12 (commencing with Section 17000), Chapter 12.5 (commencing with Section 17070.10), and Chapter 14 (commencing with Section 17085) of Part 10.

(4) Part 13 (commencing with Section 22000).

(5) Section 35735.1.

(6) Paragraph (8) of subdivision (a) of Section 37220.

(7) The following provisions of Part * * * 10.5 (commencing with Section 17211:

(A) Chapter 1 (commencing with Section 17211).

(B) Article 1 (commencing with Section 17251) to Article 6 (commencing with Section 17365), inclusive, of Chapter 3.

(C) * * * Sections 17416 to 17429, inclusive; Sections 17459 and 17462 and subdivision (a) of Section 17464 ; and Sections 17582 to 17592, inclusive.

* * *

(8) The following provisions of Part 24 (commencing with Section 41000):

(A) Sections 41000 to 41360, inclusive.

(B) Sections 41420 to 41423, inclusive.

(C) Sections 41600 to 41866, inclusive.

(D) Sections 41920 to 42911, inclusive.

(9) Article 8 (commencing with Section 44930) of Chapter 4 of Part 25 and regulations in Title 5 of the California Code of Regulations adopted pursuant to Article 3 (commencing with Section 44930) of Chapter 4 of Part 25.

* * *

(10) Part 26 (commencing with Section 46000).

* * *

(11) Chapter 6 (commencing with Section 48900) and Chapter 6.5 (commencing with Section 49060 of Part 27.

(12) Section 51513.

(13) Chapter 6.10 (commencing with Section 52120) and Chapter 6.8 (commencing with Section 52080) of Part 28, relating to class size reduction * * *.

(14) Section 52163.

(15) The identification and assessment criteria relating to any categorical aid program, including Sections 52164.1 and 52164.6.

(16) Sections 52165, 52166, and 52178.

(17) Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(18) Section 56364.1, except that this restriction shall not prohibit the State Board of Education from approving any waiver of Section 56364 or Section 56364.2, as applicable, relating to full inclusion.

(19) Article 4 (commencing with Section 60640) of Chapter 5 of Part 33, relating to the STAR Program, and any other provisions of Chapter 5 (commencing with Section 60600) of Part 33 that establish requirements for the STAR Program.

(b) Any waiver of provisions related to the programs identified in Section 52851 shall be granted only pursuant to Article 3 (commencing with Section 52850) of Chapter 12 of Part 28.

(c) The waiver of an advisory committee required by law shall be granted only pursuant to Article 4 (commencing with Section 52870) of Chapter 12 of Part 28.

(d) Any request for a waiver submitted by the governing board of a school district or a county board of education pursuant to subdivision (a) shall include a written statement as to both of the following:

(1) Whether the exclusive representative of employees, if any, as provided in Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, participated in the development of the waiver * * *.

(2) The exclusive representative's position regarding the waiver.

(e) Any request for a waiver submitted pursuant to subdivision (a) relating to a regional occupational center or program established pursuant to Article 1 (commencing with Section 52300) of Chapter 9 of Part 28, that is operated by a joint powers entity established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, shall be submitted as a joint waiver request for each participating school district and shall meet both of the following conditions:

(1) Each joint waiver request shall comply with all of the requirements of this article.

(2) The submission of a joint waiver request shall be approved by a unanimous vote of the governing board of the joint powers agency.

(f) The governing board of any school district requesting a waiver under this section of any provision of Article 5 (commencing with Section 39390) of Chapter 3 of Part 23 shall provide written notice of any public hearing it conducted pursuant to subdivision (a), at least 30 days prior to the hearing, to each public agency identified under Section 39394.

SEC. 13. Section 41203.1 of the Education Code is amended to read:

41203.1. (a) For the 1990–91 fiscal year and each fiscal year thereafter, allocations calculated pursuant to Section 41203 shall be distributed in accordance with calculations provided in this section. Notwithstanding Section 41203, and for the purposes of this section, school districts, community college districts, and direct elementary and secondary level instructional services provided by the State of California shall be regarded as separate

segments of public education, and each of these three segments of public education shall be entitled to receive respective shares of the amount calculated pursuant to Section 41203 as though the calculation made pursuant to subdivision (b) of Section 8 of Article XVI of the California Constitution were to be applied separately to each segment and the base year for the purposes of this calculation under paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution were based on the 1989–90 fiscal year. Calculations made pursuant to this subdivision shall be made so that each segment of public education is entitled to the greater of the amounts calculated for that segment pursuant to paragraph (1) or (2) of subdivision (b) of Section 8 of Article XVI of the California Constitution.

(b) If the single calculation made pursuant to Section 41203 yields a guaranteed amount of funding that is less than the sum of the amounts calculated pursuant to subdivision (a), then the amount calculated pursuant to Section 41203 shall be prorated for the three segments of public education.

(c) Notwithstanding any other provision of law, this section shall not apply to the fiscal * * * years between the 1992–93 * * * fiscal year * * * and the 2000–01 fiscal year, inclusive.

SEC. 14. Section 42238.23 is added to the Education Code, to read:

42238.23. Notwithstanding any other provision of law, persons providing services to local education agencies through use of a joint powers authority involving the local education agency who would, in absence of the joint powers authority, otherwise be considered school employees and subject to the Public Employees' Retirement System rate reduction to revenue limits authorized in Section 42238, shall not be excluded from the calculations of the Public Employees' Retirement System reduction authorized in that section.

SEC. 15. Section 47652 of the Education Code is amended to read:

47652. Notwithstanding Section 41330, * * * a charter school in its first year of operation shall be eligible to receive funding for the advance apportionment based on an estimate of average daily attendance for the current fiscal year, as approved by the local educational agency that granted its charter and the county office of education in which the charter-granting agency is located. Not later than five business days following the end of the first 20 school days, a charter school receiving funding pursuant to this section shall report to the Department of Education its actual average daily attendance for that first month, and the Superintendent of Public Instruction shall adjust immediately, but not later than 45 days, the amount of its advance apportionment accordingly.

SEC. 16. Section 48664 of the Education Code is amended to read:

48664. (a)(1) In addition to funds from all other sources, the Superintendent of Public Instruction shall apportion to each school district that operates a community day school four thousand dollars ($4,000) per year, and for each county office of education that operates a community day school three thousand dollars ($3,000) per year, for each unit of average daily attendance reported at the annual apportionment for pupil attendance at community day schools, adjusted annually commencing with the 1999–2000 fiscal year for the inflation adjustment calculated pursuant to subdivision (b) of Section 42238.1. Average daily attendance reported for this program shall not exceed 0.375 percent of a district's prior year P2 average daily attendance in an elementary school district, 0.5 percent of a district's prior year P2 average daily attendance in a unified school district, or 0.625 percent of a district's prior year P2 average daily attendance in a high school district. The units of average daily attendance of a community day school operated by a county office of education shall not exceed the unused units of average daily attendance of the community day schools operated by the school districts within the jurisdiction of that county office of education.

(2) The Superintendent of Public Instruction may reallocate to any school district any unexpended balance of the appropriations made for the purposes of this subdivision for actual pupil attendance in excess of the percentage specified in this subdivision for the school district in an amount not to exceed one-half of that percentage. However, the average daily attendance generated by pupils expelled pursuant to subdivision (d) of Section 48915, shall not be subject to these percentage caps on average daily attendance.

(b) The average daily attendance of a community day school shall be determined by dividing the total number of days of attendance in all full school months, by a divisor of 70 in

the first period of each fiscal year, by a divisor of 135 in the second period of each fiscal year, and by a divisor of 180 at the annual time of each fiscal year.

(c) The Superintendent of Public Instruction shall apportion to each school district that operates a community day school an amount equal to four dollars ($4), adjusted annually commencing with the 2000–01 fiscal year for inflation pursuant to subdivision (b) of Section 42238.1, multiplied by the total of the number of hours each schoolday, up to a maximum of two hours daily, that each community day school pupil remains at the community day school under the supervision of an employee of the school district, or a consortium of school districts pursuant to Section 48916.1, reporting the attendance of the pupils for apportionment funding following completion of the full six-hour instructional day.

(d) It is the intent of the Legislature that districts enter into consortia, as feasible, for the purpose of providing community day school programs. Any school district with fewer than 2,501 units of average daily attendance may request a waiver for any fiscal year of the funding limitations set forth in this section. The Superintendent of Public Instruction shall approve a waiver if he or she deems it necessary in order to permit the operation of a community day school of reasonably comparable quality to those offered in a school district with 2,501 or more units of average daily attendance. In no event shall the amount allocated pursuant to a waiver exceed the amount provided for one teacher pursuant to Section 42284, for pupils enrolled in kindergarten and grades 1 to 6, inclusive, or the amount provided for one teacher pursuant to Section 42284, for pupils enrolled in grades 7 to 12, inclusive. The provisions of this act shall not apply to any school district that applied for a waiver within the funding limits established by this subdivision but was denied funding or not fully funded.

(e) The State Department of Education shall evaluate and report to the appropriate legislative policy committees and budget committees on or before October 1, 1998, and for two years thereafter the following programmatic and fiscal issues:

(1) The number of expulsions statewide.

(2) The number of school districts operating community day schools.

(3) Status of the countywide plans as defined in Section 48926.

(4) An evaluation of the community day school average daily attendance funding percentage cap.

(5) Number of small school districts requesting and the number receiving a waiver under this section.

(6) The effect of hourly accounting under Section 48663 for purposes of receiving the additional funding under Section 48664.

(7) The number of pupils and average daily attendance served in community day programs, further identified as the number expelled pursuant to subdivision (b) of Section 48915, subdivision (d) of Section 48915, other expulsion criteria, or referred through a formal district process.

(8) Pupil outcome data and other data as required under Section 48916.1.

(9) Other programmatic or fiscal matters as determined by the State Department of Education.

(f) The additional funds provided in subdivisions (a)(c),[1] and (d) shall only be allocated to the extent that funds are appropriated for this purpose in the annual Budget Act or other legislation, or both, except for pupils expelled pursuant to subdivision (d) of Section 48915. For pupils expelled pursuant to subdivision (d) of Section 48915, the funds apportioned under subdivision (a) are continuously appropriated from the General Fund to Section A of the State School Fund.

(g) A one-time adjustment shall be made to the amount specified in subdivision (a), for the 1998–99 fiscal year and subsequent fiscal years, by increasing that amount by the statewide average quotient resulting from dividing the average daily attendance specified in subparagraph (B) of paragraph (3) of subdivision (a) of Section 42238.8 by the amount specified in subparagraph (C) of paragraph (3) of subdivision (a) of Section 42238.8.

[1] Punctuation so in enrolled bill.

SEC. 17. Section 49550.3 of the Education Code is amended to read:

49550.3. (a) * * * Because a hungry child cannot learn, the Legislature intends, as a state nutrition and health policy, that the School Breakfast Program be made available in all schools where it is needed to provide adequate nutrition for children in attendance.

(b) The State Department of Education shall, in cooperation with school districts and county superintendents of schools, provide information and limited financial assistance to encourage program startup and expansion into all qualified schools, as follows:

(1) Provide information to school districts and county superintendents of schools concerning the benefits and availability of the School Breakfast Program.

(2) Each year, provide additional information and financial assistance to schools in the state, selected on the following criteria:

(A) Twenty percent or more of the school enrollment consists of children who have applied and qualify for free and reduced-price meals.

* * *

(B) The school has not been awarded federal startup funds to initiate a school breakfast program or a summer food service program.

(c) The department shall award grants of up to fifteen thousand dollars ($15,000) per schoolsite on a competitive basis to school districts, county superintendents of schools, or entities approved by the State Department of Education, * * * limited to an amount subject to budget appropriations each fiscal year * * *, for nonrecurring expenses incurred in initiating or expanding a school breakfast program under this section or a summer food service program pursuant to Article 10.7 (commencing with Section 49547).

(d) Grants awarded under this section shall be used for nonrecurring costs of initiating or expanding a school breakfast program * * * or a summer food service program, including the acquisition of equipment, training of staff in new capacities, outreach efforts to publicize new or expanded school breakfast programs or summer food service programs, * * * minor alterations to accommodate new equipment, computer point-of-service systems for food service, and the purchase of vehicles for transporting food to schools. Funds may not be used for salaries and benefits of staff, food, computers, except computer point-of-service systems, or capital outlay * * *.

(e) In making grant awards under this section in any fiscal year, the department shall give a preference to school districts and county superintendents of schools that do all of the following:

(1) Submit to the department a plan to start or expand school breakfast programs or summer food service programs in the district or the county, including a description of the following:

(A) The manner in which the district or county will provide technical assistance and funding to schoolsites to expand those programs.

(B) Detailed information on the nonrecurring expenses needed to initiate a program.

(C) Public or private resources that have been assembled to carry out expansion of these programs during that year.

(2) Agree to operate the breakfast program or the summer food service program for a period of not less than three years.

(3) Assure that the expenditure of funds from state and local resources for the maintenance of the breakfast program or the summer food service program shall not be diminished as a result of grant awards received under this section.

SEC. 18. Section 52052.3 is added to the Education Code, to read:

52052.3. Test scores of pupils who are in the first year of enrollment in a high school, but who, in the prior year, were enrolled in an elementary school district that normally matriculates to the high school district, shall be included in the Academic Performance Index, as provided in Section 52052.

SEC. 19. Section 54743 of the Education Code is amended to read:

54743. For the purposes of this chapter, the following definitions shall apply:

(a) "Case management" means a process that ensures that the pupil and child receive identified needed services in an efficient, supportive, and cost-effective manner. The process is interactive, pupil-centered, culturally appropriate, and goal-oriented.

(b) "Child care and development program" means developmentally appropriate learning activities for the children of enrolled teen parents that are provided when the child's teen parent is, or parents are, participating in a school-approved activity both during and outside the school day.

* * *

(c) "Intake process" means the interactive process upon entry into the Cal–SAFE program through which academic and service needs are inventoried and demographic data are collected.

(d) "Interventions" means services needed to correct or ameliorate a pupil's health, psychosocial, educational, vocational, daily living, or economic problems, which may impede the pupil from achieving the program goals.

(e) "Local education agency" means a school district or county office of education.

(f) "Support services" means services, as referenced in subdivision (b) * * * of Section 54746, that will enhance the academic ability of the enrolled pupil in order for her or him to earn a high school diploma or its equivalent and for healthy development of their children.

(g) "Title IX of the Education Amendments of 1972 Regulations" refers to federal Public Law 92–318 and the regulations set forth in Section 106.1 and following of Title 34 of the Code of Federal Regulations, which prohibit discrimination against pupils, among other things, because of their pregnant or parenting status.

SEC. 20. Section 54744 of the Education Code is amended to read:

54744. (a) It is the intent of the Legislature that communities implementing new programs or initiatives connect with existing program strategies and build upon existing local collaboratives, when possible, to provide a unified integrated system of service for children and families.

(b) No application for participation in the Cal–SAFE program is complete unless each county superintendent of schools, in conjunction with superintendents of school districts, the Adolescent Family Life Program, the Cal–Learn program, the local child care and development planning council as defined by Section 8499.5, and, as appropriate, other existing organizations such as Healthy Start and local job training councils, have developed a county service coordination plan for providing educational and related support services to pregnant and parenting teens and their children.

(c) The county service coordination plan shall include, at a minimum, all of the following information:

(1) Incidence of live births to teen mothers by * * * a method to be determined by the State Department of Education.

(2) Incidence of pregnant and parenting pupils receiving welfare aid by * * * a method to be determined by the State Department of Education.

(3) Incidence of low birth weight children born to teen mothers by * * * a method to be determined by the State Department of Education.

(4) Educational alternatives for pregnant and parenting teens.

(5) Child care and development resources for the children of teen parents.

(6) Public and private resources providing support services necessary for pregnant and parenting teens to achieve academically.

(7) Gaps and overlaps in educational and support services for pregnant and parenting pupils and their children.

(8) Proposed strategies to address identified gaps and overlaps in services.

(d) The county service coordination plan shall be submitted to the State Department of Education no later than June 1, 2000.

(e) If the county service coordination plan is not submitted to the State Department of Education by June 1, 2000, a local education agency may only operate a Cal–SAFE program on an interim basis until January 1, 2001.

(f) The county superintendent of schools, in conjunction with superintendents of school districts, the Adolescent Family Life Program, the Cal–Learn program, the local child care and development planning council as defined by Section 8499.5, and, as appropriate, other existing organizations such as Healthy Start and local job training councils, shall annually review the county service coordination plan, update the plan as needed, disseminate the revised plan to superintendents of school districts within its jurisdiction, and submit a copy of the revised plan to the State Department of Education.

SEC. 21. Section 54745 of the Education Code is amended to read:

54745. (a) In the administration of the Cal–SAFE program, the following provisions shall apply:

(1) Participation by a school district or county superintendent of schools in the Cal–SAFE program is voluntary.

(2) The governing board of a school district or county superintendent of schools may * * * submit an application to the State Department of Education in the manner, form, and date specified by the department to establish and maintain a Cal–SAFE program.

(3) A school district or county superintendent of schools * * * approved to implement the Cal–SAFE program shall be funded as one program to be operated at one or multiple sites depending upon the need within the service area.

(4) Notwithstanding any other provision of law, a school district or county superintendent of schools operating, by October 1, 1999, a School Age Parent and Infant Development Program pursuant to Article 17 (commencing with Section 8390) of Chapter 2 of Part 6, a Pregnant Minors Program pursuant to Chapter 6 (commencing with Section 8900) of Part 6 and Section 2551.3, or a Pregnant and Lactating Students Program pursuant to Sections 49553 and 49559, as those provisions existed prior to the operative date of the act that adds this article, or any combination thereof, that chooses to participate in the Cal–SAFE program shall have priority for Cal–SAFE program funding for an amount up to the dollar amount provided to each school district or county superintendent of schools under those provisions in the fiscal year prior to participation in the Cal–SAFE program, provided that an application is submitted and approved.

(5) If a school district or county superintendent of schools operating a School Age Parent and Infant Development Program, a Pregnant Minors Program, or a Pregnant and Lactating Students Program, or any combination thereof, chooses not to participate in the Cal–SAFE program, it is the intent of the Legislature that the funding it would have received for the operation of those programs shall be redirected to the Cal–SAFE program and the school district or county superintendent of schools may apply in a subsequent school year to operate a Cal–SAFE program.

(6) A school district or county superintendent of schools that terminates its Cal–SAFE program may reapply to establish a Cal–SAFE program.

(7) In order to continue implementation of the Cal–SAFE program beyond the initial three years of funding, each funded agency shall be reviewed by the department to determine progress towards achieving the goals set forth in Section 54742. Thereafter, funded agencies shall be reviewed and reauthorized every five years based upon a process determined by the department to continue implementation of a Cal–SAFE program.

(b) All of the following requirements shall apply to an application for the Cal–SAFE program:

(1) The governing board of a participating local education agency shall adopt a policy or resolution declaring its commitment to provide a comprehensive, continuous, community-linked program for pregnant and parenting pupils and their children that reflects the cultural and linguistic diversity of the community.

(2) The local education agency shall provide assurance for participation in the development of the County Service Coordination Plan as described in Section 54744.

(3) A school district or county superintendent of schools shall agree to participate in the data collection and evaluation of the Cal–SAFE program.

(c) To implement a Cal–SAFE program, the funded school district, * * * or county superintendent of schools * * * shall meet all of the following criteria:

(1) Be in compliance with Title IX of the Education Amendments of 1972 Regulations.

(2) Ensure that enrolled pupils retain their right to participate in the regular school or educational alternative programs. School placement and instructional strategies shall be based upon the needs and styles of learning of the individual pupils. The classroom setting shall be the preferred instructional strategy unless an alternative is necessary to meet the needs of the individual parent, child, or both.

(3) Enroll pupils into the Cal–SAFE program on an open entry and open exit basis.

(4) Provide a quality education program to pupils in a supportive and accommodating learning environment with appropriate classroom strategies to ensure school access and academic credit for all work completed.

(5) Provide a parenting education and life skills class to enrolled pupils.

(6) Make maximum utilization of available programs and facilities to serve pregnant and parenting pupils and their children.

(7) Provide a quality child care and development program for the children of enrolled teen parents located on or near the schoolsite.

(8) Make maximum utilization of its local school food service program.

(9) Provide special school nutrition supplements, as defined by subdivision (b) of Section 49553, to pregnant and lactating pupils.

(10) Enter into formal partnership agreements, as necessary, with community-based organizations and other governmental agencies to assist pupils in accessing support services.

(11) Provide staff development and community outreach in order to establish a positive learning environment and school policies supportive of pregnant and parenting pupils' academic achievement and to promote the healthy development of their children.

(12) Maintain an annual program budget and expenditure report to document that funds are expended pursuant to Section 54749.

(13) Assess no fees to enrolled pupils or their families for services provided through the Cal–SAFE program.

(14) Establish and maintain a data base in the manner and form prescribed by the State Department of Education for purposes of program evaluation.

SEC. 22. Section 54746 of the Education Code is amended to read:

54746. (a) In meeting the goals of the program and responding to the individual needs and differences of pupils and their children to be served, the funded agency shall complete an intake procedure regarding each pupil and child upon entry into the program and periodically as needed thereafter.

(b) Based upon the information provided during the intake procedure pursuant to subdivision (a), the funded agency shall determine appropriate levels and types of services to be provided. These services may not duplicate services currently provided to the pupil by a local Adolescent Family Life Program or Cal–Learn program. In addition to an academic program that meets district standards, necessary support services for pupils shall be funded by the calculation pursuant to paragraph (1) of subdivision (a) of Section 54749. Allowable expenditures for support services are as follows:

(1) Parenting education and life skills class.

(2) Perinatal education and care, including childbirth preparation.

(3) Safe home-to-school transportation.

(4) Case management services.

(5) Comprehensive health education including reproductive health care.

(6) Nutrition education, counseling, and meal supplements.

(7) School safety and violence prevention strategies targeted to pregnant and parenting teens and their children.

(8) Academic support and youth development services, such as tutoring, mentoring, and community service internships.

(9) Career counseling, preemployment skills, and job training.

(10) Substance abuse prevention education, counseling, and treatment services.

(11) Mental health assessment, interventions, and referrals.

(12) Crisis intervention counseling services, including suicide prevention.

(13) Peer support groups and counseling.

(14) Family support and development services, including individual and family counseling.

(15) Child and domestic abuse prevention education, counseling, and services.

(16) Enrichment and recreational activities, as appropriate.

(17) Services that facilitate transition to postsecondary education, training, or employment.

(18) Support services for grandparents, siblings, and fathers of babies who are not enrolled in the Cal-SAFE program.

(19) Outreach activities to identify eligible pupils and to educate the community about the realities of teen pregnancy and parenting.

(c) The funded agency shall provide child care and development program services located on or near the schoolsite for the children of teen parents enrolled in the Cal-SAFE program. Program services shall be funded by the revenue generated pursuant to paragraph (2) of subdivision (a) of Section 54749.

(1) Participation in the child care and development component of the Cal-SAFE program shall be voluntary.

(2) There is no minimum age for enrollment, but the child shall be eligible for enrollment in the child care and development component until the age of five years or the child is enrolled in kindergarten, whichever occurs first, as long as the teen parent is enrolled in the Cal-SAFE program.

(3) Each child shall have a health evaluation form signed by a physician, or his or her designee, before the child is allowed on the school campus or is enrolled in the child care and development program. Health screening and immunizations shall not be required when the custodial parent annually files a written request as provided for in Section 49451 and Section 120365 of the Health and Safety Code.

(4) A developmental profile shall be maintained for each infant, toddler, and child. This development profile shall be utilized by the program staff to design a program that meets the infant's, toddler's, or child's developmental needs.

(5) The arrangement of the child care site environment shall be safe, healthy, and comfortable for children and staff, easily maintained, and appropriate for meeting the developmental needs of the individual child. Child care sites shall meet the health and safety requirements specified in Chapter 1 (commencing with Section 1429) of, and Chapter 2 (commencing with Section 1442) of, Division 12 of Title 22 of the California Code of Regulations.

(6) The child care and development component of the Cal-SAFE program shall operate pursuant to applicable sections of Chapter 2 (commencing with Section 8200) of Part 6. In addition to meeting the requirements of Section 8860, teachers shall have at least three semester units, or the equivalent number of quarter units, of coursework related to the care of infants and toddlers.

(7) The child care site shall be available as a laboratory for parenting or related courses that are offered by the funded agency to pupils whether or not they are enrolled in the Cal-SAFE program.

(d) Inservice training for school staff on teen pregnancy and parenting-related issues may be funded from revenue generated pursuant to paragraphs (1) and (2) of subdivision (a) of Section 54749. However, use of these funds for this purpose shall supplement and, not supplant, existing resources in these areas.

(e) The data base required pursuant to paragraph (14) of subdivision (c) of Section 54746 may be funded from revenue appropriated for purposes of subdivision (a) of Section 54749.

SEC. 23. Section 54747 of the Education Code is amended to read:

54747. (a) A male or female pupil, 18 years of age or younger, may enroll in the Cal–SAFE program and be eligible for all services afforded to pupils enrolled if he or she is an expectant parent, the custodial parent, or the noncustodial parent taking an active role in the care and supervision of the child, and has not earned a high school diploma or its equivalent.

(b) A pupil having an active special education Individualized Education Plan (IEP) shall be eligible until age 22, as long as she or he has an active IEP and meets the eligibility criteria as specified in subdivision (a), and shall continue to receive services identified in the IEP while enrolled in the Cal–SAFE program.

(c) Pupils shall be eligible for enrollment on a voluntary basis for as long as they meet eligibility criteria specified in subdivisions (a) and (b) until they earn a high school diploma or its equivalent.

(d) If an enrolled 18–year–old pupil reaches age 19 without earning a high school diploma or its equivalent, the pupil may be enrolled for one additional semester if the pupil has been continuously enrolled in the Cal–SAFE program since before his or her 19th birthday.

(e) Pupils receiving services under Article 3.5 (commencing with Section 11331) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code are eligible for services under this chapter. Child care provided under this article shall be the primary source of child care for these recipients when participating in a Cal–SAFE program operated by school districts or county superintendents of schools.

(f) The participating school district, * * * or county superintendent of schools * * * and case managers provided pursuant to Section 11332.5 of the Welfare and Institutions Code shall coordinate services to the maximum extent possible.

SEC. 24. Section 54748 of the Education Code is amended to read:

54748. The duties of the State Department of Education include all of the following:

(a) Provision of technical assistance, focused upon transition into the Cal–SAFE program, to school districts and county superintendents of schools currently operating a School Age Parent and Infant Development Program, a Pregnant Minors Program, or a Pregnant and Lactating Students Program, or any combination thereof.

(b) Provision of technical assistance to school districts and county superintendents of schools that do not currently operate a School Age Parent and Infant Development Program, a Pregnant Minors Program, or a Pregnant and Lactating Students Program as defined by subdivision (a) of Section 54745.

(c) Identification and sharing of information on best practices across program sites.

(d) Development of benchmarks to determine to what degree pupils and children enrolled in the Cal–SAFE program attain the program goals.

(e) Consultation with local education agency representatives and others, as appropriate, to develop strategies for implementation of the Cal–SAFE program.

(f) Determination of areas in the state where there are pupils who are most in need or pupils who are least likely to access services on their own if there are not enough resources to serve all eligible pupils.

(g) Development of an application process and approval of local education agencies to implement a Cal–SAFE program.

(h) Development of operating guidelines for implementing an effective Cal–SAFE program.

(i) Development of guidelines for fiscal reporting.

(j) Coordination with other state agencies that administer teen pregnancy prevention and intervention programs.

(k) Development of procedures to conduct program evaluation and monitoring, as appropriate.

(l) Commencing March 1, 2005, and every five years thereafter, preparation and submission of a report to the Joint Legislative Budget Committee and appropriate policy and fiscal

committees of the Legislature. The report shall include data, analysis of data, and an evaluation of the Cal-SAFE program.

SEC. 25. Section 54749 of the Education Code is amended to read:

54749. (a) For the * * * 2000-01 fiscal year and each fiscal year thereafter, a school district or county superintendent of schools * * * participating in Cal-SAFE shall be eligible for state funding from funds appropriated * * * for services provided * * * for the purposes of the program as follows:

* * *

(1) A support services allowance of two thousand two hundred thirty-seven dollars ($2,237) for each unit of average daily attendance generated by each pupil who has completed the intake process pursuant to subdivision (a) of Section 54746 and is receiving services pursuant to subdivision (b) of Section 54746. This allowance shall be adjusted annually by the inflation factor set forth in subdivision (b) of Section 42238.1. In no event shall more than one support service allowance be generated by any pupil concurrently enrolled in more than one educational program.

This allowance may not be claimed for units of average daily attendance reported pursuant to the following:

(A) Subdivision (b) of Section 1982 for pupils attending county community schools operated pursuant to Chapter 6.5 of Part 2 (commencing with Section 1980).

(B) Pupils attending juvenile court schools operated pursuant to Article 2.5 (commencing with Section 48645) of Chapter 4 of Part 27.

(C) Pupils attending community day schools operated pursuant to Article 3 (commencing with Section 48660) of Chapter 4 of Part 27.

(D) Pupils attending county operated Cal-SAFE programs pursuant to this article whose attendance is reported pursuant to Section 2551.3.

(2) Average daily attendance and base revenue limit funding for pupils receiving services in the Cal-SAFE program shall be computed pursuant to provisions and regulations applicable to the educational program or programs that each pupil attends, except as provided in paragraph (3).

(3) For attendance not claimed pursuant to paragraph (2), county offices of education may claim the statewide average revenue limit per pupil in average daily attendance of high school districts, payable from Section A of the State School Fund, for the attendance of pupils receiving services in the Cal-SAFE program, provided that no other revenue limit funding is claimed for the same pupil and pupil attendance of no less than 240 minutes per day and is computed and maintained pursuant to Section 46300.

(4) Except as provided in subdivision (c) of Section 54749.5, operators of Cal-SAFE programs shall be reimbursed in accordance with the amount specified in subdivision (b) of Section 8265 and the amounts specified in subdivisions (a) and (b) of Section 8265.5 for each child receiving services pursuant to the Cal-SAFE program who is the child of teen parents enrolled in the Cal-SAFE program. To be eligible for funding pursuant to this paragraph, the operational days of child care and development programs shall be only those necessary to provide child care services to children of pupils participating in Cal-SAFE.

(5) Notwithstanding paragraph (1), pupils for whom attendance is reported pursuant to subdivision (b) of Section 1982, pupils attending juvenile court schools, and pupils attending community day schools may complete the intake process for the Cal-SAFE program and, if the intake process is completed, shall receive services pursuant to subdivision (b) of Section 54746. The children of pupils receiving services in the Cal-SAFE program pursuant to subdivision (b) of Section 54746 and attending juvenile court schools, county community schools, or community day schools shall be eligible for funding pursuant to paragraph (4) and no other provisions of this section.

(b) Funds allocated pursuant to paragraph (1) of subdivision (a) shall be maintained in a separate account and shall be expended only to provide the supportive services enumerated in subdivisions (b) * * * of Section 54746, in service training as specified in subdivision (d) of Section 54746, and expenditures enumerated in subdivision (d) of this section, to pupils enrolled in the Cal-SAFE program as determined pursuant to Section 54746. * * *

(c) Funds allocated pursuant to paragraph (4) of subdivision (a) shall be maintained in a separate account and shall be expended only to provide developmentally appropriate child care and development services pursuant to subdivision (c) of Section 54746 and staff development of child development program staff pursuant to subdivision (d) of Section 54746 for children of teen parents enrolled in the Cal–SAFE program * * * for the purpose of promoting the children's development comparable to age norms, access to health and * * * preventive services, and enhanced school readiness.

(d) Funds generated pursuant to Section 2551.3 and this section shall be maintained in a separate account and shall be expended only to provide the services enumerated in Section 54746 and the following expenditures as defined by the California State School Accounting Manual:

(1) Expenditures defined as direct costs of instructional programs.

(2) Expenditures defined as documented direct support costs.

(3) Expenditures defined as allocated direct support costs.

(4) Expenditures for indirect charges.

(5) Expenditures defined as facility costs, including the costs of renting, leasing, lease purchase, remodeling, or improving buildings.

(e) Indirect costs shall not exceed the lesser of the approved indirect cost rate or 10 percent.

(f) Expenditures that represent contract payments to community-based organizations and other governmental agencies pursuant to paragraph (10) of subdivision (b) of Section 54745 for the operation of a Cal–SAFE program shall be included in the Cal–SAFE program account.

(g) To the extent permitted by federal law, any funding made available to a school district or county superintendent of schools * * * shall be subject to all of the following conditions:

(1) The program is open to all eligible pupils without regard to any pupil's religious beliefs or any other factor related to religion.

(2) No religious instruction is included in the program.

(3) The space in which the program is operated is not used in any manner to foster religion during the time used for operation of the program.

(h) A school district or county superintendent of schools implementing a Cal–SAFE program may establish a claims process to recover federal funds available for any services provided that are Medi–Cal eligible.

(i) For purposes of serving pupils enrolled in the Cal–SAFE program in a summer school program or enrolled in a school program operating more than 180 days, reimbursement for providing services pursuant to subdivision (c) of Section 54746 shall be based upon the * * * pupil's hours of attendance.

* * *

(j) To meet startup costs for the opening of child care and development sites, as defined in subdivision (ac) of Section 8208, and applicable regulations, a school district or county office of education may apply for a one-time 15–percent service level exemption from the initial allocation within the amount for the program pursuant to paragraph (4) of subdivision (a) for each site meeting the provision of subdivision (ac) of Section 8208. A school district or county office of education shall submit claims pursuant to this subdivision with other claims submitted pursuant to this section. Funding provided for startup costs shall be utilized for approvable startup costs enumerated in subdivision (a) of Section 8275.

(k) Notwithstanding any other provision of this article, its implementation is contingent upon appropriations in the annual Budget Act for the purpose of its administration and evaluation by the State Department of Education.

(l) Notwithstanding any other provision of law, a charter school may apply for funding pursuant to this article and shall meet the requirements of this article to be eligible for funding pursuant to this section.

SEC. 26. Section 54749.5 of the Education Code is amended to read:

54749.5. (a) County superintendents who operated pregnant minors programs in the 1979–80 fiscal year, or commenced operation during the 1996–97 fiscal year, shall continue to operate pregnant minors programs in the 1980–81 fiscal year, or the 1997–98 fiscal year, as appropriate, and each fiscal year thereafter, and school districts that increased their revenue limit in the 1981–82 fiscal year pursuant to subdivision (d) of Section 42241 shall continue to operate pregnant minors programs in subsequent fiscal years, unless the program is transferred to another local education agency, or unless the county superintendent or district superintendent demonstrates that programs and services for pregnant minors, such as continuation school, home instruction, or independent instruction, are available from other local education agencies in the county, pursuant to rules and regulations adopted by the Superintendent of Public Instruction.

(b) Pregnant minors programs that continue to operate pursuant to subdivision (a) and that continue to operate as Cal-SAFE programs * * * may continue to claim funding pursuant to Section 2551.3 for an amount of average daily attendance up to the amount certified at the 1998–99 annual apportionment for that program. Programs continuing under this section may enroll pupils above the level of average daily attendance certified at the 1998–99 annual apportionment, and that additional average daily attendance shall be eligible for funding pursuant to Section 54749 and provisions that apply to the educational program that the pupil attends.

(c) County offices of education that choose to retain their pregnant minor program revenue limit rather than convert to the Cal-SAFE revenue limit shall provide child care services from funds provided in their pregnant minor program revenue limit pursuant to Section 2551.3 for children of pupils comprising base year average daily attendance as certified at the 1998–99 annual apportionment. Growth funding for child care shall be equal to the proportionate share of child care funding for the specific agency's program, determined by dividing the authorized growth in pupil average daily attendance by the total authorized average daily attendance.

(d) Nothing in this section shall be construed as allowing a county superintendent to receive funding pursuant to * * * Sections 2551.3 and * * * 54749 for the same average daily attendance, or for average daily attendance generated by the same pupil on the same calendar day.

SEC. 27. Section 76300 of the Education Code is amended to read:

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b)(1) The fee prescribed by this section shall be twelve dollars ($12) per unit per semester, effective with the fall term of the 1998–99 academic year, and eleven dollars ($11) per unit per semester effective with the fall term of the 1999–2000 academic year.

(2) The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and also shall proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84757.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(3) Students enrolled in credit contract education courses pursuant to Section 78021, if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting and if these students are not included in the calculation of the average daily attendance of that district.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. The governing board of a community college district also shall waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, refers to a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i)(1) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) and (h).

(2) From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) and (h). From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to * * * ninety-one cents ($0.91) per credit unit waived pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992–93 fiscal year.

(j) The board of governors shall adopt regulations implementing this section.

SEC. 28. Section 87885 of the Education Code is amended to read:

87885. (a) The Part-Time Faculty Office Hours Program Fund is hereby established in the State Treasury.

(b) On or before June 15 of each year, the Chancellor of the California Community Colleges shall apportion to each community college district that establishes a program pursuant to this article an amount equal to * * * two dollars ($2) for every one dollar ($1) that the district provides in compensation paid for office hours of part-time faculty, as defined in Section 87882. The chancellor shall distribute funds that are appropriated in the annual Budget Act specifically for this purpose proportionally based on each district's total costs for office hours of part-time faculty pursuant to the verification submitted by the community college district in accordance with subdivision (c) of Section 87884 for that fiscal year. In no event, however, shall the allocation to any district in a fiscal year exceed * * * two-thirds of the total costs of the compensation paid for office hours of part-time faculty pursuant to this article.

(c) It is the intent of the Legislature that funding for the purposes of this article be included in the annual Budget Act.

SEC. 29. Section 92820 of the Education Code is amended to read:

92820. There is hereby established in the Neurology Department at the University of California, San Francisco, a research project on substance abuse. The major goal of this research is to identify new pharmaceutical agents to prevent or treat alcohol and drug addiction. It is the intent of the Legislature that dedicated state funding for this research will be provided for five years, and be appropriated in the annual Budget Act. It is further the intent of the Legislature that the augmentation of one million dollars ($1,000,000) per year appropriated in the Budget Act of 2000 for this program be used for permanent on-going support of the program.

SEC. 30. Chapter 3.10 (commencing with Section 15820.80) is added to Part 10b of Division 3 of Title 2 of the Government Code, to read:

Chapter 3.10. Teaching Hospital Seismic Program

15820.80. For the purposes of this article, "Regents" means the Regents of the University of California.

15820.81. The Regents of the University of California may acquire, design, construct, or renovate acute care hospital buildings, as defined in subdivision (k) of Section 130005 of the Health and Safety Code, on a site or sites owned by, or subject to a lease or option to purchase held by, the regents to implement the compliance plan developed by the regents pursuant to subdivision (b) of Section 130050 of the Health and Safety Code. The scope and costs of these projects shall be subject to approval and administrative oversight by the State Public Works Board, including augmentations, pursuant to Section 13332.11 of the Government Code.

15820.82. Project financing requests from the regents shall be accompanied by an opinion of bond counsel to the effect that the board's bonds issued for the project will be able to receive a customary approving opinion as to state law and federal income tax law. The costs of obtaining the legal opinion shall not be eligible for reimbursement from the proceeds of the bonds.

15820.83. The board and the regents may borrow funds for project costs, excluding preliminary plans and working drawings, from the Pooled Money Investment Account pursuant to Sections 16312 and 16313. Bond proceeds may be utilized to reimburse the regents for the costs of preliminary plans and working drawings for board approved projects, however, the regents shall provide interim financing for these costs. Project funds expended prior to project approval by the board shall not be reimbursable from the proceeds of the bonds.

15820.85. Notwithstanding Section 15820.84, the amount of revenue bonds, negotiable notes, or negotiable bond anticipation notes to be sold shall equal the following:

(a) The cost of acquisition, design, construction or construction management and supervision, and other costs related to the design and construction of the facilities, including augmentations.

(b) Sums necessary to pay interim financing.

(c) In addition to the amount authorized by Section 15820.84, any additional amount as may be authorized by the board, including, but not limited to, the costs of financing. The costs of financing include, but are not limited to, interest during construction of the project, a reasonably required reserve fund, and the cost of issuance of permanent financing.

15820.86. (a) The board and the regents may lease any properties of the regents to facilitate the financing authorized by this chapter that is mutually agreed by the board and the regents. Accordingly, the property leased between the board and the regents for the purposes of these financings need not be the same property that is acquired, renovated, or improved with the proceeds of the board's bonds.

(b) It is the intent of the Legislature that, to the greatest degree possible, the rental paid by the regents to the board in connection with these financings shall utilize teaching hospital revenues of the regents, but only to the extent lawfully available to pay that rental.

SEC. 31. Section 15820.84 is added to Chapter 3.10 (commencing with Section 15820.80) of Part 10B of Division 3 of the Government Code, to read:

15820.84. (a) The board may issue up to six hundred million dollars ($600,000,000) in revenue bonds, negotiable notes, or negotiable bond anticipation notes pursuant to this part, to finance the acquisition, design, or construction, including both new construction or renovation projects, authorized in Section 15820.80. Authorized costs for acquisition, design, construction, and construction related costs, including augmentations pursuant to Section 13332.11, for all projects approved for financing by the board pursuant to Section 15820.81, shall not exceed six hundred million dollars ($600,000,000).

(b) This section shall become inoperative on June 30, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 32. Section 6516.6 of the Government Code is amended to read:

6516.6. (a) Notwithstanding any other provision of law, a joint powers agency established pursuant to a joint powers agreement in accordance with this chapter may issue bonds pursuant to Article 2 (commencing with Section 6540) or Article 4 (commencing with Section 6584), in order to purchase obligations of local agencies or make loans to local agencies, which moneys the local agencies are hereby authorized to borrow, to finance the local agencies' unfunded actuarial pension liability or to purchase, or to make loans to finance the purchase of, delinquent assessments or taxes levied on the secured roll by the local agencies, the county, or any other political subdivision of the state. Notwithstanding any other provision of law, including Section 53854, the local agency obligations or loans, if any, shall be repaid in the time, manner and amounts, with interest, security, and other terms as agreed to by the local agency and the joint powers authority.

(b) Notwithstanding any other provision of law, a joint powers authority established pursuant to a joint powers agreement in accordance with this chapter may issue bonds pursuant to Article 2 (commencing with Section 6540) or Article 4 (commencing with Section 6584), in order to purchase or acquire, by sale, assignment, pledge, or other transfer, any or all right, title, and interest of any local agency in and to the enforcement and collection of delinquent and uncollected property taxes, assessments, and other receivables that have been levied by or on behalf of the local agency and placed for collection on the secured, unsecured, or supplemental property tax rolls. Local agencies, including, cities, counties, cities and counties, school districts, redevelopment agencies, and all other special districts that are authorized by law to levy property taxes on the county tax rolls, are hereby authorized to sell, assign, pledge, or otherwise transfer to a joint powers authority any or all of their right, title, and interest in and to the enforcement and collection of delinquent and uncollected property taxes, assessments, and other receivables that have been levied by or on behalf of the local agency for collection on the secured, unsecured, or supplemental property tax rolls in accordance with the terms and conditions that may be set forth in an agreement with a joint powers authority.

(c) Notwithstanding Division 1 (commencing with Section 50) of the Revenue and Taxation Code, upon any transfer authorized in subdivision (b), the following shall apply:

(1) A local agency shall be entitled to timely payment of all delinquent taxes, assessments, and other receivables collected on its behalf on the secured, unsecured, and supplemental tax rolls, along with all penalties, interest, costs, and other charges thereon, no later than 30 calendar days after the close of the preceding monthly or four week accounting period during which the delinquencies were paid by or on account of any property owner.

(2) Upon its receipt of the delinquent taxes, assessments, and receivables that it had agreed to be transferred, a local agency shall pay those amounts, along with all applicable penalties, interest, costs, and other charges, to the joint powers authority in accordance with the terms and conditions that may be agreed to by the local agency and the joint powers authority.

(3) The joint powers authority shall be entitled to assert all right, title, and interest of the local agency in the enforcement and collection of the delinquent taxes, assessments, and receivables, including without limitation, its lien priority, its right to receive the proceeds of delinquent taxes, assessments, and receivables, and its right to receive all penalties, interest, administrative costs, and any other charges, including attorney fees and costs, if otherwise authorized by law to be collected by the local agency.

(d) The powers conferred by this section upon joint powers authorities and local agencies shall be complete, additional, and cumulative to all other powers conferred upon them by law. Except as otherwise required by this section, the agreements authorized by this section need not comply with the requirements of any other laws applicable to the same subject matter.

(e) An action to determine the validity of any bonds issued, any joint powers agreements entered into, any related agreements, including, without limitation, any bond indenture or any agreements relating to the sale, assignment, or pledge entered into by a joint powers authority or a local agency, the priority of any lien transferred in accordance with this section, and the respective rights and obligations of any joint powers authority and any party with whom the joint powers authority may contract pursuant to this chapter, may be brought by the joint powers authority pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. Any appeal from a judgment in the action shall be commenced within 30 days after entry of judgment.

(f) This section shall not be construed to affect the manner in which an agency participates in or withdraws from the alternative distribution method established by Chapter 3 (commencing with Section 4701) of Part 8 of Division 1 of the Revenue and Taxation Code.

(g) Subdivisions (b) to (f), inclusive, shall be inoperative from the operative date of this subdivision to June 30, 2001, inclusive.

SEC. 33. Section 10299 is added to the Public Contract Code, to read:

10299. (a) Notwithstanding any other provision of law, the director may consolidate the needs of multiple state agencies for information technology, goods and services, and, pursuant to the procedures established in Chapter 3 (commencing with Section 12100), establish contracts, master agreements, multiple award schedules, cooperative agreements, including agreements with entities outside the state, and other types of agreements that leverage the state's buying power, for acquisitions authorized under Chapter 2 (commencing with Section 10290), Chapter 3 (commencing with Section 12100), and Chapter 3.6 (commencing with Section 12125). State agencies and local agencies may contract with suppliers awarded the contracts without further competitive bidding.

(b) The director may make the services of the department available, upon the terms and conditions agreed upon, to any school district empowered to expend public funds. These school districts may, without further competitive bidding, utilize contracts, master agreements, multiple award schedules, cooperative agreements, or other types of agreements established by the department for use by school districts for the acquisition of information technology, goods, and services. The state shall incur no financial responsibility in connection with the contracting of local agencies under this section.

SEC. 34. Notwithstanding Section 42238.1 of the Education Code or any other provision of law, the cost-of-living adjustment for Items 6110–104–0001, 6110–105–0001, 6110–156–0001, 6110–158–0001, 6110–161–0001, 6110–185–0001, 6110–186–0001, 6110–190–0001, 6110–196–0001, 6110–234–0001, and 6110–235–0001 of Section 2.00, and those items identified in subdivision (b) of Section 12.40 of the Budget Act of 2000 and the amount appropriated for the purposes of Section 42243.7 of the Education Code for the 2000–01 fiscal year shall be 3.17 percent. All funds appropriated in the items identified in this section are in lieu of the amounts that would otherwise be appropriated pursuant to any other provision of law.

SEC. 35. (a)(1) The sum of twenty-five million dollars ($25,000,000) is hereby appropriated from the General Fund for transfer by the Controller to the Child Care Facilities Revolving Fund established pursuant to Section 8278.3 of the Education Code.

(2) The sum of one hundred seventy-five million dollars ($175,000,000) is hereby appropriated from the General Fund to the Secretary for Education for allocation to school districts for high schools and to charter schools serving any of grades 9 to 12, inclusive, pursuant to the Education Technology Grant Program established pursuant to legislation enacted during the 1999–2000 Regular Session. The allocation shall be based on enrollment in grades 9 to 12, inclusive. Any unencumbered balance on March 15, 2001, of these funds shall be transferred by the Controller to the Superintendent of Public Instruction for allocation pursuant to the school district block grant authorized pursuant to Section 38 of this act. The funds shall be available for allocation pursuant to subdivision (c) of Section 38 of this act.

(b) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriations made by subdivision (a) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1999–2000 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code for the 1999–2000 fiscal year.

SEC. 36. (a) The sum of one hundred million dollars ($100,000,000), is hereby appropriated from the General Fund, for transfer to Section B of the State School Fund by the Controller, for allocation by the Chancellor of the California Community Colleges, for purposes of providing one-time grants to community college districts for the 2000–01 fiscal year.

(b) The Chancellor of the California Community Colleges shall allocate the funds appropriated by subdivision (a) to community college districts in an average amount per actual statewide full-time equivalent student enrollment reported for the 1999–2000 fiscal year. These funds may only be expended for high priority projects for instructional equipment, library materials replacement, technology infrastructure, scheduled maintenance, special repairs, hazardous substances abatement, and the removal of architectural barriers.

(c) For the purposes of making computations required by Section 8 of Article XVI of the California Constitution, the amount appropriated pursuant to subdivision (a) shall be deemed to be "General Fund revenues appropriated for community college districts," as defined in subdivision (d) of Section 41202 for the 1999–2000 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code for the 1999–2000 fiscal year.

SEC. 37. (a) The sum of two hundred fifty million dollars ($250,000,000) is hereby appropriated from the General Fund, for transfer to Section A of the State School Fund, for allocation by the Superintendent of Public Instruction to school districts, county offices of education, and charter schools on a competitive basis, as specified in Chapter 6 (commencing with Section 420) of Part 1 of the Education Code.

(b) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subdivision (a) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1999–2000 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code for the 1999–2000 fiscal year.

SEC. 38. (a) The sum of one hundred thirty-nine million dollars ($139,000,000) is hereby appropriated from the General Fund as a contingency expenditure, to be authorized by the Department of Finance for transfer to the Controller, as necessary for the reimbursement of state-mandated cost claims submitted by school districts and county offices of education. These funds may not be expended without approval of the Department of Finance.

(b) Prior to the payment of any claim with the funds appropriated in subdivision (a), the Controller shall ensure that an audit of the claim is complete.

(c) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subdivision (a) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1999–2000 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code for the 1999–2000 fiscal year.

SEC. 39. The SCHOOL IMPROVEMENT AND PUPIL ACHIEVEMENT BLOCK GRANT shall be provided to school districts and schoolsites as provided in this section.

(a) The sum of four hundred twenty-five million dollars ($425,000,000) is hereby appropriated from the General Fund, for transfer to Section A of the State School Fund, to the Superintendent of Public Instruction for the purposes of making block grant allocations to

school districts, county offices of education, and charter schools as provided in this section. The sum of one hundred eighty million dollars ($180,000,000) shall be available for purposes of subdivision (b). The sum of two hundred forty-five million dollars ($245,000,000) shall be available for purposes of subdivision (c).

(b)(1) From the amount available for this subdivision pursuant to subdivision (a), the Superintendent of Public Instruction shall calculate an equal amount per unit of actual average daily attendance, including average daily attendance attributable to regional occupational centers and programs and adult education, for the 1999–2000 second principal apportionment for each regular public school. However, no regular public school shall receive less than ten thousand dollars ($10,000). If a school district or county office of education did not report prior year average daily attendance on behalf of a regular public school by the second principal apportionment of the 1999–2000 fiscal year, but that school is a regular public school, as defined pursuant to paragraphs (4) and (5), that school may receive the minimum grant specified under this section.

(2) The use of funds allocated pursuant to paragraph (1) for public schools under the jurisdiction of a school district shall be proposed by each school's schoolsite council, as defined in Section 52012 of the Education Code, or, if the school does not have a schoolsite council, by schoolwide advisory groups or school support groups that conform to the requirements of Section 52012 of the Education Code. These funds may be used for instructional materials, staff development, computers, education technology, such as software and wiring, library materials, deferred maintenance, enrichment activities, tutoring services, or any other one-time educational purpose. Before funds allocated pursuant to paragraph (1) may be encumbered or expended, the governing board of the school district shall approve the proposed use. If the governing board of a school district does not approve the use proposed pursuant to this paragraph, no expenditures of the specified funds may be made and the governing board of the school district shall inform the schoolsite council, schoolwide advisory group, or school support group of the reasons why the proposal was disapproved. If the schoolsite council, schoolwide advisory group, or school support group and the governing board of the school district are not able to agree on the use of the funds by May 1, 2001, the county superintendent of schools shall notify the Controller of the impasse. The Controller shall require that the funds allocated to the school be returned to the state at the next following apportionment, and the funds shall revert to the Proposition 98 Reversion Account in the General Fund.

(3) The use of funds allocated pursuant to paragraph (1) for schools under the jurisdiction of a county office of education shall be proposed by each school's schoolwide advisory group or school support group that conforms to the requirements of Section 52012 of the Education Code. The proposals shall be approved by the county board of education prior to expenditure of the funds allocated pursuant to paragraph (1).

(4) For purposes of this section, "regular public school," as provided in paragraph (1), means any public school in a district or county office of education that is a wholly self-contained public schoolsite, with a separate county-district-school (CDS) code, as maintained by the Superintendent of Public Instruction as of June 30, 2000, and which is in operation during the 2000–01 school year. Two or more schools that share a physical site or staff shall be considered a single "regular public school" for purposes of qualifying for the minimum ten thousand dollar ($10,000) grant, which shall be allocated to the separate schools sharing the site based on each school's share of qualifying average daily attendance. Funds allocated pursuant to paragraph (1) shall not be allocated to parents or guardians of pupils, or to pupils.

(5) For the purposes of this section, "regular public school," as provided in paragraph (1), shall include charter schools that have pupils who are currently enrolled and that have a current county-district-school (CDS) code, as maintained by the Superintendent of Public Instruction as of June 30, 2000. The use of the funds allocated to charter schools pursuant to paragraph (1) shall further the program specified in the school's charter and shall not be allocated to parents, pupils, or staff of the charter school. A charter school shall obtain approval from the governing board of the school district for the use of the funds allocated pursuant to paragraph (1) if the terms of its charter require the approval of the governing board of the school district for similar uses of funds.

(6) Schools that choose to accept funds allocated pursuant to paragraph (1) shall agree to implement all of the provisions of this section.

(c)(1) From the amount available for this subdivision pursuant to subdivision (a), the Superintendent of Public Instruction shall calculate an allocation for each school district, county office of education, and charter school on the basis of an equal amount per unit of actual average daily attendance, including average daily attendance attributable to regional occupational centers and programs and adult education for the 1999–2000 second principal apportionment for each school district, county office of education, and charter school.

(2) Funds allocated pursuant to paragraph (1) shall be expended for school safety, deferred maintenance, technology staff development, education technology connectivity, or facility improvements.

(d) This is a one-time allocation of funds.

(e) The Superintendent of Public Instruction shall apportion to each school district, county office of education, and charter school the sum of the amounts calculated pursuant to subdivision (b) and (c). The amount calculated pursuant to subdivision (b) shall only be expended at the schoolsite level pursuant to the process specified in paragraphs (2) and (3) of subdivision (b). The amount calculated pursuant to subdivision (c) shall be expended for purposes specified in paragraph (2) of subdivision (c).

(f) For the purpose of making the computations required by Section 8 of Article XVI of the California Constitution, the amount appropriated pursuant to subdivision (a) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1999–2000 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1999–2000 fiscal year.

SEC. 40. (a)(1) The sum of three hundred fifty million dollars ($350,000,000) is hereby appropriated from the General Fund, for transfer by the Controller to Section A of the State School Fund, for allocation on a one-time basis by the Superintendent of Public Instruction to school districts, county offices of education, and charter schools for the Academic Performance Index Schoolsite Employees Performance Bonus.

(2) As a condition of receiving funds pursuant to this section, school districts, county offices of education, and charter schools shall, upon request by the Superintendent of Public Instruction and by November 1, 2000, certify the number of full-time equivalent employees employed as of the second principal apportionment of the 1999–2000 school year at each schoolsite under their jurisdiction that are eligible for awards in accordance with subdivision (a) of Section 52057, the Governor's Performance Award Program.

(3) Upon receipt of the certifications the Superintendent of Public Instruction shall calculate a statewide amount per full-time equivalent employee, the sum of which shall not exceed three hundred fifty million dollars ($350,000,000). The Superintendent of Public Instruction shall then apportion an equal amount per full-time equivalent employee to the appropriate school district, county office of education, or charter school for allocation to the schoolsites that have met or exceeded their Academic Performance Index growth target.

(4) As a condition of receiving funds pursuant to this section, a schoolsite shall expend 50 percent of the funds to provide one-time bonuses, to its employees, to be divided equally among all schoolsite employees on a full-time equivalent basis. The other 50 percent may be used at the discretion of the schoolsite for any one-time purposes.

(b) For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subdivision (a) shall be deemed to be "General Fund revenues appropriated to school districts," as defined in subdivision (c) of Section 41202 of the Education Code for the 1999–2000 fiscal year and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B" as defined in subdivision (e) of Section 41202 of the Education Code, for the 1999–2000 fiscal year.

SEC. 41. (a) The sum of eight million nine hundred thousand dollars ($8,900,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for

the purpose of allocating funds to county offices of education, pursuant to subparagraph (A) of paragraph (1) of subdivision (b) of Section 2568 of the Education Code.

(b) For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subdivision (a) shall be deemed to be "General Fund revenues appropriated to school districts," as defined in subdivision (c) of Section 41202 of the Education Code for the 2000–01 fiscal year and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B" as defined in subdivision (e) of Section 41202 of the Education Code, for the 2000–01 fiscal year.

SEC. 42. (a) The sum of thirty-two million eight hundred *fifty-two* thousand dollars ($32,852,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction in accordance with the following schedule:

(1) One hundred thousand dollars ($100,000) for allocation on a one-time basis to the San Francisco County Office of Education for an evaluation of the Cada Cabeza Es Un Mundo Latino–Chicano High School Dropout Prevention Program.

(2) One hundred ten thousand dollars ($110,000) for allocation on a one-time basis to the Orange County Department of Education for kitchen facilities at the Katharine Irvine Day School.

(3) Eighty thousand dollars ($80,000) for allocation on a one-time basis to the Santa Ana Unified School District for playground equipment for the Romero Cruz Elementary School.

(4) One hundred fifty-five thousand dollars ($155,000) for allocation on a one-time basis to the Centralia Elementary School District for playground equipment for the San Marino and Danbrook elementary schools.

(5) Two hundred thousand dollars ($200,000) for allocation on a one-time basis to the Long Beach Unified School District for renovation of the swimming pool at Jordan High School.

(6) Three hundred thousand dollars ($300,000) for allocation on a one-time basis to the San Francisco Unified School District to expand instruction in arts education in kindergarten and grades 1 to 5, inclusive.

(7) Five hundred thousand dollars ($500,000) for allocation on a one-time basis to the Culver City Unified School District to repair the track at Culver City High School.

(8) Ten thousand dollars ($10,000) for allocation on a one-time basis to Los Angeles Unified School District for a school–based/school–linked health program at Maclay Middle School.

(9) Ten thousand dollars ($10,000) for allocation on a one-time basis to Los Angeles Unified School District for a school–based/school–linked health program at Pacoima Middle School.

(10) Fifteen thousand dollars ($15,000) for allocation on a one-time basis to Raisin City Elementary School District for the Raisin City library.

(11) Twenty thousand dollars ($20,000) for allocation on a one-time basis to the Manhattan Beach Unified School District for purchase of equipment for teaching aids to reduce diversity intensity and increase cultural awareness at Mira Costa High School.

(12) Fifty thousand dollars ($50,000) for allocation on a one-time basis to the El Nido Elementary School District for air conditioning at El Nido Elementary.

(13) Sixty–two thousand dollars ($62,000) on a one-time basis to the Hilmar Unified School District for street access at Hilmar High School.

(14) Seventy–five thousand dollars ($75,000) for allocation on a one-time basis to the Wasco Union High School District for air conditioning for the Wasco High School auditorium.

(15) One hundred thousand dollars ($100,000) for allocation on a one-time basis to the Los Angeles Unified School District for a parent education center at the Ligget Elementary School.

(16) One hundred thirty thousand dollars ($130,000) for allocation on a one-time basis to the San Diego City Unified School District for an ADA Tot Lot upgrade at the Alcott Elementary School.

(17) One hundred thirty-nine thousand dollars ($139,000) for allocation on a one-time basis to the Las Deltas Unified School District for a water well.

(18) Two hundred thousand dollars ($200,000) for allocation on a one-time basis to the Sunnyvale Elementary School District for Project H.E.L.P.

(19) Two hundred fifty thousand dollars ($250,000) for allocation on a one-time basis to the Lamont Elementary School District for portable classrooms.

(20) Two hundred fifty thousand dollars ($250,000) for allocation on a one-time basis to the Compton Unified School District for a pool at Compton High School.

(21) Three hundred fifty thousand dollars ($350,000) for allocation on a one-time basis to the Fremont Union High School District for a swimming pool at Fremont High School.

(22) Four hundred fifty thousand dollars ($450,000) for allocation on a one-time basis to the Los Angeles Unified School District for the San Fernando High School Health Clinic.

(23) Five hundred thousand dollars ($500,000) for allocation on a one-time basis to the Baldwin Park Unified School District for the DREAM project.

(24) Five hundred thousand dollars ($500,000) for allocation on a one-time basis to Montebello Unified School District for natural gas powered delivery trucks.

(25) One hundred fifty thousand dollars ($150,000) for allocation to the Elk Grove Unified School District for a statewide Japanese language academy.

(26) Five hundred thousand dollars ($500,000) for allocation on a one-time basis to the Oakland Unified School District for a reading training program.

(27) Three hundred fifty thousand dollars ($350,000) for allocation on a one-time basis to the Burbank Unified School District to continue an innovative literacy program.

(28) Three hundred thousand dollars ($300,000) for allocation on a one-time basis to the Temple City Unified School District Arts Academy.

(29) Four hundred thousand dollars ($400,000) for allocation on a one-time basis to the Alum Rock Union Elementary School District for a mathematics/science center.

(30) Fifty thousand dollars ($50,000) for allocation on a one-time basis to the Santa Monica Malibu Unified School District for an after school youth program at Malibu High School.

(31) One hundred fifty thousand dollars ($150,000) for allocation on a one-time basis to the Pasadena Unified School District for the Pasadena Multipurpose Athletic Field.

(32) Two hundred thousand dollars ($200,000) for allocation on a one-time basis to the Tahoe–Truckee Unified School District for the North Tahoe Youth Center.

(33) Three hundred sixty thousand dollars ($360,000) for allocation on a one-time basis to the Santa Barbara High School District for soccer and baseball fields.

(34) Six hundred seventy-five thousand dollars ($675,000) for allocation on a one-time basis to the Los Alamitos Unified School District for reimbursement for class size reduction costs.

(35) Ten million dollars ($10,000,000) for allocation on a one-time basis to the Alvord Unified School District for construction costs associated with the Center for Primary Education.

(36) Nine hundred thousand dollars ($900,000) for allocation on a one-time basis to the Riverside County Office of Education for purposes of screening and diagnosing pupils for Scotopic Sensitivity Syndrome.

(37) Five hundred thousand dollars ($500,000) for allocation on a one-time basis to the Saugus Union Elementary School District for costs associated with testing air quality in portable classrooms.

(38) Two hundred seventy-five thousand dollars ($275,000) for allocation on a one-time basis to the Inyo County Office of Education for facilities costs.

(39) Five hundred thousand dollars ($500,000) for allocation on a one-time basis to the Calaveras Unified School District for swimming pool renovations.

(40) Twenty-seven thousand dollars ($27,000) for allocation on a one-time basis to the Alta-Dutch Flat Union Elementary School District to provide pupil transportation services.

(41) Five hundred thousand dollars ($500,000) for allocation on a one-time basis to the Gonzales Unified School District for slough repair costs.

(42) Two hundred seventy thousand dollars ($270,000) for allocation on a one-time basis to the Madera Unified School District for the Madera Safe Schools and Recreation Route.

(43) Four hundred sixty-nine thousand dollars ($469,000) for allocation on a one-time basis to the Mariposa Unified School District to offset declining average daily attendance funding.

(44) Five hundred sixty-eight ($568,000) for allocation on a one-time basis to the Chatom Union Elementary School District to offset declining average daily attendance funding and to purchase school busses.

(45) Three million seven hundred thousand dollars ($3,700,000) for allocation on a one-time basis to the Clovis Unified School District for the Central Valley Applied Agriculture and Technology Center.

(46) Six hundred thousand dollars ($600,000) for allocation on a one-time basis to the Orinda Union Elementary School District to improve pedestrian and vehicle safety.

(47) One hundred twelve thousand dollars ($112,000) for allocation on a one-time basis to the Alameda County Office of Education for the Smart Kids, Safe Kids Program.

(48) Four hundred seventy-five thousand dollars ($475,000) for allocation on a one-time basis to the Millbrae Elementary School District for declining enrollment.

(49) Four hundred thousand dollars ($400,000) for allocation on a one-time basis to the Los Angeles Unified School District to renovate Olive Vista Middle School.

(50) Fifty thousand dollars ($50,000) for allocation on a one-time basis to the Escalon Unified School District for a new swimming pool.

(51) One hundred five thousand dollars ($105,000) for allocation on a one-time basis to the Borrego Springs Unified School District for a football field facility at the Borrego Springs High School.

(52) One hundred sixty thousand dollars ($160,000) for allocation on a one-time basis to the Soledad Enrichment Action Charter School for Operation Y.E.S.

(53) Four hundred fifty thousand dollars ($450,000) for allocation on a one-time basis to the Del Norte County Unified School District for construction of the Mountain School multi-purpose building.

(54) One hundred thousand dollars ($100,000) for allocation on a one-time basis to the L.A.'s Best for afterschool programs.

(55) Five million dollars ($5,000,000) for allocation on a one-time basis to the Clovis and Fresno Unified School Districts for the Center for Advanced Research and Technology.

(b) For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subdivision (a) shall be deemed to be "General Fund revenues appropriated to school districts," as defined in subdivision (c) of Section 41202 of the Education Code for the 1999–2000 fiscal year and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII-B" as defined in subdivision (e) of Section 41202 of the Education Code, for the 1999–2000 fiscal year.

SEC. 43. (a) The sum of eight million five hundred seventy-six thousand dollars ($8,576,000) is hereby appropriated from the General Fund to the Chancellor of the California Community Colleges, in accordance with the following schedule:

(1) Five hundred seventy-five thousand dollars ($575,000) for allocation on a one-time basis to the Santa Clarita Community College District for the purpose of preliminary plans, working drawings, and construction of the College of the Canyons Welding Technology and Manufacturing Lab renovation and expansion project.

(2) Five hundred fifty-one thousand dollars ($551,000) for allocation on a one-time basis to the Victor Valley Community College District for the purpose of working drawings for a new computer lab at Victor College.

(3) One million dollars ($1,000,000) for allocation on a one-time basis to the Compton Community College District for the purpose of preliminary plans, working drawings, and construction for the Compton Community College stadium renovation project.

(4) One million five hundred thousand dollars ($1,500,000) for allocation on a one-time basis to Copper Mountain Community College for transition and technology costs.

(5) Nine hundred thousand dollars ($900,000) for allocation on a one-time basis to the San Francisco City College, Mission Center, for the working drawings phase of the Mission Center capital outlay project which has previously been approved by the state.

(6) Fifty thousand dollars ($50,000) for allocation on a one-time basis to the San Diego Community College district for the Faces of San Diego Project.

(7) Four million dollars ($4,000,000) for allocation on a one-time basis to the Los Angeles City College for site acquisition and development of the Atwater Village Satellite Center.

(b) For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subdivision (a) shall be deemed to be "General Fund revenues appropriated to community colleges," as defined in subdivision (c) of Section 41202 of the Education Code for the 1999–2000 fiscal year and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B" as defined in subdivision (e) of Section 41202 of the Education Code, for the 1999–2000 fiscal year.

SEC. 44. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement the Budget Act of 2000 with respect to the public schools and higher education, it is necessary that this act take effect immediately.

SCHOOLS AND SCHOOL DISTRICTS—INSTRUCTIONAL PROGRAMS

CHAPTER 72

S.B. No. 1683

AN ACT to amend Sections 37252, 37253, 42239.1, and 42239.2 of, to amend and repeal Section 37252.5 of, to add Sections 37252.2, 37252.8, and 37253.5 to, to add and repeal Section 37252.6, to repeal Sections 42239.5 and 42239.6 of, and to repeal and add Section 42239 of, the Education Code, relating to instructional programs, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State July 5, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1683, Escutia. Instructional programs.

Existing law requires a school district, and authorizes a charter school, to offer summer school instructional programs for pupils who do not demonstrate sufficient progress toward passing the high school graduation exit exam. Existing law authorizes these instructional programs to be offered during the summer, after school, on Saturday, or during intersession.

This bill would rename summer school instructional programs as supplemental instructional programs and would authorize the programs also to be offered before school.

Existing law requires a school district, and authorizes a charter school, to offer direct, systematic, and intensive supplemental instruction to a pupil who has been retained in his or her grade level. Existing law authorizes a school district or charter school to require a pupil who has been retained to participate in the instruction, with prescribed exceptions. Existing law prohibits the instruction from being offered during the regular instructional day if it would result in the pupil being removed from classroom instruction in the core curriculum. Existing law prescribes a maximum amount of funding for purposes of these programs.

This bill would also require the governing board of each school district to offer that supplemental instruction to pupils in grades 2 to 9, inclusive, who have been recommended for retention, thereby imposing a state-mandated local program. The bill would prohibit the

EXHIBIT 4

CALIFORNIA COMMUNITY COLLEGES CHANCELLOR'S OFFICE

2000-2001 PROGRAM MANUAL

Exhibit 4
California Community Colleges Chancellor's Office
2000-2001 Program Manual

California Community Colleges
Chancellor's Office

Board of Governors Fee Waiver Program And Special Programs

2000-2001 PROGRAM MANUAL

Effective:
July 1, 2000-June 30, 2001

California Community Colleges Chancellor's Office

Board of Governor's Fee Waiver Program And Special Programs

2000/2001

PROGRAM MANUAL

Effective July 1, 2000 – June 30, 2001

Table of Contents

4. ELIGIBILITY: FINANCIAL
   - 4.1 Dependency Status
     - 4.1.1 Independence
     - 4.1.2 Dependency overrides
     - 4.1.3 Documentation of independence
   - 4.2 Financial Eligibility for Part A
     - 4.2.1 Types of public benefits
     - 4.2.2 Documentation for Part A
   - 4.3 Financial Eligibility for Part B
     - 4.3.1 Income standards
     - 4.3.2 Zero EFC
     - 4.3.3 Professional Judgment for EOPS Eligibility
     - 4.3.4 Documentation for Part B
   - 4.4 Financial Eligibility for Part C
     - 4.4.1 Financial eligibility for need-based aid
     - 4.4.2 Documentation for Part C
     - 4.4.3 Use of discretion
   - 4.5 BOG Fee Waiver as a Award in Packaging
   - 4.6 Federal Statute and Regulation Regarding Need Analysis

5. SPECIAL ELIGIBILITY
   - 5.1 Dependents of National Guard
   - 5.2 Other Dependents of Veterans

6. PAYMENT POLICIES
   - 6.1 Eligibility Established Prior to Start of Term
   - 6.2 Eligibility Established After Start of Term or Eligibility Pending
   - 6.3 Reimbursement of Fees Paid and Retroactive Reimbursement
   - 6.4 Repayment of a BOG Fee Waiver

7. ALLOCATIONS
   - 7.1 Board Financial Assistance Program (BFAP) Student Aid Administrative Allowance – "7%"
     - 7.1.1 Allocation formula
     - 7.1.2 Allowable use of funds
   - 7.2 The Board Financial Assistance Program (BFAP) Fee Equalization Allocations – "2%"
   - 7.3 BOG Fee Waivers are Entitlement Funding

8. CAMPUS REPORTING REQUIREMENTS
   - 8.1 Estimates of Fee Waiver Activity: BFAP Reports 1A, 1B, and 1C
   - 8.2 Reallocation of Unused Administrative Allowance: BFAP Report 4
   - 8.3 MIS Data: Annual October 1st Submission
   - 8.4 Maintenance of Administrative Effort: BFAP Report 3
   - 8.5 Ad Hoc Reports

9. PARTICIPATION BY NEW COLLEGES

10. SPECIAL PROGRAM: CHANCELLOR'S OFFICE TAX OFFSET PROGRAM
    - 10.1 Program Description
    - 10.2 Participation Agreement
    - 10.3 Chancellor's Office Contact Person

11. COMMUNICATION AND ASSISTANCE
    - 11.1 Chancellor's Office
    - 11.2 Communication from the Chancellor's Office
    - 11.3 Training
    - 11.4 Other Communication
    - 11.5 Comments

APPENDICES

1. California Education Code - Section 76300
   The law regarding the BOG Fee Waiver Program

2. Title 5, California Code of Regulations, Section 58600
   The regulations regarding the BOG Fee Waiver Program

3. California Education Code, Section 66022
   The law regarding students in default

4. CCC Chancellor's Office Legal Opinion Regarding Students in Default

5. Higher Education Act of 1965 as amended, Section 480
   Federal law regarding dependency overrides

6. 2000/2001 Income Standards

7. Higher Education Act of 1965 as amended, Section 479(a)
   The law regarding professional judgment

8. California Education Code – Section 32320
   The law regarding dependents of veterans

California Community Colleges Chancellor's Office
Board of Governor's Fee Waiver Program And Special Programs

2000/2001
PROGRAM MANUAL
Effective July 1, 2000 – June 30, 2001

1. INTRODUCTION

1.1 Program Purpose

The Board of Governors Fee Waiver Program is designed to ensure that the fee policies of the California Community Colleges (CCC) are not a financial barrier to education for any California resident. As of January 2000, the CCC fee charge is planned to be $11 per unit for resident students in 2000/2001. (Fee levels are not final until the state budget is passed in June 2000.) Enrollment fees are waived for all needy students as defined in this program.

1.2 Program Description

1.2.1 Three-part eligibility

Students are determined eligible in one or more of the following three separate parts of the BOG Fee Waiver Program. Part A is for students receiving TANF, SSI and General Assistance. Part B is for students who meet strict low-income criteria. Part C provides fee waivers to every student who demonstrates financial need.
Note: The Title 5 regulations (Appendix 2) refer to these parts in a different manner:

Part A = Section 2
Part B = Section 1
Part C = Section 3

1.2.2 Relationship to other program eligibility and fee provisions

EOPS: Students who are eligible for Parts A and/or B are eligible to be referred to the Extended Opportunity Program and Services to be considered for support services such as counseling and tutoring. Part C recipients who also meet Part A or B criteria are eligible for referral.

HEALTH: Any student eligible for a BOG Fee Waiver is exempt from the health fee.

OTHER: Eligibility for a BOG Fee Waiver relates to several provisions of the fee policies of the Community Colleges. Please refer to the annual Fee Policy update from the CCCCO Legal Department (sent to all Financial Aid Directors in December of each year).

1.3 Program Authority

1.3.1 The law

The Board of Governors Fee Waiver Program is authorized in California law in Section 76300 of the California Education Code. (See Appendix 1.)

1.3.2 The regulations

The Program is regulated through Title 5 of the California Code of Regulations, Sections 58600-58630. (See Appendix 2.)

1.3.3 Sub-regulatory guidance

Additional guidance on the administration of the BOG Fee Waiver Program is offered by the California Community College Chancellor's Office through this manual, program updates and training materials. This manual supercedes existing Q and A documents.

1.3.4 Annual cycle of the academic year: leader or trailer

For eligibility purposes, the campus may choose to make summer session a "leader" or a "trailer" to fit other program decisions. Thus, the eligibility criteria in this manual may be applied for summer 2000 through spring 2001 or for fall 2000 through summer 2001.

For reporting purposes (see Section 6 on Reporting Requirements), summer is always the leader. Reports for 2000/2001 will include summer 2000, not summer 2001.

1.4 Multi-Campus Districts

Districts are free to adopt district-wide policies or campus specific policies in the BOG Fee Waiver program.

2.0 APPLICATION PROCESS

2.1 The Basic Application for the BOG Fee Waiver Program

Any student may apply for a BOGFW using the Free Application for Federal Student Aid (FAFSA) or a separate, supplemental BOG Fee Waiver Application. The FAFSA is the basic application for the program. Whenever possible, students should not be required to complete a supplemental form to receive a fee waiver unless it is necessary or to the student's advantage to do so.

2.2 The BOG Fee Waiver Application

2.2.1 The Chancellor's Office BOG Fee Waiver Application

Each year the Chancellor's Office will produce a BOG Fee Waiver application that may be used by the colleges as a supplemental or separate form. Colleges may design and print their own forms as long as the information on the Chancellor's Office form is included.

2.2.2 The use of the BOG Fee Waiver Application

The supplemental or separate form may be used as a quick or short form to facilitate a fast eligibility process and/or as the sole application for students who choose not to file a FAFSA. The FAFSA application is preferable because the student will be evaluated for a full-range of financial assistance.

Colleges may use a locally-developed supplement to determine the source of untaxed income to demonstrate Part A eligibility because TANF and SSI are no longer specifically identified on the FAFSA. A separate BOGFW application is not required for this.

If a student is given the BOG Fee Waiver Application, the student should be strongly urged to complete a FAFSA as well. The BOG Fee Waiver Application tells students to consider filing a FAFSA, but colleges are encouraged to find additional means to publicize the FAFSA and encourage the application for full funding.

Students may be considered eligible under Parts A and B without filing a supplemental form. If the FAFSA demonstrates Part A and/or Part B eligibility no additional application form is required.

2.2.3 The 2000/2001 BOG Fee Waiver Application

The application is available electronically from the Chancellor's Office. The application is also included in the manual. (See Appendix 9.)

2.2.4 Applications in languages other than English

If the BOGFW application that is translated into other languages, the college is urged to share the form with the Chancellor's Office so it may be made available to other colleges.

2.2.5 Acceptable media

Colleges may provide a BOG Fee Waiver application in any format desired, as long as a paper format remains available for those students who do not have access to electronic media.

2.3 The Use of the FAFSA Output

2.3.1 SAR/ISIR available

A processed SAR/ISIR is acceptable for Parts B or C eligibility.

2.3.2 No SAR/ISIR available

If the college so chooses, the copy of the FAFSA may be evaluated and used as an eligibility document for fee waiver, without waiting for the receipt of the ISIR. Or a paper FAFSA may be evaluated and used as an eligibility document for fee waiver, without central processing.

3. ELIGIBILITY: NON-FINANCIAL

3.1 Residency

The student must be determined to be a California resident for fee purposes through the college's admissions process.

3.2 Enrollment in Credit Coursework

The BOG Fee Waiver is available for enrollment in credit coursework only. (Note: The distinction is between credit and noncredit courses. Students may take credit courses with a grading option of "credit/no credit". The grading choice is not relevant to fee waiver eligibility.)

3.3 Relation to Federal Non-Financial Requirements

In the eligibility situations noted below, students are eligible for BOG Fee Waiver assistance only. If it is possible for the student to overcome the particular obstacle (e.g., provide a social security number or take an ability to benefit test) the student should be counseled to do so in order to be considered for additional funds.

3.3.1 Social security number

A student may receive a BOG Fee Waiver without providing a social security number as long as the college permits students to receive regular services without providing the SSN.

3.3.2 Ability to benefit

A student who has not earned a HS diploma, GED or equivalent, but who is eligible for enrollment in credit coursework may receive a fee waiver without passing an ability to benefit test as required by the federal Title IV statutes.

3.3.3 Eligible program and educational goal

A student may receive a fee waiver for enrollment in any type of credit coursework without specifying an educational goal or participating in an eligible program.

3.3.4 High School Enrollment

High school students are not usually charged fees. However, in a case where a high school student is charged an enrollment fee the fee may be waived under the BOG Fee Waiver Program.

3.3.5 Enrollment level

A student may receive a fee waiver for enrollment in any number of credit units during a term. There is no minimum or maximum.

3.3.6 Citizenship

As long as the student is admitted as a California resident by the college the student may receive a fee waiver. Federal rules regarding citizenship do not apply.

3.3.7 Selective Service

Students who fail to register for the selective service in accordance with the law (50 USC App 451 et seq.) may receive a BOG fee waiver unless there are college policies that prohibit this service.

Each college is required under Section 66500 of the California Education Code to inform students of their obligation to register and to provide access to additional information. Students who are not registered in accordance with the law should be referred to the office that provides such information at the college.

3.3.8 Drug convictions

If the student's eligibility is suspended due to the federal Title IV drug conviction regulations the student remains eligible for a BOG Fee Waiver.

3.3.9 Loan default and grant repayment

Per the California Education Code (Section 66022) the governing board of each college must adopt policies regarding the withholding of services from students in default. (See Appendix 3.) Per Legal Opinion E 2000-01 of the Chancellor's Office, the BOG Fee Waiver is not an institutional service that may be withheld from students pursuant to E.C. Section 66022. (See Appendix 4.)

Colleges are encouraged to counsel students regarding the consequences of default and the procedures necessary to reestablish his/herself in good standing.

3.3.10 Satisfactory academic progress

As long as a student continues to be eligible to enroll in credit coursework, the student may remain eligible for a fee waiver.

4. ELIGIBILITY: FINANCIAL

4.1 Dependency Status

4.1.1 Independence

Students may qualify as financially independent for a BOG Fee Waiver using the federal criteria. In addition, students who do not qualify through these criteria may be considered independent of parent support *for a BOG Fee Waiver only* if they do not live with their parent(s) and were not claimed as a tax exemption by either or both parents in 1999.

4.1.2 Dependency overrides

The discretion provided in Article 480(d)(7) of the HEA of 1965 as amended to override the dependency status of an otherwise dependent student (See Appendix 5) shall apply to dependency status for the BOG Fee Waiver program including Parts A, B and C and subsequent EOPS eligibility.

In making such determinations, the college may apply more lenient or different criteria than might be applied for federal purposes for the same student, as long as the determination is made on a case-by-case basis and includes supporting documentation.

Other Student Services (EOPS, Counseling, DSPS, etc.), should be encouraged to *refer* students for consideration for dependency override if there is evidence that dependent status is inappropriate in a particular case; the *determination* of dependency override (and maintenance of supporting documentation) is a function of the Financial Aid Office.

4.1.3 Documentation of independence

If the student is independent under the federal and state criteria, the normal verification procedures of the college are sufficient.

If the student is independent only under the supplemental BOG Fee Waiver criteria, the college may require the student to submit a signed copy of the 1999 Federal Income Tax return of his or her parents (or tax documentation from both parents if the parents did not file jointly) to prove the student was not claimed. Or, if one or both of the parents did not file a 1999 Federal Income Tax Return, the parent(s) who did not file may be required to submit a non-filing statement. Or the college may accept the information on the signed application without requiring additional documentation.

4.2 Financial Eligibility for Part A

4.2.1 Types of public benefits

A dependent student is eligible for Part A if the parent(s) who are required to complete the FAFSA receive, or if the dependent student receives, the public benefits listed below at the time of enrollment

An independent student is eligible if the student (not the spouse) receives the public benefits listed below at the time of enrollment.

- **TANF:** Temporary Assistance to Needy Families. The monthly cash grant must include the dependent student and/or be the sole source of income for the family. Students/families receiving food stamps or CalWORKs services but no TANF cash grant are not eligible under Part A.

- **SSI/SSP:** Supplemental Security Income/State Supplemental Program. The benefits must include the dependent student and/or be the sole source of income for the family. Other associated public benefits such as Social Security Disability Income (SSDI) and regular Social Security retirement benefits do not qualify under Part A. These public benefits are not necessarily "need-based".
- **GA:** General Assistance. The receipt of General Assistance qualifies the student for a BOG Fee Waiver. Again, food stamp eligibility alone is not sufficient to qualify for Part A.

NOTE: Students who do not qualify under the strict criteria described above will often qualify under Part C. Encourage completion of the FAFSA.

4.2.2 Documentation for Part A

In order to qualify under Part A, the Financial Aid Office must document the public benefits listed above per Title 5 of the California Code of Regulations. (See Appendix 2.) The type of documentation is to be determined by local financial aid policies. The documentation must be sufficient to officially prove the individual(s) received the type of benefit listed above in the appropriate time period.

4.3 Financial Eligibility for Part B

4.3.1 Income standards

The 2000/2001 income standards are listed in Appendix 7. Students are eligible for Part B fee waivers if the total 1999 income is equal to or less than the amount on the chart for the relevant family size.

For a dependent student, "income" means all taxed and untaxed income received in the base year (1999) by the parent(s) who are required to complete the FAFSA. (Income received by the dependent student counts toward the calculation of an EFC but not toward the income standards for Part B.)

For a single independent student with no dependents, "income" means all taxed and untaxed income received in the base year (1999).

For a married independent student, "income" means all taxed and untaxed income received in the base year (1999) by the student and/or the student's spouse.

For an independent student with dependents other than a spouse, "income" means all taxed and untaxed income received in the base year (1999) by the student but not income received by the dependent(s).

NOTE: Students who do not qualify under the strict criteria described above will often qualify under Part C. Encourage completion of the FAFSA.

4.3.2 Zero EFC

If a student is determined to have a zero EFC, the student qualifies for a Part B referral to EOPS regardless of the income standards described above.

If the colleges chooses, a dependent student may also qualify for a Part B EOPS referral based only on the *parent contribution* of the EFC. (Federal Methodology calculates the PC and SC portions separately.

4.3.3 Professional judgment for EOPS eligibility

A Part C eligible student with a zero EFC calculated as a result of the exercise of professional judgment as provided for in Section 479(a) of the HEA of 1965 as amended is also eligible for a Part B referral to EOPS. (See Appendix 7.)

Professional judgment cannot be used to amend the income standards for Part B eligibility.

4.3.4 Documentation for Part B

Title 5 of the California Code of Regulations requires documentation of those who are eligible under Part B. (See Appendix 2.) The college shall determine the method of documentation (which may include such methods as self certification, sampling or 100% verification).

4.4 Financial Eligibility for Part C

4.4.1 Financial eligibility for need-based aid

Any student who demonstrates financial eligibility for federal or state need-based student aid is eligible for a Part C fee waiver. Financial eligibility means a student with an EFC (9 month EFC) that is less than the Cost of Attendance (9 month budget) as determined for that individual student or for the group of students to which the student belongs (e.g. "at home" or "off campus").

4.4.2 Documentation for Part C

In order to be eligible for Part C, a student must complete a FAFSA. No other documentation is required.

4.4.3 Use of discretion

If the Financial Aid Office exercises the discretionary authority allowed in Section 479(a) of the HEA of 1965 as amended to change the data elements of the student's EFC or Cost of Attendance, the amended amounts used for federal funding must be used for Part C fee waiver eligibility as well, whether that action increases or decreases eligibility.

4.5 BOG Fee Waiver as a Resource in Packaging

The Cost of Attendance for each student shall include the enrollment fee as assessed per the California Education Code. The BOG Fee Waiver is considered an award in the package of financial aid to meet that cost. The amount to be listed on the offer letter is determined per college policy.

4.6 Federal Statute and Regulation Regarding Need Analysis

In the absence of specific guidance to the contrary, federal rules for need analysis shall be used in the BOG Fee Waiver program.

5. SPECIAL ELIGIBILITY

5.1 Dependents of National Guard

Per the California Education Code, Section 76300, fees are waived regardless of financial circumstance "for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, refers to a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code". (See Appendix 1.)

5.2 Other Dependents of Veterans

Section 32320 of the California Education Code, Plan B, provides that fees shall not be charged of children of veterans with service-connected disabilities and those killed in action, where the annual income of the child, including the value of support received from the parent, does not exceed $8480 per year. The amount is updated annually. (See Appendix 8.)

6. PAYMENT POLICIES

6.1 Eligibility Established Prior to Start of the Term

If the student establishes eligibility prior to the start of a term and the college has sufficient time to notify the appropriate offices of that eligibility, the student should not be required to make payment of fees at the time of enrollment.

6.2 Eligibility Established After the Start of the Term or Eligibility Pending

If the student establishes eligibility after the start of a term or if the college does not have sufficient time to notify the appropriate offices of eligibility established before the start of the term, the college may:

- Require the student to pay fees and later reimburse the student for fees paid, OR

- Waive the student's fees pending completion of eligibility, with a student acknowledgement of the obligation to pay if the student is found to be ineligible, OR
- Require the student to pay fees and set a date beyond which fees will not be reimbursed if eligibility is not yet established.

6.3 Reimbursement of Fees Paid and Retroactive Reimbursement

If a student retroactively demonstrates eligibility for a fee waiver at any time during the academic year, the college may (but is not required to) reimburse the student for fees paid even if one or more terms has been completed. Reimbursements may be paid to students only within the current academic year. There shall be no reimbursements after June 30 of the academic year.

6.4 Repayment of a BOG Fee Waiver

If a student becomes ineligible after receiving a BOG Fee Waiver, the college may pursue repayment or not, at its own discretion.

7. ALLOCATIONS

7.1 Board Financial Assistance Program (BFAP) Student Aid Administrative Allowance - "7% Fund".

7.1.1 Allocation Formula

Under Section 76300 of the Education Code (see Appendix 1) colleges are provided an administrative allowance to administer the BOG Fee Waiver Program. The statewide aggregate allowance for all colleges is determined by multiplying 7% of the enrollment fee for one credit at a value of no less than $13 ($0.91) times the estimated number of credit units to be waived in the year.

From the statewide aggregate allowance, each college is allocated a sum proportional to the number of students served by fee waivers in the last year for which verifiable data are available. Allocations will not be less than 90% of the previous year's allocation (if funding permits). No college receives less than $12,500.

7.1.2 Allowable use of funds

Funds cannot be used for district operations nor may they be divided among colleges within a district in a manner that differs from the annual allocation to each campus.

The BFAP administrative allowance must be spent solely on financial aid professional, technical and/or clerical staffs who report directly to the financial aid director. Funds may not be used for salaries for personnel at the level of financial aid manager or above, for capital outlay, or office supplies. The funds may not cover expenditures made or liabilities incurred prior to July 1 of the applicable fiscal year.

On an exceptional basis funds may be allowed to cover student help and computer hardware or software if these expenditures are immediately necessary for the delivery of student aid services. Colleges should make a written request (letter, fax, email) to the Coordinator of SFA Programs at the Chancellor's Office. The request should include a description of the expenditures, the amount to be spent by exception and a brief statement describing the need for the request.

Funds must supplement, not supplant, on-going college expenditures for the administration of student aid.

7.2 Board Financial Assistance Program (BFAP) Fee Equalization Allocations – "2% Fund".

Colleges should not be disadvantaged in fee revenue by enrolling needy students. Each year the college receives an amount equal to 2% of the total fees waived to be used in the college general fund. This is similar funding to the 2% of fees actually paid that is kept by the college. These funds do not have to be spent on the administration of student aid.

7.3 BOG Fee Waivers are Entitlement Funding

There are no allocations for the actual student fee waivers. The waivers are simply a transaction in which no money is received (other than the eventual 2% noted above.) The waivers are available to all students who qualify regardless of the amount of fees thus waived and are thus an "entitlement" throughout the year.

8. CAMPUS REPORTING REQUIREMENTS

8.1 Estimates of Fee Waiver Activity: BFAP Reports 1A, 1B, and 1C

Twice per year (October and March) the college will be asked to provide an estimate of the total program activity for the current year. This will include an estimate of the number of students to be served in summer, fall, (winter), and spring as well as an estimate of the total dollar amount of fees to be waived in that time period. This information is used to develop estimates for the Department of Finance for the Governor's January Budget and for the May Revision of the Governor's Budget. These reports are called "BFAP Form 1A" and "BFAP Form 1B."

At the end of the year (usually in August) the college will be asked to report on the total actual activity (number of students served and dollar value of waivers) in the program. This is called "BFAP Form 1C".

8.2 Reallocation of Unused Administrative Allowance: BFAP Report 4

In the spring each year the college will be asked to report on the amount of administrative allowance that might be not be utilized and to request additional amounts if needed. Unused funds will be reallocated to those colleges with need. Failure to release or utilize the BFAP administrative allowance will result in an allocation penalty. The penalty will equal unutilized funds in excess of one percent of the allocation for the applicable year and will be taken from the allocation for the fiscal year immediately following the year in which the underutilization is reported. The report is called "BFAP Report 4".

8.3 MIS Data: Annual October 1st Submission

The MIS data reporting requirements are contained in the manual available on line at www.cccco.edu or through the campus MIS office. MIS reporting for the Financial Aid data elements is on an annual basis, due October 1 each year.

8.4 Maintenance of Administrative Effort: BFAP Report 3

Colleges are asked to report annually on the amount of money spent to administer the student financial aid programs. The amount must be equal to or greater than the maintenance of effort required under the California Education Code (see Appendix 1). The maintenance of effort is equal to the 92/93 level of administrative effort updated for cost of living adjustments. This same report also provides information on the college's final expenditure of the BFAP Administrative Allowance. This report is called "BFAP Report 3".

8.5 Ad Hoc Reports

From time to time the Chancellor's Office may request additional information regarding the administration of student aid or regarding the student population served. Cooperation with special requests is appreciated.

9. PARTICIPATION BY NEW COLLEGES

Whenever a new college or district is officially approved by the Board of Governors, the students attending that college become eligible for BOG Fee Waivers and the student service division of that college becomes eligible to receive the minimum annual administrative allowance allocation of $12,500 during the next available award cycle. Greater allocations will not be made until MIS data are available that support a greater share and until the college has at least one full-time employee devoted exclusively to the management of student financial aid.

10. SPECIAL PROGRAM: CHANCELLOR'S OFFICE TAX OFFSET PROGRAM (COTOP)

10.1 Program Description

The Chancellor's Office can act on behalf of local community college districts for the purpose of collecting outstanding student financial aid and specific non-financial aid obligations owed to the districts by former students through participation in the Franchise Tax Board's Interagency Tax Offset Program. The COTOP program requests the Franchise Tax Board to offset (deduct) the amount owed to a community college district from the student/debtor's personal state income tax, lottery winnings or other state refund.

Some of the types of outstanding liabilities recoverable under this program are defaulted Perkins loans, financial aid overpayments, campus emergency loans, EOPS grants and loans, non-resident tuition, enrollment fees, library fines, and personal checks written with non-sufficient funds.

10.2 Agreement

Each community college district interested in participating in the COTOP program must execute a contract with the Chancellor's Office. The contract is available within the COTOP contract packet, which is distributed by early June of each year. Also included are the data format specifications and the forms that are used throughout the processing year.

Debtor data is due to the Chancellor's Office by October 1 of each year. Additional data may also be submitted by the following January 15, if necessary.

10.3 Chancellor's Office Contact Person

Contact the COTOP Coordinator for additional information or to ask questions. Richard Quintana, COTOP Coordinator, may be reached via e-mail at rquintan@cccco.edu or at (916) 324-0925.

11. COMMUNICATION AND HELP

11.1 Chancellor's Office

Any Financial Aid Office employee or other college staff person may contact the Chancellor's Office, Student Financial Assistance Unit for help.

- Coordinator: Mary Gill, 916.323.5951, mgill@cccco.edu
- Specialist: Richard Quintana, 916.324.0925, rquintan@cccco.edu
- Program Assistant: Brenda Fong, 916.322.7412, bfong@cccco.edu
- Office Technician: Patty Falero, 916.323.6877, pfalero@cccco.edu

In addition, policy inquires may also be directed to those who supervise the Student Financial Assistance Unit:

- Dean: Kaylene Hallberg, 916.324.2348, khallber@cccco.edu
- Acting Vice Chancellor of Student Services: Patrick Lenz, Executive Vice Chancellor, 916.445.2738, plenz@cccco.edu

11.2 Communication from the Chancellor's Office

Regular program updates and special notices are sent to each college using the Chancellor's Office "cfao alias list" system. Each district MIS person establishes the names of the "pointers" for this list. The pointers for the financial aid list should include all persons interested in financial aid policy and must include the director or manager of financial aid. If personnel changes, please contact the MIS office at the district level and ask for a change in pointers for the "cfao alias list.".

11.3 Training

New directors/managers/coordinators/officers (whatever the title of the person in charge of the day-to-day operations of the financial aid office) are required to attend training offered by the Chancellor's Office within the first year of their appointment. Financial Aid Management Training is held twice per year in the fall and spring. Assistant Directors and other management or lead, supervisory or professional staff are encouraged to attend.

In addition, financial aid personnel are strongly encouraged to attend the periodic training offered by USDE, NASFAA, WASFAA, CASFAA, CSAC and CCCSFAAA.

11.4 Other Communication

Financial aid personnel are encouraged to use the CCCSFAAA listserve to communicate with one another on financial aid topics.

To subscribe to the CCCSFAAA listserve:
Send a message to majordomo@list.bcrv.net
In the body of the message type **only**: SUBSCRIBE ccc-fin-aid

To post a message to the CCCSFAAA listserve:
Send a message to ccc-fin-aid@list.bcrv.net

Additionally, financial aid people might want to be on these financial aid listserves:
CASFAA – state issues in financial aid
FINAID-L – national issues in financial aid

The following websites may be of value:
www.casfaa.org
www.cccsfaaa.org
www.cccco.edu (Student Services "under construction")

11.5 Comments

All community college financial aid and student service personnel are welcome to make comments and suggestions about the contents of this manual, BOG Fee Waiver program policies and procedures or other student aid programs. Contact the Chancellor's Office with comments.

APPENDIX 1
BOG Fee Waiver Program: The Law

CALIFORNIA EDUCATION CODE
SECTION 76300

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) (1) The fee prescribed by this section shall be twelve dollars ($12) per unit per semester, effective with the fall term of the 1998-99 academic year, and eleven dollars ($11) per unit per semester effective with the fall term of the 1999-2000 academic year.

(2) The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and also shall proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84757.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(3) Students enrolled in credit contract education courses pursuant to Section 78021, if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting and if these students are not included in the calculation of the average daily attendance of that district.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or

regulation for determining the expected family contribution of students seeking financial aid. The governing board of a community college district also shall waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, refers to a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) (1) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) and (h).

(2) From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) and (h). From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 7 percent of the fee waivers provided pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992-93 fiscal year.

(j) The board of governors shall adopt regulations implementing this section.

APPENDIX 2
BOG Fee Waiver Program: The Regulations

TITLE 5. Education
Division 6. California Community Colleges
Chapter 9. Fiscal Support
Subchapter 7. Student Financial Aid

§58600. Scope.

As used in this chapter: Board of Governors Grant. An instrument used by a community college district to process the financial assistance provided to a low-income student pursuant to the terms of this chapter.

§58601. Definitions.

(a) The Chancellor shall estimate each community college district's need for Board of Governors Grants, and shall allocate funds to districts based on that anticipated need.(b) In estimating each district's need for these financial assistance funds the Chancellor shall consider the following factors:(1) The number of Pell Grant recipients in the district in the previous fiscal year;(2) The estimated number of students in the district who are eligible pursuant to Education Code section 72252(f).(3) The estimated number of low-income students in the district who are enrolled for fewer than six units.(c) The Chancellor shall apportion the allocations in the advanced apportionment certified by the Chancellor.

§58610. Allocations.

Districts shall report the number of and amounts provided for Board of Governors Grants. The Chancellors shall then adjust the financial assistance allocation in the First and Second Principal Apportionments to reflect each district's actual expenditure of funds allocated pursuant to this chapter. Any necessary additional adjustments shall be made in the applicable fiscal year recalculations.

§58611. Adjustments.

(a) A community college district shall provide Board of Governors Grants to all students who are eligible and who apply for this assistance.(b) A student who is determined to be eligible for a Board of Governors Grant may be presumed to be eligible for that assistance for the remainder of the academic year and until the beginning of the following fall term.(c) Nothing in this chapter shall prohibit a community college district from establishing a date beyond which it will not accept applications for this financial assistance.

§58612. Financial Assistance Awards.

Board of Governors Grants shall be made in the amount of the enrollment fee calculated pursuant to section 58507 of this division.

§58620. Student Eligibility: Board of Governors Grant.

To be eligible for a Board of Governors grant, a student must:

(a) Be a California resident;
(b) Meet one of the following criteria:
(1) Income Standards.
(A) Be a single and independent student having no other dependents and whose total income in the prior year was equal to or less than 150% of the US Department of Health and Human Services Poverty Guidelines for a family of one. Or be a married, independent student having no dependents other than a spouse, whose total income of both student and spouse in the prior year was equal to or less than 150% of the US Department of Health and Human Services Poverty Guidelines for a family of two.
(B) Be a student who is dependent in a family having a total income in the prior year equal to or less than 150% of the US Department of Health and Human Services Poverty Guidelines for a family of that size, not including the student's income, but including the student in the family size.
(C) Provide documentation of taxable or untaxed income.
(C) Be a student who is married or a single head of household in a family having a total income in the prior year equal to or less than 150% of the US Department of Health and Human Services Poverty Guidelines for a family of that size.
(D) Be an independent student whose Estimated Family Contribution as determined by Federal Methodology is equal to zero or a dependent student for whom the parent portion of the Estimated Family Contribution as determined by Federal Methodology is equal to or less than zero.
(E) For purposes of this subsection US Department of Health and Human Services Poverty Guidelines used each year shall be the most recently published guidelines immediately preceding the academic year for which a fee waiver is requested.
(2) Current recipient of benefits described in Education Code section 76300 (g).
(A) At the time of enrollment be a recipient of benefits under the Temporary Assistance to Needy Families (TANF) program. A dependent student whose parent(s) or guardian(s) are recipients of TANF shall be eligible if the TANF program grant includes a grant for the student or if the TANF grant is the sole source of income for the parent or guardian.
(B) At the time of enrollment be a recipient of benefits under the Supplemental Security Income (SSI) program. A dependent student whose parent(s) or guardian(s) are recipients of SSI shall be eligible if the SSI program grant is the sole source of income for the parent(s) or guardian(s).
(C) At the time of enrollment be a recipient of benefits under the General Assistance program.
(D) Provide documentation that the student if a recipient of benefits under one of the programs identified in Education Code section 76300 (g) and (h) at the time of enrollment. Documentation sufficient to meet the requirements of this subdivision shall provide official evidence of these benefits.
(3) Need-Based Financial Aid Eligibility. Any student who has been determined financially eligible for federal and/or state needed-based financial aid.

§58621. Student Eligibility: Enrollment Fee Credit.

(a) Dollars allocated for financial assistance pursuant to this chapter shall be identified separately in district accounts.

§58630. District Reporting and Accountability.

(b) The governing board of each community college district shall adopt procedures that will document all financial assistance provided on behalf of students pursuant to this chapter. Authorized procedures shall include rules for retention of support documentation which will enable an independent determination regarding accuracy of the district's certification of need for financial assistance.

APPENDIX 3
The Law Regarding Students in Default

Section 66022 of the Education Code

66022. (a) The governing board of every community college district, the Trustees of the California State University, the Regents of the University of California, and the Board of Directors of the Hastings College of the Law shall adopt regulations providing for the withholding of institutional services from students or former students who have been notified in writing at the student's or former student's last known address that he or she is in default on a loan or loans under the Federal Family Education Loan Program. "Default," for purposes of this section, means the failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the guarantee agency finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for 180 days for a loan repayable in monthly installments, or 240 days for a loan repayable in less frequent installments. (b) The regulations adopted pursuant to subdivision (a) shall provide that the services withheld may be provided during a period when the facts are in dispute or when the student or former student demonstrates to either the governing board of the community college district, the Trustees of the California State University, the Regents of the University of California, or the Board of Directors of the Hastings College of the Law, as appropriate, or to the Student Aid Commission, or both the Student Aid Commission and the appropriate entity or its designee, that reasonable progress has been made to repay the loan or that there exists a reasonable justification for the delay as determined by the institution. The regulations shall specify the services to be withheld from the student and may include, but are not limited to, the following: (1) The provision of grades. (2) The provision of transcripts. (3) The provision of diplomas. The adopted regulations shall not include the withholding of registration privileges. (c) When it has been determined that an individual is in default on a loan or loans specified in subdivision (a), the Student Aid Commission shall give notice of the default to all institutions through which that individual acquired the loan or loans. (d) This section shall not impose any requirement upon the University of California or the Hastings College of the Law unless the Regents of the University of California or the Board of Directors of the Hastings College of the Law, respectively, by resolution, make this section applicable. (e) Guarantors, or those who act as their agents or act under their control, who provide information to postsecondary educational institutions pursuant to this section, shall defend, indemnify, and hold harmless the governing board of every community college district, the Trustees of the California State University, the Regents of the University of California, and the Board of Directors of the Hastings College of the Law from action resulting from compliance with this section when the action arises as a result of incorrect, misleading, or untimely information provided to the postsecondary educational institution by the guarantors, their agents, or those acting under the control of the guarantors.

APPENDIX 4
CCCCO Legal Opinion Regarding Default

To: Mary Gill
From: Paul Sickert

Opinion Number: E 2000-01

Mary,

You have asked whether a community college district can deny or withhold a Board of Governors grant to an otherwise eligible student because the student is in default on student loans.

As a form of student financial aid, Education Code, Section 76300(g) requires that the enrollment fee charged to each student attending a community college "shall be waived for any student who, at the time of enrollment" is a recipient of CalWORKs (formerly AFDC), SSI, public assistance, or has demonstrated financial need in the manner set forth in the statute and in Title 5, California Code of Regulations, Section 58620.

The Chancellor's Office provides the funds for the grant to each community college district through the apportionment process. (§§ 58610, 58611.) Section 58612 provides that "A community college district shall provide Board of Governors Grants to all students who are eligible and who apply for assistance."

Because the Education Code and Title 5 use the mandatory language, "shall be waived" and "shall be granted," a community college district is required to provide a waiver to all eligible students who apply for it. There is no provision that would deny an eligible student a Board of Governors grant because they were in default on student loans or had not repaid a federal or state student grant.

Education Code, Section 66022 requires a community college district governing board to adopt regulations "providing for the withholding of institutional services" from students who are in default on loans under the Federal Family Education Loan Program. Among the services mentioned which may be withheld are the provision of grades, transcripts, or diplomas. There may be other services withheld as well. However, Section 66022 specifically prohibits withholding registration privileges.

In addition, Education Code, Section 69507.5 prohibits students from receiving a grant or fellowship administered by the Student Aid Commission if the student has "previously defaulted on any student loan, or failed to repay a federal or state grant where required to do so."

Education Code, Section 69507.5 is in Part 42, Chapter 2, Article 1.5 of the Education Code. Education Code, Section 69504 provides that this article applies to all need-based student grants that are funded by the state or a public postsecondary educational institution. We previously opined that the provisions of Article 1.5 apply to the Board of Governors programs. (O 89-34.)

However, Section 69507.5 is a specific statute limited by its own terms to grants and fellowships administered by the Student Aid Commission. Under general principles of statutory construction, the specific provisions of a statute will control over a statute containing

general provisions. As a result, because the Board of Governors grant is administered by the Board of Governors and not the Student Aid Commission, Section 69507.5 does not apply.

Under the same principles, the specific requirements of Section 76300(h) prevail over the general requirements of Section 66022. As a result, while the districts actually award the grants to the students, and have some discretion in determining whether or not a student meets the need requirements for eligibility as specified in the code and regulations, they are otherwise required to award the grants to "all students who are eligible and who apply for this assistance."

CONCLUSION

The districts do not have the discretion to deny a grant on any basis other than eligibility as defined in the code and regulations. As a result, the Board of Governors grant is not part of a district's institutional services that may be withheld from students pursuant to Education Code, Section 66022.

Sincerely,

Paul Sickert
Assistant General Counsel

APPENDIX 5
Federal Law Regarding Dependency Overrides

Higher Education Act of 1965 Sec. 480

(d) INDEPENDENT STUDENT. – The term "independent", when used with respect to a student, means any individual who-

(1) is 24 years of age or older by December 31 of the award year;
(2) is an orphan or ward of the court or was a ward of the court until the individual reached the age of 18;
(3) is a veteran of the Armed Forces of the United States (as defined in ;subsection (c)(1));
(4) is a graduate or professional student;
(5) is a married individual;
(6) has legal dependents other than a spouse; or
(7) is a student for whom a financial aid administrator makes a documented determination of independence by reason of their unusual circumstances.

APPENDIX 6
2000/2001 Income Standards

Family Size	1999 Income
1	12360
2	16590
3	20820
4	25050
5	29280
6	33510
7	37740
8	41970
Each Additional Family Member	4230

APPENDIX 7
Federal Law Regarding Professional Judgment

HIGHER EDUCATION ACT OF 1965 Sec. 479A

SEC 479A. [20 U.S.C. 1087tt] DISCRETION OF STUDENT FINANCIAL AID ADMINISTRATORS.

(a) IN GENERAL. – Nothing in this part shall be interpreted as limiting the authority of the financial aid administrator, on the basis of adequate documentation, to make adjustments on a case-by-case basis to the cost of attendance or the values of the data items required to calculate the expected student or parent contribution (or both) to allow for treatment of a individual eligible applicant with special circumstances. However, this authority shall not be construed to permit aid administrators to deviate from the contributions expected in the absence of special circumstances. Special circumstances may include tuition expenses at an elementary or secondary school, medical or dental expenses not covered by insurance, unusually high child care costs, recent unemployment of a family member, the number of parents enrolled at least half-time in a degree, certificate, or other program leading to a recognized educational credential at an institution with a program participation agreement under section 487, or other changes in a family's income, a family's assets, or a student's status. Special circumstances shall be conditions that differentiate an individual student from a class of students rather than conditions that exist across a class of students. Adequate documentation for such adjustments shall substantiate such special circumstances of individual students. In addition, nothing in this title shall be interpreted as limiting the authority of the student financial aid administrator in such cases to request and use supplementary information about the financial status or personal circumstances of eligible applicants in selecting recipients and determining the amount of awards under this title. No student or parent shall be charged a fee for collecting, processing, or delivering such supplementary information.

32320. No state-owned college, university, community college, or other school shall charge any tuition or fees, including enrollment fees, registration fees, differential fees, or incidental fees to any of the following:

(a) Any dependent eligible to receive assistance under Article 2 (commencing with Section 890) of Chapter 4 of Division 4 of the Military and Veterans Code.

(b) Any child of any veteran of the United States military who has a service-connected disability, has been killed in service, or has died of a service-connected disability, where the annual income of the child, including the value of any support received from a parent, does not exceed seven thousand dollars ($7,000).

(c) Notwithstanding Section 893 of the Military and Veterans Code, the Department of Veterans Affairs may determine the eligibility for fee waivers for a child described in subdivision (b).

(d) Any dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty, and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. "Active service of the state," for the purposes of this subdivision, means a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

Nothing contained in this section shall prevent the Regents of the University of California from charging to, and collecting from, nonresident students an admission fee and rate of tuition, nor shall anything in this section prevent the charging and collecting of fees required of nonresident students admitted to a community college or to a state university under the jurisdiction of the Trustees of the California State University.

This section shall not apply to a dependent of a veteran within the meaning of paragraph (4) of subdivision (a) of Section 890 of the Military and Veterans Code.

(e) This section shall become operative on July 1, 1994.

SixTen and Associates
Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

November 12, 2001

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Test Claim 00-TC-15
Glendale Community College District
Enrollment Fee Waivers

Dear Ms. Higashi:

I have received the comments of the Department of Finance ("DOF") dated September 25, 2001 to which I now respond on behalf of the test claimant. No response has been received from the Chancellor's office.

The DOF opposes the test claim on the grounds that (1) the test claim legislation and regulations are not a higher level of service, (2) funding is provided to cover the costs associated with the test claim legislation and regulations, (3) that portions of the test claim mandated activities are already included in another test claim, and (4) the wrong staff are implementing the mandate requirement of determining eligibility and take an excessive amount of time in doing so.

Although none of the objections engendered by DOF are included in the statutory exceptions set forth in Government Code Section 17556, the objections stated additionally fail for the following reasons:

1. **The Comments of the DOF are Incompetent and Should be Excluded**

Test claimant objects to the Comments of the DOF, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

> "...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information and belief."

The DOF comments do not comply with this essential requirement. Furthermore, the test claimant objects to any and all assertions or representations of fact made in the response [such as "(M)any students (possibly up to half in a given district) do not apply for assistance because they know they would not meet the eligibility criteria", "California Community Colleges (CCC) states that 87 percent of fall students also take spring courses (and therefore, presumably) the persistence between summer and fall is at least 50 percent", "...Finance calculates[1] that (test claimant) would make 13,439 fee waiver determinations, roughly 36 percent of the 37,748 determinations asserted by the Claimant", the wrong staff are making the eligibility determinations, and the amounts, if any, received by the test claimant] since DOF has failed to comply with Title 2, California Code of Regulations, Section 1183.02(c)(1) which requires:

> "If assertions or representations of fact are made (in a response), they must be supported by documentary evidence which shall be submitted with the state agency's response, opposition, or recommendations. All documentary evidence shall be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge or information or belief."

Furthermore, these hearsay statements do not even come up to the level of hearsay or the type of evidence people rely upon in the conduct of serious affairs. The entire document submitted by DOF, and any allegations of unsupported facts therein, should be excluded from the record.

2. The Test Claim Legislation and Regulations Create New Mandated Duties

Test claimant alleges in its verified claim that, pursuant to Section 58612 of Title 5 of the California Code of Regulations, it is now required to determine and classify those students who are eligible for Board of Governor grants according to the eligibility criteria set forth in Title 5, California Code of Regulations, Section 58620. Section 58612, effective September 20, 1984, requires the Board of Governors of a community college district to provide fee waivers to all students who are eligible and apply for this assistance. Section 58620, also effective September 20, 1984, sets forth the eligibility criteria: the student must be a California resident and meet either specific income standards, or be a current recipient of benefits described in Education Code section

[1] DOF states that its calculations are set forth on an Appendix A which is not attached to its comments. Even if it were attached, without a verification under penalty of perjury, it is incompetent and subject to a valid motion to exclude.

76300(g), or satisfy specified need-based financial aid eligibility. A copy of Section 58620 is attached hereto as an exhibit and incorporated herein by reference to demonstrate to the reader how detailed and specific these requirements are.

DOF argues that these sections do not require a higher level of service because "(M)uch of the infrastructure for determining whether a student is eligible to have fees waived already existed prior to 1975". In support of this argument, DOF cites Education Code section 76355 (formerly 72246) which requires community colleges to adopt rules and regulations to exempt "low-income students" from health service fees. DOF is in error both as to the legal effective dates and intent of the prior law.

As added by Chapter 1, Statutes of 1983-84, 2nd Executive Session, operative January 1, 1988, subdivision (c) of former Section 72246 merely required the adoption of rules and regulations that either exempt "low-income" students or to provide for the payment of the fees from other sources. The legislation provided no guidance or direction as to the method or means to determine whether or not a student was a "low-income" student. The legislation said absolutely nothing about all of the factors set forth in Title 5, California Code of Regulations, Section 58620 (attached) which was promulgated as part of Subchapter 7 and became effective on September 20, 1984. That portion of Section 72246 which later required exemption of students receiving financial aid pursuant to Section 72252.1 (and which, in turn, referred to subdivision (g) of Section 72252 requiring that fees be defrayed for any student who, at the time of enrollment, was a recipient of benefits under the Aid to Families with Dependent Children program, the Supplemental Security Income/State Supplementary Program, or a general assistance program) was added later in 1987 by Chapter 1118, Statutes of 1987, Section 8.

This argument of DOF fails because there was no "infrastructure" to determine the specific requirements of Title 5, California Code of Regulations, Section 58620, until 1987. The existence of "infrastructure" (or the lack thereof) is not one of the statutory exceptions set forth in Government Code Section 17556. As a result this argument is clearly irrelevant, both in fact and in law. Therefore, the test claim legislation and regulations clearly create new mandated duties for the community colleges.

3. Potential Revenues Do Not Preclude an Initial Determination That a Reimbursable Mandate Exists

DOF next argues that funding is provided to cover the costs associated with determining eligibility for fee waivers. In support of that argument, DOF first offers unverified and incompetent calculations to argue that the sworn declaration of claimant's Vice President of Administrative services, a copy of which is attached and incorporated herein by

reference, overstates the number of fee waiver determinations, that the average time to make a fee waiver determination is overstated, and unsupported statements of other total revenue which are more than alleged total costs. DOF concludes "(T)hus, Finance *believes* that eligibility determination is fully funded and not a reimbursable state mandate." (Emphasis added)

The issue finds its solution in the statutory exceptions. Government Code Section 17556 states, in part:

> "The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, **after a hearing**, the commission finds that...
>
> (e) The **statute or executive order provides for offsetting savings** to local agencies or school districts **which result in no net costs** to the local agencies or school districts, or includes **additional revenue that was specifically intended to fund the costs** of the state mandate in an **amount sufficient** to fund the cost of the state mandate." (Emphasis added)

As a matter of law, the test claim statutes and executive orders do not include "offsetting savings" since those savings must be included in the same legislation. Since there is none, they cannot result in no net costs. A new program was added, and no other mandated program was removed by the statute.

The test claim has identified the "additional revenue" source:

> "To the extent that State funds are, and continue to be appropriated, allocated, or otherwise credited to the community college districts pursuant to Education Code section 76300, Subdivision (i)(2), in the annual Budget Act, or from other state sources for the purpose of reimbursing the costs of determining financial need and the delivery of student financial aid services, computed as 7% of the fees waived from July 1, 1999 through July 4, 2000 and at ninety-one cents ($0.91) per credit unit waived thereafter, these amounts are a reduction to the total costs mandated by the state to implement Section 76300 and the relevant Title 5, California Code of Regulations sections." (Test Claim, page 19, lines 6 through 17)

The Commission can take notice that the entire cost to implement the mandate will vary

from district to district so it cannot be determined as a matter of fact that this "revenue" is sufficient for any or all districts. The revenue can, in the usual course of the mandate process, be addressed by the parameters and guidelines and by the annual claiming process whereby the claimants are required by law to report their cost of implementing the mandate from which they must deduct other reimbursements and funds received, in this case, amounts allocated pursuant to Education Code Section 76300(i)(2). To the extent these allocations are made available, and continue to be made available each subsequent year (which is not guarantied), those allocations will reduce reimbursable costs, but does not preclude an initial determination of whether a reimbursable mandate exists.

The test claim recognizes these facts and revenue allocations and the effect of Government Code Section 17556(e). These revenues will be used to reduce mandated costs, but do not preclude a finding that the mandated costs are subject to reimbursement.

4. DOF's "Alternative Methods" Argument is Irrelevant

DOF then lists the next five mandate duties identified in the test claim on pages 17 and 18, at paragraphs B through F, and argues that these activities are alternative methods of determining student eligibility rather than additional requirements. From this base, DOF launches its conclusion that "(T)hese activities do not constitute a higher level of service and are therefore not reimbursable state mandates".

DOF misses the point. The test claim seeks reimbursement for the ***process*** of determining whether a student is eligible for a fee waiver. The number of steps required for the process is relevant only to the parameters and guidelines, but not to the test claim decision. The test claim seeks a means to claim reimbursement for the cost of making the determinations, it does not seek reimbursement based on the number of steps taken when making the determinations.

5. The Fee Collection Test Claim is Separate and Distinct From This Fee Waiver Test Claim

The next argument of the DOF is its false assertion that the accounting duties alleged in the test claim are already included in Test Claim No. 99-TC-13, Enrollment Fee Collection, and that this test claimant seeks reimbursement to document and account for funds allocated for the collection of enrollment fees.

It is the legislature, not the test claimants, who have separated the duties and reimbursements of fee collections from fee waivers.

A. Enrollment Fee Collections

Community college districts generally receive revenue from two sources: (1) state apportionments and (2) enrollment fees collected from students. In computing the apportionments, the Chancellor's office is directed to subtract from the amounts owing to the district "98 percent of the revenues received by districts from charging a fee pursuant to this section." Education Code Section 76300(c) The net result is that the districts keep 2% as their revenue "from charging a fee".[2]

B. Enrollment Fee Waivers

From the funds provided in the annual Budget Act, the board of governors were, prior to July 5, 2000, required to allocate to the community college districts an amount equal to 7 percent of the fees waived "for the determination of financial need and delivery of student financial aid services". After July 4, 2000, the board is required to allocate to the districts ninety-one cents ($0.91) per credit unit waived, again, "for the determination of financial need and delivery of student financial aid services". Education Code Section 76300(i)(2)

These enactments demonstrate the legislative intent that the duties required and reimbursements allowed for "Enrollment Fee Collections" and "Enrollment Fee Waivers" are clearly separate and distinct. The test claim recognizes this distinction:

> "Inasmuch as this test claim does not seek reimbursement for the administrative process of collecting enrollment fees, the two-percent funding provided pursuant to Education Code section 76300, subdivision (i), does not qualify to reduce the total costs mandated by the state alleged in this test claim." Test Claim, page 19, lines 14 through 17

The Board of Governors also recognized this distinction by requiring dollars allocated for financial assistance to be identified and maintained in separate accounts. Title 5, California Code of Regulations, Section 58630 The attempt by DOF to obfuscate the distinction must be rejected.

6. **Who Makes the Fee Waiver Determination is Irrelevant.**

DOF also takes issue with the test claimant's declaration which estimates the mandated

---

[2] To insure receipt of the full 2%, subdivision (I)(2) also allocates 2 percent of the fees waived.

costs by allocating certain waiver determination functions to a Financial Aid Assistant and a portion of the determination functions to a Financial Aid Assistant Technician. Whether these functions are performed by a Financial Aid Assistant or a Financial Aid Assistant Technician is a local decision and, in the absence of facts to the contrary, not presumptively excessive.

7. **General Funds for Financial Aid Are For Other Purposes**

DOF also believes that funds received for "Student Financial Aid Administration" can be used to reimburse community college districts for the costs of fee waiver determinations. This argument is also irrelevant as those funds are earmarked for student loan administration, not BOGG administrative costs.

CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,

Keith B. Petersen

C: Per Mailing List Attached

ATTACHMENTS:

Title 5, Code of Regulations, Section 58620

Declaration of Lawrence Serot dated May 16, 2001

California Code of Regulations, Section 58620 (as last amended on March 4, 1991):

"To be eligible for a Board of Governors grant, a student must:

(a) Be a California resident;

(b) Meet one of the following criteria:

(1) Income Standards.

(A) Be a single and independent student having no other dependents and whose total income in the prior year was equal to or less than 150% of the US Department of Health and Human Services Poverty Guidelines for a family of one. Or be a married, independent student having no dependents other than a spouse, whose total income of both student and spouse in the prior year was equal to or less than 150% of the US Department of Health and Human Services Poverty Guidelines for a family of two.

(B) Be a student who is dependent in a family having a total income in the prior year equal to or less than 150% of the US Department of Health and Human Services Poverty Guidelines for a family of that size, not including the student's income, but including the student in the family size.

(C) Provide documentation of taxable or untaxed income.

(D) Be a student who is married or a single head of household in a family having a total income in the prior year equal to or less than 150% of the US Department of Health and Human Services Poverty Guidelines for a family of that size.

(E) Be an independent student whose Estimated Family Contribution as determined by Federal Methodology is equal to zero or a dependent student for whom the parent portion of the Estimated Family Contribution as determined by Federal Methodology is equal to or less than zero.

(F) For purposes of this subsection US Department of Health and Human Services Poverty Guidelines used each year shall be the most recently published guidelines immediately preceding the academic year for which a fee waiver is requested.

(2) Current recipient of benefits described in Education Code section 76300(g).

(A) At the time of enrollment be a recipient of benefits under the Temporary Assistance to Needy Families (TANF) program. A dependent student whose parent(s) or guardian(s) are recipients of TANF shall be eligible if the

TANF program grant includes a grant for the student or if the TANF grant is the sole source of income for the parent or guardian.

(B) At the time of enrollment be a recipient of benefits under the Supplemental Security Income (SSI) program. A dependent student whose parent(s) or guardian(s) are recipients of SSI shall be eligible if the SSI program grant is the sole source of income for the parent(s) or guardian(s).

(C) At the time of enrollment be a recipient of benefits under the General Assistance program.

(D) Provide documentation that the student if (sic) a recipient of benefits under one of the programs identified in Education Code section 76300(g) and (h) at the time of enrollment. Documentation sufficient to meet the requirements of this subdivision shall provide official Education of these benefits.

(3) Need-Based Financial Aid Eligibility. Any student who has been determined financially eligible for federal and/or state needed based financial aid."

DECLARATION OF LAWRENCE SEROT

VICE PRESIDENT, ADMINISTRATIVE SERVICES

COSM No. _____

TEST CLAIM OF GLENDALE COMMUNITY COLLEGE DISTRICT

Chapter 71, Statutes of 2000
Chapter 72, Statutes of 1999
Chapter 63, Statutes of 1996
Chapter 308, Statutes of 1995
Chapter 422, Statutes of 1994
Chapter 153, Statutes of 1994
Chapter 1124, Statutes of 1993
Chapter 67, Statutes of 1993
Chapter 66, Statutes of 1993
Chapter 8, Statutes of 1993
Chapter 136, Statutes of 1989
Chapter 1118, Statutes of 1987
Chapter 394, Statutes of 1986
Chapter 46, Statutes of 1986
Chapter 1454, Statutes of 1985
Chapter 920, Statutes of 1985
Chapter 1401, Statutes of 1984
Chapter 274, Statutes of 1984
Chapter 1, Statutes of 1984XX

Title 5, California Code of Regulations, Sections 58600, 58601, 58610 through 58613, 58620, 58630

Education Code Section 76300

Executive Orders of the California Community Colleges Chancellor's Office "Board of Governors Fee Waiver Program and Special Programs 2000-2001 Program Manual" Effective: July 1, 2000-June 30,2001

Enrollment Fee Waivers

I, Lawrence Serot, Vice President, Administrative Services, Glendale Community College District, make the following declaration and statement:

In my capacity as Vice President, Administrative Services, I am the Chief Administrative Officer responsible for college financial administration and facilities. I am responsible for implementing the requirements of Education Code Section 76300, (former Section 72252) as added by Chapter 1, Statutes of 1984, Second Extraordinary Session and last amended by Chapter 71, Statutes of 2000, and supplemented by the above referenced sections of Title 5, California Code of Regulations and Executive Orders of the California Community Colleges Chancellor's Office, which requires the District to perform the following administrative tasks at the time of enrollment to determine which students are entitled to have his or her enrollment fees waived for any of the reasons stated in Education Code Section 76300, subdivisions (g) and (h):

ACTIVITIES REQUIRED TO IMPLEMENT THE MANDATE

A) Pursuant to Section 58612 of Title 5 of the California Code of Regulations, determine and classify those students who are eligible for Board of Governor grants according to the eligibility criteria set forth in Section 58620.

B) Pursuant to Education Code Section 76300(g), determine, at the time of enrollment, if fees should be waived for any student because he or she is a recipient of benefits under the Aid to Families with Dependent Children program;

C) Pursuant to Education Code Section 76300(g), determine, at the time of enrollment, if fees should be waived for any student because he or she is a recipient of benefits under the Supplemental Security Income/State Supplementary program;

D) Pursuant to Education Code Section 76300(g), determine, at the time of enrollment, if fees should be waived for any student because he or she is a beneficiary under a general assistance program;

E) Pursuant to Education Code Section 76300(g), determine, at the time of enrollment, if fees should be waived for any student because he or she has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid;

F) Pursuant to Education Code Section 76300(h), determine, at the time of enrollment, if fees should be waived for any student because he or she is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state.

G) Enter the enrollment fee waiver information into the district cashier system and data processing and accounting systems, and process all agency billings for students whose fees are waived.

H) Pursuant to Section 58630 of Title 5 of the California Code of Regulations, separately document and account for the funds allocated for the collection of enrollment fees and financial assistance in order to enable an independent determination regarding the accuracy of the District's certification of need for financial assistance.

I) Pursuant to Section 58611 of Title 5 of the California Code of Regulations, prepare and submit reports regarding number and amounts

of the enrollment fees waived as required by the Board of Governors and other state agencies.

ESTIMATED UNFUNDED COST TO IMPLEMENT THE MANDATE

It is estimated that the District incurred more than approximately $359,916 in staffing and other costs (or about $9.53 per student enrollment) for the period of July, 1999 through June, 2000 to implement these new duties mandated by the state in excess of seven-percent of the enrollment fees waived[1] from the State pursuant to Education Code Section 76300, subdivision (i)(2), and related Budget Act appropriations, for the purpose of implementing this mandate, and for which it cannot otherwise obtain reimbursement.

CERTIFICATION

The foregoing facts are known to me personally and if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED, this 16 day of May, 2001, in the City of Glendale, California.

Lawrence Serot
Vice President, Administrative Services
Glendale Community College District

[1] Commencing July 5, 2000 the credit will be ninety-one cents ($0.91) per credit unit waived.

ATTACHMENT TO THE DECLARATION OF
LAWRENCE SEROT
VICE PRESIDENT, ADMINISTRATIVE SERVICES
FOR
TEST CLAIM OF GLENDALE COMMUNITY COLLEGE DISTRICT

Education Code Section 76300
Enrollment Fee Waivers

FOR FISCAL YEAR 1999-2000

Cost of Waiver Eligibility Determination at Time of Enrollment

Number of Enrollments – Summer Semester:	7,174
Number of Enrollments – Fall Semester	15,501
Number of Enrollments – Spring Semester	15,073
Total Number of Enrollments:	37,748

Average Time (in minutes) of district personnel (and average hourly wages and benefits) in making fee waiver determinations:

Financial Aid Technician	$29.13/hr	10 minutes
Financial Aid Assistant Technician	$23.91/hr	15 minutes

Calculation of Cost:

Financial Aid Technician $\frac{10 \times 37{,}748 \times \$29.13}{60} = \$183{,}267$

Financial Aid Assistant Technician $\frac{15 \times 37{,}748 \times \$23.91}{60} = 225{,}639$

Total Annual Cost of Financial Aid Determinations: $408,906

Cost of Entering Data Into Data Processing and Accounting Systems:

Number of Fee Waivers – Summer Semester:	2,063
Number of Fee Waivers – Fall Semester	5,062
Number of Fee Waivers – Spring Semester	5,061
Total Number of Fee Waivers:	12,186

Average Time (in minutes) of district personnel (and average hourly wages and benefits) in entering data into data processing and accounting systems:

Financial Aid Assistant	$23.30/hr	8 minutes

Calculation of Cost:

Financial Aid Assistant $\frac{8 \times 12,186 \times \$23.30}{60} = \$ 37,858$

TOTAL COST OF WAIVER DETERMINATION AND ACCOUNTING:

Waiver Determinations:	$408,906
Accounting:	37,858
Total Cost:	$446,764

COST REIMBURSEMENT:

Fees Waived	$1,240,692
Percentage	7%
Total Reimbursement	$ 86,848

NET REIMBURSABLE COST: $446,764 less $86,848 = $ 359,916

TOTAL COST PER ENROLLMENT: $446,764 divided by 37,748 = $ 11.84

NET COST PER ENROLLMENT: $359,916 divided by 37,748 = $ 9.53

PROOF OF SERVICE

Re: CSM #00-TC-15
Chapter 71, Statutes of 2000, et. al.
Enrollment Fee Waivers

I, the undersigned, declare as follows:

I am employed in the County of San Diego, State of California. I am 18 years of age or older and am not a party to the entitled causes(s). My business address is 5252 Balboa Avenue, Suite 807, San Diego, California 92117.

On November 12, 2001, I served the attached rebuttal of SixTen and Associates, on behalf of test claimant Glendale Community College District, to the parties on the attached CSM Mailing List for 00-TC-15, dated May 22, 2001, for this claim that was provided by the Commission on State Mandates, by placing a true copy thereof to the Commission and other state agencies and persons in the United States Mail at San Diego, California, with first-class postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 12, 2001 at San Diego, California.

Leo Shaw

Claim Number 00-TC ..3 **Claimant** Glendale Community College District

Subject Statutes of 1999, Chapter 72, Education Code section 76300

Issue Enrollment Fee Waivers

Mr. Keith B. Petersen, President
Sixten & Associates

5252 Balboa Avenue Suite 807
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Interested Person

Mr. Lawrence Serot, Vice President
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Claimant

Mr. Gerry Shelton, (E-8)
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State Agency

List Date: 05/22/2001 **Mailing Information**

Mailing List

Claim Number 00-TC-15 **Claimant** Glendale Community College District

Subject Statutes of 1999, Chapter 72, Education Code section 76300

Issue Enrollment Fee Waivers

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Interested Person

SixTen and Associates
Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President
5252 Balboa Avenue, Suite 807
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January 17, 2002

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Draft Staff Analysis
Enrollment Fee Collection, 99-TC-13
Los Rios Community College District, Claimant

Enrollment Fee Waivers, 00-TC-15
Glendale Community College District, Claimant

Dear Ms. Higashi:

I have received the draft staff analysis for the above referenced test claims transmitted by your letter of January 8, 200(3).

I am in general agreement with the draft staff analysis, except for the exclusion of the costs associated with collecting enrollment fees from nonresident students. Commission staff has concluded that since *tuition* and other fees were collected from nonresident students prior to 1975, that the collection of *enrollment* fees from nonresident students was not a higher level of service. The fact that tuition fees were collected prior to 1975 is not legally or factually relevant to the additional administrative procedures required to collect enrollment fees. There are no facts in the record that the fee collection procedures occur at the same time or location, are performed by the same staff members, or result in the same subsequent administrative burden (e.g., fees adjusted based on changes to class loads, student withdrawal, etc.) Therefore, the better conclusion of law would be that, to the extent that procedures for the collection of *enrollment fees* from nonresident students is different and exceeds the administrative tasks required to collect *tuition fees* from nonresident students, it is a new activity and higher level of service.

Sincerely,

Keith B. Petersen

C: Mailing List attached

Original List Date: 8/7/2000
Last Updated: 7/25/2002
List Print Date: 01/08/2003
Claim Number: 99-TC-13
Issue: Enrollment Fee Collection

Mailing Information: Draft Staff Analysis

Mailing List

Related Matter(s)

00-TC-15 Enrollment Fee Waivers

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Original List Date: 5/22/2001
Last Updated: 1/6/2003
List Print Date: 01/08/2003
Claim Number: 00-TC-15
Issue: Enrollment Fee Waivers

Mailing Information: Draft Staff Analysis

Mailing List

Related Matter(s)

99-TC-13 Enrollment Fee Collection

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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July 5, 2002

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And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: **Draft Staff Analysis and Hearing Date**
Enrollment Fee Collection, 99-TC-13
Education Code Section 76300;
Statutes 1984xx, Chapter 1; Statutes 1984, Chapters 274 and 1401; Statutes 1985, Chapters 920 and 1454; Statutes 1986, Chapters 46 and 394; Statutes 1987, Chapter 1118; Statutes 1989, Chapter 136; Statutes 1991, Chapter 114; Statutes 1992, Chapter 703; Statutes 1993, Chapters 8, 66, 67, and 1124; Statutes 1994, Chapters 153 and 422; Statutes 1995, Chapter 308; Statutes 1996, Chapter 63; and Statutes 1999, Chapter 72; California Code of Regulations, Title 5, Sections 58500 – 58508.

Dear Mr. Petersen:

The draft staff analysis for this test claim is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by **Wednesday, July 24, 2002.** You are advised that the Commission's regulations require comments filed with the Commission to be simultaneously served on other interested parties on the mailing list, and to be accompanied by a proof of service on those parties. If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This test claim is tentatively set for hearing on Tuesday, **August 29, 2002** at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. The final staff analysis will be issued on or about July 16, 2002. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

If you have any questions on the above, please contact Eric Feller at (916) 323-8224.

Sincerely,

Paula Higashi
Executive Director

Enc. Draft Staff Analysis

cc. Mailing List (current mailing list attached)

MAILED: ✓ FAXED:
DATE: 3/5/03 INITIAL: VS
CHRON: FILE: ✓
WORKING BINDER:

ITEM

TEST CLAIM
DRAFT STAFF ANALYSIS

Education Code Section 76300;
Statutes 1984xx, Chapter 1; Statutes 1984, Chapters 274 and 1401;
Statutes 1985, Chapters 920 and 1454; Statutes 1986, Chapters 46 and 394;
Statutes 1987, Chapter 1118; Statutes 1989, Chapter 136; Statutes 1991, Chapter 114;
Statutes 1992, Chapter 703; Statutes 1993, Chapters 8, 66, 67, and 1124;
Statutes 1994, Chapters 153 and 422; Statutes 1995, Chapter 308;
Statutes 1996, Chapter 63; and Statutes 1999, Chapter 72;
California Code of Regulations, Title 5, Sections 58500 – 58508

Enrollment Fee Collection

EXECUTIVE SUMMARY

STAFF WILL INSERT THE EXECUTIVE SUMMARY IN THE FINAL ANALYSIS

Claimant

Los Rios Community College District

Chronology

6/22/00	Claimant files test claim with the Commission
7/21/00	Department of Finance (DOF) requests the Attorney General to comment on DOF's behalf
8/2/00	Attorney General files request for extension to submit comments
8/4/00	California Community Colleges (CCC) Chancellor's Office files comments on the test claim with the Commission
9/1/00	Attorney General files request for extension to submit DOF's comments
10/13/00	Attorney General files comments on the test claim with the Commission on DOF's behalf
11/9/00	Claimant files response to DOF and CCC comments.

Background Information

There are currently 72 community college districts governing 108 community colleges in California, serving over 2.5 million students. It is the largest system of higher education in the world.[1]

Originally enacted in 1984 and amended throughout the 1980s and 1990s, the test claim legislation and regulations[2] authorize and require community colleges to implement enrollment fees and adopt regulations for their collection. Although the amount of the enrollment fee has been amended various times, the two percent of the fee the community colleges retain[3] has remained constant.

Claimant's Contentions

Claimant contends that the test claim legislation constitutes a reimbursable state mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514.

Claimant is requesting reimbursement for the following activities: (1) determining the number of credit courses for each student subject to the student enrollment fees; (2) calculating and collecting student enrollment fees for each nonexempt student enrolled, and providing a waiver of student enrollment fees for exempt students; (3) calculating, collecting, waiving or refunding

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[1] California Community College Chancellor's Office website <http://www.cccco.edu>.

[2] Reference to the test claim legislation hereafter includes all of the following: Education Code section 76300. Statutes 1984xx, chapter 1; Statutes 1984, chapters 274 and 1401; Statutes 1985, chapters 920 and 1454; Statutes 1986, chapters 46 and 394; Statutes 1987, chapter 1118; Statutes 1989, chapter 136; Statutes 1991, chapter 114; Statutes 1992, chapter 703; Statutes 1993, chapters 8, 66, 67, and 1124; Statutes 1994, chapters 153 and 422; Statutes 1995, chapter 308; Statutes 1996, chapter 63; and Statutes 1999, chapter 72. California Code of Regulations, title 5, sections 58500 – 58508.

[3] Education Code Section 76300, subdivision (c). This is called a "revenue credit" by the Community College Chancellor's Office.

student enrollment fees due to subsequent timely program changes or withdrawal from school; (4) entering the student enrollment fee collection and waiver information into the district cashier system and data processing and accounting systems; (5) processing all agency billings for students whose student enrollment fees are waived; (6) preparing and submitting reports on student enrollment fees collected and waived as required by the board of governors and other state agencies. Claimant states that failure to implement this mandate would reduce the total district revenue by up to ten percent pursuant to Education Code section 76300, subdivision (d).

Department of Finance's Contentions

The Department of Finance agrees that the test claim statutes constitute a new program or higher level of service because the community college districts had not previously been required to collect enrollment fees from students, but asserts the test claim should be denied because the statutory scheme sets up a mechanism whereby community college districts are automatically provided with funding for their costs of administering the program.[4] According to DOF, since the collection of enrollment fees is entwined with the entire admission process it would be extremely difficult, if not impossible, to accurately isolate the specific tasks involved with collecting enrollment fees. DOF submits that the Legislature has validly determined that two percent of the revenue from fees is adequate to compensate community college districts for administering the test claim statutes. DOF further notes that the costs associated with fee waivers should not be included in this claim because a statutory compensation mechanism currently exists for those costs. Finally, DOF states that processing refunds does not result in state mandated costs because the districts have preexisting regulatory authority to charge up to $10 per semester or quarter for refunding a student's enrollment fees.

Community Colleges Chancellor's Office Contentions

In its comments, the CCC concludes that the original test claim statute was "clearly a higher level of service for community colleges." The CCC also provides legislative history quoting the Legislative Analyst's conclusion that the two percent revenue credit is an insufficient reimbursement for the locally mandated fee-collection program. The CCC provides other legislative history, stressing that although the amount of the fees have varied, the two percent revenue credit for community colleges has remained constant. Finally, the CCC provides the amount of fees collected by the claimant for fiscal year 1998-99.

STAFF ANALYSIS

In order for a statute to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514, the statutory language must mandate or require an activity or task on local governmental agencies. If the statutory language does not mandate or require local governments to perform a task, then compliance with the test claim statute is within the discretion of the local entity and a reimbursable state mandated program does not exist.

In addition, the required activity or task must constitute a new program or create an increased or higher level of service over the former required level of service. The California Supreme Court has defined the word "program" subject to article XIII B, section 6 of the California Constitution

[4] Education Code section 76300, subdivision (c). All further statutory references are to the Education Code unless otherwise indicated.

as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the new program or increased level of service must impose "costs mandated by the state."[5]

This test claim presents the following issues:

- Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose a new program or higher level of service on community college districts within the meaning of article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

These issues are addressed as follows.

Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program." The California Supreme Court, in the case of *County of Los Angeles* v. *State of California*,[6] defined "program" within the meaning of article XIII B, section 6 as a program that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. Only one of these findings is necessary to trigger article XIII B, section 6.[7]

The test claim legislation concerns the program of community college enrollment fees. Collecting these fees is a peculiarly governmental function administered by community college districts as part of their mission to provide educational services to the students. Moreover, the test claim legislation imposes unique fee collection requirements on community college districts that do not apply generally to all residents or entities in the state. Therefore, staff finds that community college enrollment fees constitutes a "program" within the meaning of section 6, article XIII B of the California Constitution.

However, the inquiry must continue to determine whether the test claim legislation activities are new or impose a higher level of service and if so, whether they impose costs mandated by the state.

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[5] Article XIII B, section 6 of the California Constitution; *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist.* v. *State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento* v. *State of California* (1990) 50 Cal.3d 51, 66; *Lucia Mar Unified School Dist.* v. *Honig* (1988) 44 Cal.3d 830, 835; Government Code section 17514.

[6] *County of Los Angeles, supra,* 43 Cal.3d 46, 56.

[7] *Carmel Valley Fire Protection Dist., supra,* 190 Cal.App.3d at page 537.

Issue 2: Does the test claim legislation impose a new program or higher level of service on community college districts within the meaning of article XIII B, section 6 of the California Constitution?

To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.

Collection of Enrollment Fees: Education Code section 76300, subdivision (a) requires the governing board of each community college district to charge each a student a fee. Subdivision (b) prescribes the fee amount of $12 per unit per semester for 1998-99, and $11 per unit per semester effective fall 1999-2000,[8] and requires the chancellor to proportionally adjust the fee for term lengths based on a quarter system. Subdivision (c) requires the chancellor, for computing apportionments to districts, to subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging the fee. Subdivision (d) requires the chancellor to reduce apportionments by up to 10 percent to any district that does not collect the fee. Subdivision (e) provides exemptions to the fee for (1) students enrolled in designated noncredit courses; (2) California State University (CSU) or University of California (UC) students enrolled in remedial classes provided on a CSU or UC campus for whom the district claims an attendance apportionment pursuant to an agreement between the district and the CSU or UC; (3) student enrolled in credit contract education courses under certain conditions. Subdivision (f) authorizes the district governing board to exempt special part-time students admitted pursuant to section 76001. Subdivision (g) requires fees to be waived for recipients of Aid to Families with Dependent Children (AFDC) or Supplemental Security Income/State Supplementary Program (SSI), or a general assistance program, or those who demonstrate financial need in accordance with federal methodology. Fee waiver is also required for students who demonstrate eligibility according to income standards established by the board of governors and section 58620 of title 5 of the California Code of Regulations. Subdivision (h) requires a fee waiver for members of the California National Guard who die or become permanently disabled as a result of an event that occurred during active service of the state. Subdivision (i) states legislative intent to fund fee waivers for students who demonstrate eligibility pursuant to subdivisions (g) and (h), and requires the board of governors to allocate to districts two percent of the fees waived pursuant to those subdivisions. Subdivision (i) also requires the board of governors, from funds provided in the annual Budget Act, to allocate to districts $.91 per credit unit waived pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services. Subdivision (j) requires the board of governors to adopt regulations to implement the section.

Under preexisting law, community colleges were authorized but not required to impose various student fees for the following: physical education courses using nondistrict facilities,[9] health services,[10] parking services,[11] transportation services,[12] program changes,[13] and late applications.[14]

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[8] Statutes 1999, chapter 72 lowered the school year 1999-2000 fees from $12 to $11. Because chapter 72 became effective July 6, 1999 to be applied in fall 1999, it does not affect claimant's reimbursement period.

[9] Former Education Code section 72245 and current Education Code section 76395.

[10] Former Education Code section 72246 and current Education Code section 76355.

Preexisting law requires charging tuition to nonresident students, but it is conditional on discretionary admittance of the student.[15] Because charging nonresidents tuition is not a new program for purposes of this test claim, it is not reimbursable under this test claim.

Education Code section 76300, subdivision (f) authorizes but does not require the governing board of a community college district to exempt special part-time students admitted pursuant to section 76001 from the student enrollment fee. This refers to students who attend a community college while still in high school. Since admitting these students is discretionary, this is not a state mandated program within the meaning of article XIII B, section 6.

Prior to the test claim statute, there was no requirement to collect student fees. Therefore, staff finds that collecting enrollment fees constitutes a new program or higher level of service within the meaning of article XIII B, section 6 for all students except for nonresidents, and except for special part-time students (pursuant to Ed. Code, § 76300, subd. (f)).

Title 5 Regulations: California Code of Regulations title 5, sections 58500 through 58508,[16] also pertain to community college student fees. Section 58500 defines the enrollment fee, section 58501 states the semester, quarter or fractional unit fee, section 58501.1 discusses the now defunct differential enrollment fee, section 58502 states the enrollment fee shall be charged at the time of enrollment, and section 58507 pertains to program changes. Finally, section 58508 governs fee refunds for program changes, authorizing districts to retain up to $10 per semester or quarter. Education Code section 76300, subdivision (j) required the board of governors to enact regulations.

As with the test claim statute, prior to the regulations there was no requirement to collect student fees. Therefore, staff finds the enrollment fee activities in the title 5 regulations (specified below) constitute a new program or higher level of service within the meaning of article XIII B, section 6.

In summary, staff finds the following activities[17] constitute new programs or higher levels of service for community college districts within the meaning of article XIII B, section 6:

- Determining the number of credit courses for each student subject to the student enrollment fees (Ed. Code, § 76300, subd. (a); Cal. Code Regs., tit. 5, § 58500).

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[11] Former Education Code section 72247 and current Education Code section 76360.

[12] Former Education Code section 72248 and current Education Code section 76361.

[13] Former Education Code sections 72250 – 72250.5 and current Title 5, section 58507.

[14] Former Education Code section 72251.

[15] Education Code section 76140.

[16] California Code of Regulations, title 5, section 58509 was not pled by claimant. This analysis does not address section 58509.

[17] There was an additional activity pled by claimant: "entering the student enrollment fee collection and waiver information into the district cashier system and data processing and accounting systems." This activity does not appear in the test claim statute or regulations. Although this activity may be the most reasonable method to comply with the test claim statute, it would be more appropriately discussed in the parameters and guidelines should the Commission approve this staff analysis.

- Calculating and collecting the student enrollment fee for each nonexempt student enrolled (Ed. Code, § 76300, subd. (b); Cal. Code Regs., tit. 5, § 58500–58503), and providing a waiver of student enrollment fees for exempt students (Ed. Code, § 76300, subds. (e), (g) and (h).
- Calculating, collecting, waiving, or refunding student enrollment fees due to subsequent timely program changes or withdrawal from school (Ed. Code, § 76300, subd. (e), (g), and (h); Cal. Code Regs., tit. 5, § 58507–58508).
- Processing all agency billings for students whose student enrollment fees are waived (Ed. Code, § 76300, subd. (e), (g) and (h)).

The test claim statutes are silent on the following activity pled by claimant, so staff finds that it is not a new program or higher level of service under article XIII B, section 6.

- Preparing and submitting reports regarding the student enrollment fees collected and waived as required by the board of governors and other state agencies.[18]

Issue 3: Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

In order for the activities listed above to impose a reimbursable, state mandated program under section 6, article XIII B of the California Constitution, two criteria must apply. First, the activities must impose costs mandated by the state.[19] Second, no statutory exceptions as listed in Government Code section 17556 can apply. Government Code section 17514 defines "costs mandated by the state" as follows:

> ...any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

Government Code section 17556, subdivision (d), precludes finding costs mandated by the state if after hearing, the Commission finds that the "local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

Government Code section 17556, subdivision (e) precludes findings costs mandated by the state if the test claim statute provides for offsetting savings which result in no net costs, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund it.

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[18] Section 17 of chapter 1 of Statutes 1983-1984, Second Extraordinary Session, (pled by claimant) included a requirement for the CCC to conduct a study regarding the impact of the fee, and authorized the chancellor to "collect from community college districts any data necessary to conduct the study." However, this was not an ongoing activity, but rather a one-time data collection for which costs would have been incurred outside the reimbursement period established by the filing date of this test claim.

[19] *Lucia Mar Unified School Dist., supra,* 44 Cal.3d 830, 835. Government Code section 17514.

Department of Finance Comments: In response to this test claim, the DOF comments as follows: "For the most part, DOF agrees that the test claim statutes constitute a new program or higher level of service because community college districts had not previously been required to collect enrollment fees from students." However, DOF believes that reimbursement should be denied and raises the following three arguments:

- The statutory scheme sets up a mechanism whereby community college districts are automatically provided with funding for their costs of administering the program.[20] Since collection of enrollment fees is entwined with the entire admission process it would be extremely difficult or impossible to accurately isolate the tasks involved with collecting enrollment fees. DOF submits that the Legislature has validly determined that two percent of the revenue from fees is adequate to compensate community college districts for administering the test claim statutes.
- Costs associated with fee waivers should not be included in this claim because a statutory compensation mechanism currently exists for those costs. Education Code section 76300, subdivision (i), paragraph (2) allocates two percent of the fees waived under subdivisions (g) and (h) (referring to students who receive AFDC, SSI or other general assistance or dependents or surviving spouses of members of the California National Guard who are killed or permanently disabled in the line of duty) of that statute. Thus, DOF says that costs associated with fee waivers should not be included in the test claim.
- Costs for processing refunds do not constitute state mandated costs because community college districts have preexisting regulatory authority to charge up to $10 per semester or quarter for refunding a student's enrollment fees pursuant to California Code of Regulations, title 5, section 58508, subdivisions (a) and (d). The regulations provide that governing boards shall refund enrollment fees when a student makes a request within a specified time and, when the district does refund fees, it may retain once each semester or quarter a maximum of $10. Therefore, according to DOF, claimant has the "authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service." (Gov. Code, § 17556, subd. (d).) Consequently, DOF says the Commission cannot find costs mandated by the State with respect to the claimant's cost of processing fee refunds.

Claimant's Response: Claimant first quotes the chancellor's office comments, which like the test claim, note that colleges are compensated in the amount of two percent of the enrollment fees collected for the cost of collecting the enrollment fee. Claimant cites the legislative history provided by the CCC that quoted the Legislative Analyst's conclusion that the two percent revenue credit was an insufficient reimbursement. Claimant goes on to quote the applicable provisions of Government Code, section 17556, subdivisions (d) and (e), as follows:

[20] Education Code, section 76300, subdivision (c) says for purposes of computing apportionments to community college districts, the Chancellor shall subtract 98% of the revenues received by districts from enrollment fees from the total revenue owed to each district.

> The Commission shall not find costs mandated by the state, as defined in section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the Commission finds that: ...
> (d) The local agency or school district has the **authority** to levy services charges, fees, or assessments **sufficient to pay** for the mandated program or increased level of service.
> (e) **The statute or executive order provides for offsetting savings** to local agencies or school districts **which result in no net costs** to the local agencies or school districts, or includes **additional revenue that was specifically intended to fund the costs** of the state mandate in an **amount sufficient** to fund the cost of the state mandate. (Emphasis added by claimant).

Claimant asserts these two Government Code subdivisions require the Commission to make findings of law and fact. Regarding subdivision (d), it can be determined that as a matter of law, neither the test claim statutes nor other laws provide the "authority to levy service charges, fees, or assessments" for the collection of enrollment fees. The "revenue credit" is not a service fee, charge, or assessment upon the consumer (student) of a service provided by the college district. Regarding subdivision (e), as a matter of law, the test claim statutes do not include "offsetting savings" which result in no net costs. A new program was added, and no other mandated program was removed by the statute. However, as a matter of law, the test claim statutes did include "additional revenue that specifically intended to fund the costs of the mandate" in the form of the revenue credit. Claimant says this begs the question of fact of whether the additional revenue is "sufficient to fund the cost of the state mandate." The entire cost to implement the mandate will vary from district to district, so it cannot be determined as a matter of fact that the revenue credit is sufficient for any or all districts. The revenue credit can in the usual course of the mandate process be addressed by the annual claiming process whereby the claimants are required by law to report their cost of implementing the mandate from which they must deduct other reimbursement and funds, in this case, the two-percent revenue credit.

Regarding DOF's statement that the collection of enrollment fees is entwined with the entire admission process making it extremely difficult, if not impossible to accurately isolate the specific tasks involved with collecting enrollment fees, claimant notes this is without foundation, and is neither a statutory exception to reimbursement of costs mandated by the state, nor a practical argument. The parameters and guidelines determine which activities are reimbursable and the cost accounting methods to be used, and the claimants have the burden of complying with the parameters and guidelines, not the state. Also, enrollment fee collection involves a high volume of uniform transactions (collecting the fee) comprised of identifiable direct costs (staff time and forms to collect the fee). After several years of data are accumulated, claimant asserts that this mandate would be a candidate for a uniform cost allowance.

Regarding DOF's comments about the refunds not being reimbursable, claimant asserts that the title 5, section 58508 regulation did not "pre-exist" the collection of enrollment fees, but was adopted as a result of the establishment of enrollment fees. There were no enrollment fees to refund until there were enrollment fees. The need to refund fees is a foreseeable consequence of collecting them and is properly an activity to be included in the cost mandated by the state subject to reimbursement. There is no statutory assertion that the $10 is adequate for the refunding process. As with the two percent revenue credit, it will be a reduction of the total cost of implementing the mandate.

Staff Findings: Staff finds the community colleges' fee authority does not preclude reimbursement for collection and reimbursement activities specified. Government Code section 17556, subdivision (d), by its express terms, only applies to "fees, or assessments **sufficient to pay** for the mandated program or increased level of service" (emphasis added). Likewise, subdivision (e) only applies to "revenue ...in an amount **sufficient to fund** the cost of the state mandate" (emphasis added). As set forth below, the record indicates that the fee authority is insufficient to fund these activities.

The test claim statute reads in pertinent part as follows:

> **76300.** (a) The governing board of each community college district shall charge each student a fee pursuant to this section. * * *
> (c) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section. .

Claimant submitted a declaration that it incurred about $677,640 (or $4.60 per student) in staffing and other costs in excess of the two percent of the enrollment fees retained during July 1998 to June 1999.[21] The assertion of insufficient fee authority is not only undisputed, but is supported by the Legislative Analyst Office's (LAO) legislative history comments submitted by the CCC. Thus, staff finds that Government Code section 17556, subdivision (d) does not preclude reimbursement because the fee is not sufficient to pay for the program.

Similarly, staff finds that Government Code section 17556, subdivision (e) does not preclude reimbursement because there is nothing in the record to indicate that the offsetting savings or additional revenue is sufficient to fund the mandate. There is nothing in the record to indicate the two percent revenue credit or $10 refund fee is sufficient to fund the mandate.[22]

Regarding DOF's assertion regarding the Legislature's valid determination that two percent of the revenue from fees is adequate to compensate community college districts for administering the test claim statutes, staff disagrees. DOF cites no authority for this, nor is there statutory language in the test claim statute to support it. Thus, DOF must mean the determination is implied in the statute. Staff finds that the Legislature did not make a determination that two percent of the enrollment fee is adequate to compensate community colleges.

Even if the Legislature had explicitly determined the fee adequate, such a determination would not prevent finding a mandate exists. For example, two cases have held legislative declarations unenforceable that attempt to limit the right to reimbursement. In *Carmel Valley Fire Protection District v. State of California,*[23] the court held that "Legislative disclaimers, findings and budget control language are no defense to reimbursement." The Carmel Valley court called such language "transparent attempts to do indirectly that which cannot lawfully be done directly."[24]

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[21] Declaration of Carrie Bray, Director, Accounting Services, Los Rios Community College District, June 22, 2000.

[22] Should the Commission approve staff's recommendation, the two percent and $10 fees may be determined to be offsets when the parameters and guidelines are adopted per California Code of Regulations, title 2, section 1183.1, subdivision (a), paragraphs (8) and (9).

[23] *Carmel Valley, supra,* 190 Cal.App.3d at page 521.

[24] *Id.* at page 541.

Similarly, in *Long Beach Unified School District v. State of California*,[25] the Legislature deleted requested funding from an appropriations bill and enacted a finding that the executive order did not impose a state-mandated local program. The court held that "unsupported legislative disclaimers are insufficient to defeat reimbursement. ...[The district,] pursuant to Section 6, has a constitutional right to reimbursement of its costs in providing an increased service mandated by the state. The Legislature cannot limit a constitutional right."[26] If the Legislature could not prevent a mandate explicitly as the authorities indicate, it certainly could not prevent one implicitly.

DOF also says that costs associated with fee waivers should not be included in this claim because a compensation mechanism exists via Education Code section 76300, subdivision (i), paragraph (2) that allocates two percent of the fees waived under subdivisions (g) and (h) (referring to students who receive AFDC, SSI or other general assistance or dependents or surviving spouses of members of the California National Guard who are killed or permanently disabled in the line of duty) of that statute. Again, claimant's undisputed assertion in the record and legislative history by the LAO indicate that two percent of the fee is not sufficient to pay for these waivers under the program. In sum, staff finds that neither Government Code section 17556, subdivisions (d) and (e), nor the statute's reimbursement mechanism, preclude reimbursement for costs associated with fee waivers.

Finally, DOF asserts that costs for processing refunds do not constitute state mandated costs because community college districts have preexisting regulatory authority to charge up to $10 per semester or quarter for refunding a student's enrollment fees pursuant to California Code of Regulations, title 5, section 58508, subdivisions (a) and (d). These subdivisions read as follows:

> (a) A community college district governing board shall refund upon request any enrollment fee paid by a student pursuant to Section 58501 or 58501.1 for program changes made during the first two weeks of instruction for a primary term-length course, or by the 10 percent point of the length of the course for a short-term course. * * *
> (d) When refunding an enrollment fee pursuant to Subsection (a), a community college district may retain once each semester or quarter an amount not to exceed $10.00.

Staff takes notice that this fee authority exists, and that under the regulations it is capped at $10. But staff finds, as with the enrollment fee and waiver reimbursement discussed above, that the $10 fee does not preclude reimbursement so long as the fee authority is insufficient to cover the cost of providing the service.

In sum, there is nothing in the record to indicate that the Legislature repealed other programs, appropriated sufficient money for fee collection, or otherwise attempted to mitigate the cost of this activity. Therefore, based on the evidence in the record, staff finds that the fee collection activities described above (and repeated below) impose costs mandated by the state on community college districts within the meaning of article XIII B, section 6 and Government Code section 17514.

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[25] *Long Beach Unified, supra,* 225 Cal.App.3d 155.

[26] *Id.* at page 184.

Conclusion and Recommendation

Based on the foregoing analysis, staff concludes that the test claim legislation imposes a partial reimbursable state-mandated program on community college districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 for all students except nonresidents and special part-time students[27] for the following activities:

- Determining the number of credit courses for each student subject to the student enrollment fees (Ed. Code, § 76300, subd. (a); Cal. Code Regs., tit. 5, § 58500.).
- Calculating and collecting the student enrollment fee for each nonexempt student enrolled (Ed. Code, § 76300, subds. (b) and (c); Cal. Code Regs., tit. 5, §§ 58500, 58501, 58502, and 58503.), and providing a waiver of student enrollment fees for exempt students (Ed. Code, § 76300, subds. (e), (g) and (h).
- Calculating, collecting, waiving, or refunding student enrollment fees due to subsequent timely program changes or withdrawal from school. (Ed. Code, § 76300, subd. (e), (g), and (h); Cal. Code Regs., tit. 5, § 58507–58508.)
- Processing all agency billings for students whose student enrollment fees are waived (Ed. Code, § 76300, subd. (e), (g) and (h).)

Staff recommends that the Commission adopt the staff analysis and approve the test claim for the activities listed above.

Staff finds that the following is not a new program or higher level of service under article XIII B, section 6.

- Preparing and submitting reports regarding the student enrollment fees collected and waived as required by the board of governors and other state agencies.

Staff also finds that all other test claim statutes and regulations not cited above are not mandates within the meaning of article XIII B, section 6.

Should the Commission adopt staff's recommendation to approve this test claim, the enrollment fee, fee waiver compensation, and refund-processing fee may be determined to be offsets[28] when the parameters and guidelines are adopted.

[27] Education Code sections 76300, subdivision (f), and 76001.

[28] California Code of Regulations, title 2, section 1183.1, subdivision (a), paragraphs (8) and (9).

Education Code

1983

VOLUME THREE

Title 3—Sections 66000–99160

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Authority to Operate Student Health Centers and Provide Health Supervision and Service

72244. The governing board of any community college district may provide health supervision and services, including direct or indirect medical and hospitalization services, and operate a student health center or centers wherein students in grades 13 and 14 and other persons authorized by the governing board may be diagnosed and treated. School physicians shall be authorized to provide medical treatment at such centers.

(Enacted by Stats. 1976, Ch. 1010.)

Fee for Physical Education Courses Requiring Use of Nondistrict Facilities

72245. The governing board of a community college district may impose a fee on a participating student for the additional expenses incurred when physical education courses are required to use nondistrict facilities.

(Enacted by Stats. 1976, Ch. 1010.)

Health Fees

72246. (a) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than seven dollars and fifty cents ($7.50) for each semester, and five dollars ($5) for summer school, or five dollars ($5) for each quarter for health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health center or centers, authorized by Section 72244, or both.

(b) If pursuant to this section a fee is required, the governing board of a district shall decide the amount of the fee, if any, that a part-time student is required to pay. The governing board may decide whether the fee shall be mandatory or optional.

(c) The governing board of a district maintaining a community college shall adopt rules and regulations that either exempt low-income students from any fee required pursuant to subdivision (a) or provide for the payment of the fee from other sources.

(d) The governing board of a district maintaining a community college shall adopt rules and regulations that exempt from any fee required pursuant to subdivision (a): (1) students who depend exclusively upon prayer for healing in accordance with the teachings of a bona fide religious sect, denomination, or organization; (2) students who are attending a community college under an approved apprenticeship training program.

(e) All fees collected pursuant to this section shall be deposited in the fund of the district designated by the California Community Colleges Budget and Accounting Manual. These fees shall be expended only for the purposes for which they were collected.

Authorized expenditures shall not include, among other things, athletic trainers' salaries, athletic insurance, medical supplies for athletics, physical examinations for intercollegiate athletics, ambulance services and the salaries of health professionals for athletic events, any deductible portion of accident claims filed for athletic team members, or any other expense that is not available to all students. No student shall be denied a service supported by student health fees on account of participation in athletic programs.

(Amended by Stats. 1981, Ch. 930, Sec. 10.1.)

Parking Service Fees

72247. The governing board of a community college district may require of students in attendance in grades 13 and 14 and employees of the district, the payment of a toll, in an amount not to exceed twenty dollars ($20) per semester or forty dollars ($40) per regular school year to be fixed by the board, for parking services.

Such toll shall only be required of students and employees using such services.

All such tolls collected shall be deposited in the designated fund of the district in accordance with the California Community Colleges Budget and Accounting Manual and shall be expended only for parking services or for purposes of reducing the costs to students and faculty of the college of using public transportation to and from the college.

Tolls collected for use of parking services provided for by investment of student body funds under the authority of Section 76064 shall be deposited in a designated fund in accordance with the California Community Colleges Budget and Accounting Manual for repayment to the student organization.

"Parking services," as used in this section, means the purchase, construction, and operation and maintenance of parking facilities.

(Amended by Stats. 1981, Ch. 930.)

Transportation Service Fees

72248. (a) The governing board of a community college district may require of students in attendance in grades 13 and 14 and employees at a campus of the district the payment of a fee for purposes of reducing fares for services provided by common carriers or municipally owned transit systems to such students and employees, as provided in subdivision (b).

(b) Fees authorized by subdivision (a) for transportation services may be required only of students and employees using such services, or, in the alternative, of either of the following groups of people:

(1) Upon the favorable vote of a majority of the students and a majority of the employees of a campus of the district, voting at an election on the question of whether or not the governing board should require all students and employees at the campus to be assessed fees for transportation services for a two-year period, the fees may be required of all students and all employees of a campus of the community college district; or

(2) Upon the favorable vote of a majority of the students at a campus of the district voting at an election on the question of whether or not the governing board should require all students to be assessed fees for transportation services for a two-year period, the fees may be required of all students at the campus of the community college district; provided that the employees shall not be entitled to use such services.

(c) In the event that fees are required to be assessed to all students and employees or all students as provided in subparagraphs (1) and (2) of subdivision (b) for a two-year period, such authorization may be continued for additional two-year periods by the governing board maintaining the campus, upon the favorable vote of a majority of the students and a majority of the employees or, in the case of subdivision (b) (2), upon the favorable vote of a majority of the students of such campus, voting in an election on the question of whether or not such required fees should be continued.

(d) If pursuant to this section a fee is required of students for transportation services, any fee required of a part-time student shall be a pro rata lesser amount than full-time students, depending on the number of units for which such part-time student is enrolled. In addition, a governing board maintaining transportation services shall adopt rules and regulations governing the exemption of low-income students from required fees, and may adopt rules and regulations that provide for the exemption of others.

(e) The total fees to be fixed by the governing board of a community college

district pursuant to this section and Section 72247 shall not exceed the amount prescribed in Section 72247.

(Enacted by Stats. 1976, Ch. 1010.)

Program Changes: Imposition of Fee

Text of section effective August 1, 1983 until July 1, 1987

72250. (a) The governing board of a community college district shall impose a fee of ten dollars ($10) per course, not to exceed a total amount of twenty dollars ($20), for a student program change consisting of dropping one or more courses any time after two weeks from the commencement of instruction in any term. The fee shall not be charged for changes due to special circumstances affecting the student's ability to complete the course or for changes initiated or required by the community college.

(b) Each community college district shall submit a report to the Chancellor of the California Community Colleges which provides information regarding all of the following:

(1) The number of students who drop courses after the second week.

(2) Revenues derived from fees assessed pursuant to subdivision (a).

(3) The number of fee waivers granted students due to a request initiated by the community college on the basis of special circumstances affecting the student's ability to complete the course.

(c) This section shall become inoperative on July 1, 1987, and, as of January 1, 1988, is repealed, unless a later enacted statute which becomes effective on or before January 1, 1988, deletes or extends the dates on which it becomes inoperative and is repealed.

(Amended and repealed by Stats. 1983, Ch. 565. Effective August 1, 1983. Inoperative July 1, 1987. Repeal operative January 1, 1988. See section of same number below.)

Program Changes: Imposition of Fee

Text of section effective August 1, 1983 until September 27, 1983

72250. The governing board of a community college district may impose a fee, not to exceed one dollar ($1), for the actual pro rata cost for services relative to a program change consisting of adding or dropping one or more courses any time after two weeks from the commencement of instruction in any term. Such fee shall not be charged for changes initiated or required by the community college.

This section shall become operative July 1, 1987.

(Added by Stats. 1983, Ch. 565. Effective August 1, 1983. Operative July 1, 1987. See section of same number above.)

Program Changes: Imposition of Fee

Text of section effective September 27, 1983

72250.5. The governing board of a community college district may impose a fee, not to exceed one dollar ($1), for the actual pro rata cost for services relative to a program change consisting of adding one or more courses any time after two weeks from the commencement of instruction in any term. Such fee shall not be charged for changes initiated or required by the community college.

(Added by renumbering Section 72250, as added by Stats. 1983, Ch. 565, Sec. 1.5, by Stats. 1983, Ch. 1095. Effective September 27, 1983.)

Charge for Late Application Fee

72251. The governing board of any community college district may impose a late application fee of not to exceed two dollars ($2) for any application for admission or readmission which is filed after the date established by the governing board for the filing of applications for admission or readmission to the community college.

(Enacted by Stats. 1976, Ch. 1010.)

Limitation on Campaign Expenditures and Contributions

72254. The governing board of a community college district may by resolution limit campaign expenditures or contributions in elections to district offices.

(Enacted by Stats. 1976, Ch. 1010.)

Use of Funds for Membership or Participation in Discriminatory Organizations

72255. No funds under the control of a community college district shall ever be used for membership or for any participation involving a financial payment or contribution, on behalf of the district or any individual employed by or associated therewith, in any private organization whose membership practices are discriminatory on the basis of race, creed, color, sex, religion, or national origin. This section does not apply to any public funds which have been paid to an individual officer or employee of the district as salary, or to any funds which are used directly or indirectly for the benefit of student organizations.

(Added by Stats. 1978, Ch. 1099.)

Report on Part-Time Employment Patterns and Practices

72256. The Board of Governors of the California Community Colleges shall publish a statewide report on part-time employment patterns and practices in each community college district to be submitted to the Legislature no later than January 1, 1982. At the least, the report shall include a comparison of full-time and part-time faculty in the areas of teaching workload, related academic activities, remuneration, types of certificates, types of classes taught, length of employment, and whether or not the faculty members are evaluated. Information on assignments performed by full-time instructors which is in addition to their full-time assignment and for which additional compensation is provided shall be included in the report.

(Added by Stats. 1980, Ch. 1177.)

Article 3. Delineation of Functions

(Article 3 enacted by Stats. 1976, Ch. 1010)

Legislative Intent

72280. By enacting this article the Legislature declares its intent to more specifically delineate the powers, duties, and functions of the community college district governing boards and the powers, duties, and functions of the Board of Governors of the California Community Colleges.

(Amended by Stats. 1981, Ch. 470.)

Definitions

72281. As used in this article, "board of governors" means the Board of Governors of the California Community Colleges. "District governing board" means the governing board of a community college district. "District" means a community college district.

(Enacted by Stats. 1976, Ch. 1010.)

Rules and Regulations

72282. The district governing board shall establish rules and regulations not inconsistent with the regulations of the board of governors and the laws of this state for the government and operation of one or more community colleges in the

(a) Loans, with or without interest, to any student body organization established in another community college of the district for a period not to exceed three years.

(b) Invest money in permanent improvements to any community college district property including, but not limited to, buildings, automobile parking facilities, gymnasiums, swimming pools, stadia and playing fields, where such facilities, or portions thereof, are used for conducting student extracurricular activities or student spectator sports, or when such improvements are for the benefit of the student body. Such investment shall be made on condition that the principal amount of the investment plus a reasonable amount of interest thereon shall be returned to the student body organization as provided herein. Any community college district approving such an investment shall establish a fund in accordance with the California Community Colleges Budget and Accounting Manual in which moneys derived from the rental of community college district property to student body organizations shall be deposited. Moneys collected by the governing board for automobile parking facilities as authorized by Section 72247 shall be deposited in the fund designated by the California Community Colleges Budget and Accounting Manual if the parking facilities were provided for by investment of student body funds under this section. Moneys shall be returned to the student body organization as contemplated by this section exclusively from such special fund and only to the extent that there are moneys in such special fund. Whenever there are no outstanding obligations against the special fund, all moneys therein may be transferred to the general fund of the school district by action of the local governing board.

Two or more student body organizations of the same community college district may join together in making such investments in the same manner as is authorized herein for a single student body. Nothing herein shall be construed so as to limit the discretion of the local governing board in charging rental for use of community college district property by student body organizations as provided in Section 76060.

(Amended by Stats. 1981, Ch. 930.)

Supervision and Audit of Student Funds

76065. The governing board of any community college district shall provide for the supervision of all funds raised by any student body or student organization using the name of the college.

The cost of supervision may constitute a proper charge against the funds of the district.

The governing board of a community college district may also provide for a continuing audit of student body funds with community college district personnel.

(Enacted by Stats. 1976, Ch. 1010.)

Student Political Organization Activity

76067. Any student political organization which is affiliated with the official youth division of any political party that is on the ballot of the State of California may hold meetings on a community college campus and may distribute bulletins and circulars concerning its meetings, provided that there is no endorsement of such organization by the school authorities and no interference with the regular educational program of the school.

(Enacted by Stats. 1976, Ch. 1010.)

Article 7. Exercise of Free Expression

(Article 7 enacted by Stats. 1976, Ch. 1010)

Exercise of Free Expression by Students: Adoption of Rules and Regulations

76120. The governing board of a community college district shall adopt rules and regulations relating to the exercise of free expression by students upon the premises of each community college maintained by the district, which shall include reasonable provisions for the time, place, and manner of conducting such activities.

Such rules and regulations shall not prohibit the right of students to exercise free expression including, but not limited to, the use of bulletin boards, the distribution of printed materials or petitions, and the wearing of buttons, badges, or other insignia, except that expression which is obscene, libelous or slanderous according to current legal standards, or which so incites students as to create a clear and present danger of the commission of unlawful acts on community college premises, or the violation of lawful community college regulations, or the substantial disruption of the orderly operation of the community college, shall be prohibited.

(Enacted by Stats. 1976, Ch. 1010.)

Article 8. Administration of Punishment to Students

(Article 8 enacted by Stats. 1976, Ch. 1010)

Administration of Punishment to Students

76130. The governing board of any community college district shall adopt rules and regulations authorizing instructors, supervisors, and other certificated personnel to administer reasonable punishment to students when such action is deemed an appropriate corrective measure.

(Amended by Stats. 1981, Ch. 470.)

Article 9. Nonresident Tuition

(Article 9 enacted by Stats. 1976, Ch. 1010)

Nonresident Tuition

76140. A community college district may admit and shall charge a tuition fee to nonresident students. The district may exempt from all or parts of the fee:

(a) All nonresidents who enroll for six or fewer units. Exemptions made pursuant to this subdivision shall not be made on an individual basis; or

(b) Any nonresident who is both a citizen and resident of a foreign country, provided that the nonresident has demonstrated a financial need for the exemption and not more than 10 percent of the nonresident foreign students attending any community college district may be so exempted. Exemptions made pursuant to this subdivision may be made on an individual basis.

A district may contract with a state, a county contiguous to California, the federal government, a foreign country, or an agency thereof, for payment of all or a part of a nonresident student's tuition fee.

Attendance of nonresident students shall not be reported as resident average daily attendance for state apportionment purposes, except as provided by statute in which case a nonresident tuition fee may not be charged.

The nonresident tuition fee shall be set by the governing board of each community college district not later than February 1 of each year for the succeeding fiscal year. Such fee may be paid in installments, as determined by the governing board of the district.

The fee established by the governing board pursuant to the preceding paragraph shall represent for nonresident students enrolled in 30 semester units or 45 quarter units of credit per fiscal year (a) the amount which was expended by the district for the current expense of education as defined by the California Community College Budget and Accounting Manual in the preceding fiscal year increased by the projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for the current fiscal year and succeeding fiscal year and divided by the average daily attendance of all students (including nonresident students) attending in the district in the preceding fiscal year, or (b) the current expense of education in the preceding fiscal year of all districts increased by the projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for the current fiscal year and succeeding fiscal year and divided by the average daily attendance of all students (including nonresident students) attending all districts during the preceding fiscal year, or (c) an amount not to exceed the fee established by the governing board of any contiguous district. However, should the district's preceding fiscal year average daily attendance of all students attending in the district in noncredit courses be equal to or greater than 10 percent of the district's total average daily attendance of all students attending in the district, the district in calculating (a) above may substitute instead the data for current expense of education in grades 13 and 14 and average daily attendance in grades 13 and 14 of all students attending in the district.

The governing board of each community college district shall also adopt a tuition fee per unit of credit for nonresident students enrolled in more or less than 15 units of credit per term by dividing the fee determined in the preceding paragraph by 30 for colleges operating on the semester system and 45 for colleges operating on the quarter system and rounding to the nearest whole dollar. The same rate shall be uniformly charged nonresident students attending any terms or sessions maintained by the community college. The rate charged shall be the rate established for the fiscal year in which the term or session ends.

Any loss in district revenue generated by the nonresident tuition fee shall not be offset by additional state funding.

The provisions of this section which require a mandatory fee for nonresidents shall not apply to any district which borders on another state and has fewer than 500 average daily attendance.

(Amended by Stats. 1983, Ch. 317. Effective July 19, 1983.)

Apprentices Exemption from Nonresident Fee

76142. No fee may be charged to any apprentice who is not a resident of California for attendance in a California community college in classes of related and supplemental instruction as provided under Section 3074 of the Labor Code and in accord with the requirements as set forth in subdivision (d) of Section 3078 of that code.

(Enacted by Stats. 1976, Ch. 1010.)

Nonresident Tuition Fee: Residence Determination

76143. For purposes of the nonresident tuition fee, a community college district shall disregard the time during which a student living in the district resided outside the state, if:

(1) The change of residence to a place outside the state was due to a job transfer and was made at the request of the employer of the student or the employer of the student's spouse or, in the case of a student who resided with, and was a dependent of, the student's parents, the change of residence was made at the request of an employer of either of the student's parents.

(2) Such absence from the state was for a period of not more than four years.

(3) At the time of application for admission to a college maintained by the district, the student would qualify as a resident if the period of the student's absence from the state was disregarded.

A nonresident tuition fee shall not be charged to a student who meets each of the conditions specified in subdivisions (1) to (3), inclusive.

(Amended by Stats. 1977, Ch. 36.)

Article 10. Miscellaneous

(Article 10 enacted by Stats. 1976, Ch. 1010)

Certain Students' Residences More Than 60 Miles From Nearest Attendance Center

76160. Any student under 21 years of age, and any student under 25 years of age who has been honorably discharged or is otherwise returning from active or inactive military service with the armed forces of the United States, who resides in this state and more than 60 miles from the nearest public community college measured by the usual vehicular route between the student's home and the college, may request to attend credit courses at any public community college in the state, whether or not the student's residence is in a district maintaining a community college. The governing board of the district maintaining the community college designated by the student shall admit the student provided all requirements for admission are met.

The provisions of this section shall not apply to any student residing in a district maintaining a community college if that district maintains adequate dormitories or housing facilities or provides adequate transportation for the student between the student's home and the community college attendance center.

If the student resides within territory not included within any community college district and resides more than 60 miles from the nearest community college, measured by the usual vehicular route between the student's home and the attendance center, there shall be paid to the parents or other persons having charge or control of the student and directly to adult students and married minors, by the district in which the student attends, a maintenance allowance not to exceed four dollars ($4) per calendar day, including weekends and school holidays, for the portion of a semester, quarter, or other session or term in which the student is enrolled full time in credit classes in a community college under this section. Community college districts shall receive reimbursement from the chancellor's office for allowances paid to students from nondistrict territory for the prior fiscal year not to exceed the maximum amount as provided in Section 84604.9.

No later than 60 days after the close of each fiscal year the chancellor shall determine the daily allowance rate for the prior fiscal year. If claims made by community colleges exceed total funds raised by nondistrict territories for that purpose prior to July 1, 1978, the chancellor shall prorate the allowances made under this section. No later than 90 days after the close of each fiscal year the community college districts shall pay eligible students at the rate prescribed by the chancellor.

The chancellor shall prescribe procedures for the submission of claims by community college districts and verification of the claims by the appropriate county superintendent of schools.

For the purpose of this section, a person shall be deemed to be honorably discharged from the armed forces (a) if he or she was honorably discharged from the armed forces of the United States or (b) if he or she was inducted into the armed forces of the United States under the "Universal Military Training and Service Act," and (1) satisfactorily completes his or her period of training and service under that act and is issued a certificate to that effect pursuant to that act,

Commission on State Mandates

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Mailing List

Claim Number: 99-TC-13

Issue: Enrollment Fee Collection

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Commission on State Mandates

Original List Date: 08/07/2000 **Mailing Information** Draft Staff Analysis

Last Updated: 06/18/2002

List Print Date: 07/05/2002

Mailing List

Claim Number: 99-TC-13

Issue: Enrollment Fee Collection

TO ALL PARTIES AND INTERESTED PARTIES h commission mailing list is continuously updated as requests are received to include or remove any party or person on he mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except s provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously erve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 181.2.)

STATE OF CALIFORNIA GRAY DAVIS, *Governor*

COMMISSION ON STATE MANDATES
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January 8, 2002

Mr. Keith Petersen
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: **Draft Staff Analysis and Hearing Date**
Enrollment Fee Collection, 99-TC-13
Los Rios Community College District, Claimant
Education Code Section 76300, Statutes 1984xx, Chapter 1 et al.; California Code of Regulations, Title 5, Sections 58500 – 58508.
Enrollment Fee Waivers, 00-TC-15
Glendale Community College District, Claimant
Education Code Section 76300, Statutes 1984xx, Chapter 1 et al.; California Code of Regulations, Title 5, Sections 58600, 58601, 58610 – 58613, 58620, 58630; Board of Governors Fee Waiver Program Manual for 2000/2001.

Dear Mr. Petersen:

The draft staff analysis for this test claim is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by **Wednesday, January 29, 2003**. You are advised that the Commission's regulations require comments filed with the Commission to be simultaneously served on other interested parties on the mailing list, and to be accompanied by a proof of service on those parties. If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This test claim is tentatively set for hearing on Thursday, **February 27, 2003** at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. The final staff analysis will be issued on or about Febuary 14, 2003. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

If you have any questions on the above, please contact Eric Feller at (916) 323-8224.

Sincerely,

Paula Higashi
Executive Director

Enc. Draft Staff Analysis
cc. Mailing List (current mailing list attached)

MAILED: ✓ FAXED:
DATE: 1/8/02 INITIAL:
CHRON: FILE: ✓
WORKING BINDER:

ITEM

TEST CLAIM
DRAFT STAFF ANALYSIS

Education Code Section 76300;
Statutes 1984xx, Chapter 1; Statutes 1984, Chapters 274 and 1401;
Statutes 1985, Chapters 920 and 1454; Statutes 1986, Chapters 46 and 394;
Statutes 1987, Chapter 1118; Statutes 1989, Chapter 136; Statutes 1991, Chapter 114;
Statutes 1992, Chapter 703; Statutes 1993, Chapters 8, 66, 67, and 1124;
Statutes 1994, Chapters 153 and 422; Statutes 1995, Chapter 308;
Statutes 1996, Chapter 63; and Statutes 1999, Chapter 72;
California Code of Regulations, Title 5, Sections 58500 – 58508

Enrollment Fee Collection

and

Education Code Section 76300
Statutes 1984xx, Chapter 1; Statutes 1984, Chapters 274 and 1401;
Statutes 1985, Chapters 920 and 1454; Statutes 1986, Chapters 46 and 394;
Statutes 1987, Chapter 1118; Statutes 1989, Chapter 136;
Statutes 1993, Chapters 8, 66, 67, and 1124; Statutes 1994, Chapters 153 and 422;
Statutes 1995, Chapter 308; Statutes 1996, Chapter 63; and Statutes 1999, Chapter 72;
California Code of Regulations, Title 5, Sections 58600, 58601, 58610 – 58613, 58620, 58630
Board of Governors Fee Waiver Program Manual for 2000/2001

Enrollment Fee Waivers

EXECUTIVE SUMMARY

STAFF WILL INSERT THE EXECUTIVE SUMMARY IN THE FINAL ANALYSIS

STAFF ANALYSIS

Claimants

Los Rios Community College District (99-TC-13)
Glendale Community College District (00-TC-15)

Chronology

6/22/00	Claimant Los Rios Community College District (LRCCD) files *Enrollment Fee Collection* test claim with the Commission (99-TC-13)
8/2/00	Department of Finance (DOF) files request for extension to submit comments
8/4/00	California Community Colleges (CCC) Chancellor's Office files comments on the test claim with the Commission
9/1/00	DOF files request for extension to submit comments
10/13/00	DOF files comments on the test claim with the Commission
11/9/00	Claimant LRCCD files response to DOF and CCC comments.
6/4/01	Claimant Glendale Community College District (GCCD) files *Enrollment Fee Waivers* test claim with the Commission (00-TC-15)
7/6/01	DOF requests an extension of time to file comments (00-TC-15)
8/8/01	DOF requests an extension of time to file comments (00-TC-15)
9/25/01	DOF files comments on the test claim (00-TC-15) with the Commission
7/5/02	Commission issues draft staff analysis for *Enrollment Fee Collection* (99-TC-13)
7/9/02	LRCCD claimant's representative faxes a statement that claimant will not respond to the draft staff analysis
7/24/02	DOF requests extension of time to submit comments on the draft staff analysis
7/25/02	Commission approves time extension for DOF to submit comments on the draft staff analysis
8/30/02	DOF submits comments on the draft staff analysis for *Enrollment Fee Collection* (99-TC-13)
8/30/02	Commission issues notice of consolidation of test claims (99-TC-13) *Enrollment Fee Collection* and (00-TC-15), *Enrollment Fee Waivers*
1/8/03	Commission issues new draft staff analysis for *Enrollment Fee Collection and Enrollment Fee Waivers.*

Background Information

There are currently 72 community college districts governing 108 community colleges in California, serving over 2.9 million students.[1]

[1] California Community College Chancellor's Office website <http://www.cccco.edu> [as of Jan. 7, 2003].

Claimant LRCCD filed the *Enrollment Fee Collection* test claim (99-TC-13) in June 2000. Originally enacted in 1984 and amended throughout the 1980s and 1990s, the original test claim legislation and regulations[2] authorize and require community colleges to implement enrollment fees and adopt regulations for their collection. Although the amount of the enrollment fee has been amended various times, the two percent of the fee retained by the community colleges[3] has remained constant.

Claimant GCCD filed the *Enrollment Fee Waivers* (00-TC-15) test claim in May 2001 in which claimant pled fee-waiver statutes and regulations[4] that specify the groups of students for which fees are waived and for whom Board of Governors Grants (BOGGs) are available. A BOGG is an instrument used by a community college district to process financial assistance to a low-income student.[5]

In August 2002, the *Enrollment Fee Collection* (99-TC-13) and *Enrollment Fee Waiver* (00-TC-15) test claims were consolidated.[6]

Claimant's Contentions

Claimant contends that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514.

In the *Enrollment Fee Collection* (99-TC-13) test claim, claimant requests reimbursement for the following activities:

> (1) determining the number of credit courses for each student subject to the student enrollment fees;
>
> (2) calculating and collecting student enrollment fees for each nonexempt student enrolled, and providing a waiver of student enrollment fees for exempt students;
>
> (3) calculating, collecting, waiving or refunding student enrollment fees due to subsequent timely program changes or withdrawal from school;
>
> (4) entering the student enrollment fee collection and waiver information into the district cashier system and data processing and accounting systems;
>
> (5) processing all agency billings for students whose student enrollment fees are waived;

---

[2] Reference to the test claim legislation hereafter includes all of the following: Education Code section 76300. Statutes 1984xx, chapter 1; Statutes 1984, chapters 274 and 1401; Statutes 1985, chapters 920 and 1454; Statutes 1986, chapters 46 and 394; Statutes 1987, chapter 1118; Statutes 1989, chapter 136; Statutes 1991, chapter 114; Statutes 1992, chapter 703; Statutes 1993, chapters 8, 66, 67, and 1124; Statutes 1994, chapters 153 and 422; Statutes 1995, chapter 308; Statutes 1996, chapter 63; and Statutes 1999, chapter 72. California Code of Regulations, title 5, sections 58500 – 58508.

[3] Education Code Section 76300, subdivision (c). This is called a "revenue credit" by the Community College Chancellor's Office.

[4] Education Code section 76300; California Code of Regulations, Title 5, Sections 58600, 58601, 58610 – 58613, 58620, 58630, Executive Orders of the California Community Colleges Chancellor's Office.

[5] California Code of Regulations, title 5, section 58601.

[6] California Code of Regulations, title 2, section 1183.06.

(6) preparing and submitting reports on student enrollment fees collected and waived as required by the Board of Governors and other state agencies. Claimant states that failure to implement this mandate would reduce the total district revenue by up to ten percent pursuant to Education Code section 76300, subdivision (d).

In the *Enrollment Fee Waivers* (00-TC-15) test claim, claimant seeks reimbursement for:

(1) determining and classifying students eligible for Board of Governors grants ("BOGG") according to the eligibility criteria;

(2) determining at the time of enrollment whether fees should be waived because the student is a recipient of benefits under the Aid to Families with Dependent Children (AFDC)[7] program or the Supplemental Security Income/State Supplementary program (SSI) or a beneficiary under a general assistance program;

(3) determining at the time of enrollment whether fees should be waived for a student due to demonstration of financial need in accordance with federal methodology for determining expected family contribution of students seeking financial aid;

(4) determining at the time of enrollment whether fees should be waived for a student because he or she is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in active service to the state;

(5) entering the enrollment fee waiver information into the district cashier system and data processing and accounting systems, and processing all agency billings for students whose fees are waived;

(6) separately documenting and accounting for the funds allocated for collection of enrollment fees and financial assistance in order to enable an independent determination regarding the accuracy of the District's certification of need for financial assistance;

(7) preparing and submitting reports regarding the number and amounts of the enrollment fees waived as required by the Board of Governors and other state agencies.

Claimant contends that state funds allocated pursuant to Education Code section 76300, subdivision (i), currently calculated at .91 per credit unit waived, are not sufficient to fund the mandate.[8]

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[7] On August 22, 1996, President Clinton signed into law H.R. 3734 --The Personal Responsibility and Work Opportunity Reconciliation Act of 1996. This federal legislation eliminated the AFDC program and replaced it with the Temporary Assistance for Needy Families (TANF) program. This federal welfare reform offered states flexibility to redesign their programs, and subjected states to financial penalties for failing to meet work participation and other requirements. In response, California created the California Work Opportunity and Responsibility to Kids (CalWORKs) program. (Stats. 1997, ch. 270; AB 1542, Ducheny, Ashburn, Thompson, and Maddy). These programs are referenced in the test claim legislation, so they are used interchangeably in this analysis.

[8] Declaration of Carrie Bray, Director of Accounting Services, Los Rios Community College District, June 22, 2000.

Department of Finance's Contentions

In its original comments on the *Enrollment Fee Collection* (99-TC-13) test claim, the DOF agrees that the test claim statutes constitute a new program or higher level of service because the community college districts had not previously been required to collect enrollment fees from students. But DOF asserts the test claim should be denied because the statutory scheme sets up a mechanism whereby community college districts are automatically provided with funding for their costs of administering the program.[9] According to DOF, since the collection of enrollment fees is entwined with the entire admission process it would be extremely difficult, if not impossible, to accurately isolate the specific tasks involved with collecting enrollment fees. DOF submits that the Legislature has validly determined that two percent of the revenue from fees is adequate to compensate community college districts for administering the test claim statutes. DOF further notes that the costs associated with fee waivers should not be included in this claim because a statutory compensation mechanism currently exists for those costs. Finally, DOF states that processing refunds does not result in state mandated costs because the districts have preexisting regulatory authority to charge up to $10 per semester or quarter for refunding a student's enrollment fees.

In its original (9/25/01) comments on the *Enrollment Fee Waivers* test claim (00-TC-15), DOF argues that all activities are fully compensated by funds provided to the district and fees levied. Regarding determining and classifying whether a student is eligible for a BOGG, DOF asserts that much of the infrastructure for determining whether a student is eligible to have fees waived already existed prior to 1975, and that the grants are only available to those who are eligible and apply for assistance. DOF also disputes the claimant's staffing for making BOGG eligibility determinations, and asserts that claimant received ample funds for student financial aid administration and fee waiver administration. DOF also commented on the claim for determining fee waivers for recipients of AFDC, SSI, general assistance, federal financial aid, or a fee waiver due to being the dependent or surviving spouse of a California National Guard member killed or permanently disabled as a result of active service to the state. DOF asserts that these activities do not constitute a higher level of service because they are alternative methods for determining student eligibility for a BOGG rather than additional requirements.

In its 8/30/02 comments on the draft staff analysis of *Enrollment Fee Collection* (99-TC-13), DOF concurs with staff's finding that preparation and submittal of reports on enrollment fees collected and waived is not a state-reimbursable mandated activity. DOF does not concur, however, that the rest of the activities discussed in the draft staff analysis are mandates. DOF argues that the only state-mandated program is calculating and collecting the student enrollment fee for each nonexempt student enrolled (Ed. Code, § 76300 subds. (b) & (c)), which is not reimbursable due to sufficient state funding and other reasons. DOF argues that community college districts were already required to determine the credit course load for every student before enactment of the test claim legislation. On providing a fee waiver for exempt students, DOF asserts that this activity is not reimbursable, but is merely the preclusion of participation in the new program of collecting enrollment fees. DOF also disagrees that calculating, collecting, waiving or refunding enrollment fees due to program changes or withdrawal from school is a reimbursable activity because permission to add or drop courses is at the discretion of the

[9] Education Code section 76300, subdivision (c). All further statutory references are to the Education Code unless otherwise indicated.

community college district. As to processing agency billings, DOF asserts that this activity is not required or even necessary to comply with Education Code section 76300 because for a fee waiver, tuition is not charged by the college to qualifying students, precluding the need for an agency billing for that student. Finally, DOF asserts that calculating and collecting the enrollment fee is not a state-mandated program because community college districts have fee authority under Education Code section 76902, subdivision (b)(9).

Community Colleges Chancellor's Office Contentions

In its comments on the *Enrollment Fee Collection* (99-TC-13), the CCC concludes that the test claim statute was "clearly a higher level of service for community colleges." The CCC provides a bill analysis from the Legislative Analyst quoting its conclusion that the two percent revenue credit is an insufficient reimbursement for the locally mandated fee-collection program. The CCC also provided a letter from its president to the author of the fee legislation.

The CCC stresses that although the amount of the enrollment fee has varied, the two percent revenue credit for community colleges has remained constant. Finally, the CCC states that, for fiscal year 1998-99, the claimant LRCCD collected $6.98 million in fees pursuant to section 76300, of which two percent, or $139,610 was a revenue credit. Statewide, enrollment fees totaled over $164 million, of which the two percent revenue credit totaled $3.28 million.

The CCC did not provide comments on *Enrollment Fee Waivers* (00-TC-15).

Discussion

In order for the test claim legislation to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution and Government Code section 17514, the statutory language must mandate a new program or create an increased or higher level of service over the former required level of service. "Mandates" as used in article XIII B, section 6, is defined to mean "orders" or "commands."[11] The California Supreme Court has defined "program" subject to article XIII B, section 6 of the California Constitution as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.[12] To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.[13] Finally, the new program or increased level of service must impose "costs mandated by the state."[14]

This test claim presents the following issues:

- Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

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[11] *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 174.

[12] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[13] *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

[14] Government Code section 17514.

- Does the test claim legislation impose a new program or higher level of service on community college districts within the meaning of article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

These issues are addressed as follows.

Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program," defined as a program that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. [15] Only one of these findings is necessary to trigger article XIII B, section 6.[16]

The test claim legislation concerns collecting community college enrollment fees and determining eligibility for fee waivers and financial aid. Collecting enrollment fees and providing waivers and financial aid is a peculiarly governmental function administered by community college districts as part of their mission to provide educational services to the students. Moreover, the test claim legislation imposes unique fee collection, fee waiver, and BOGG eligibility determination requirements on community college districts that do not apply generally to all residents or entities in the state. Therefore, staff finds that community college enrollment fees, fee waivers, and Board of Governors grants constitute a "program" within the meaning of article XIII B, section 6 of the California Constitution.

Issue 2: Does the test claim legislation impose a new program or higher level of service on community college districts within the meaning of article XIII B, section 6 of the California Constitution?

Article XIII B, section 6 of the California Constitution states, "whenever the Legislature or any state agency *mandates* a new program or higher level of service on any local government, the state shall provide a subvention of funds." (Emphasis added.) This provision was specifically intended to prevent the state from forcing programs on local government that require them to spend their tax revenues.[17] To implement article XIII B, section 6, the Legislature enacted Government Code section 17500 et seq. Government Code section 17514 defines "costs mandated by the state" as "any increased costs which a local agency or school district is *required* to incur . . . as a result of any statute. . . .which *mandates* a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution." (Emphasis added.) "Mandates" as used in article XIII B, section 6 has been defined to mean "orders" or "commands."[18] If the test claim legislation does not mandate

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[15] *County of Los Angeles, supra,* 43 Cal.3d 46, 56.

[16] *Carmel Valley Fire Protection Dist., supra,* 190 Cal.App.3d at page 537.

[17] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Los Angeles, supra,* 43 Cal.3d 46, 56; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283-1284.

[18] *Long Beach Unified School District, supra,* 225 Cal.App.3d 155, 174.

the school district to perform a task, then compliance is within the discretion of the school district and a state-mandated program does not exist. The state has no duty under article XIII B, section 6 to reimburse the school district for costs of programs or services incurred as a result of the exercise of local discretion or choice.[19]

To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.[20]

Collection of enrollment fees: Education Code section 76300 governs collection of enrollment fees as follows:

- Subdivision (a) requires the governing board of each community college district to charge each student a fee.
- Subdivision (b) prescribes the fee amount of $12 per unit per semester for 1998-99, and $11 per unit per semester effective fall 1999-2000,[21] and requires the chancellor to proportionally adjust the fee for term lengths based on a quarter system.
- Subdivision (c) requires the chancellor, for computing apportionments to districts, to subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging the fee.
- Subdivision (d) requires the chancellor to reduce apportionments by up to 10 percent to any district that does not collect the fee.

Under preexisting law, community colleges were authorized but not required to impose various student fees for the following: physical education courses using nondistrict facilities,[22] health services,[23] parking services,[24] transportation services,[25] program changes,[26] and late applications.[27]

Prior to the test claim statute, there was no requirement to collect student fees except from nonresident students.[28] Therefore, because it is not a new activity, staff finds that collecting fees from nonresident students is not a new program or higher level of service.

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[19] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783.

[20] *Lucia Mar Unified School Dist. v. Honig, supra,* 44 Cal.3d 830, 835.

[21] Statutes 1999, chapter 72 lowered the school year 1999-2000 fees from $12 to $11. Because chapter 72 became effective July 6, 1999 to be applied in fall 1999, it does not affect claimant's reimbursement period.

[22] Former Education Code section 72245 and current Education Code section 76395.

[23] Former Education Code section 72246 and current Education Code section 76355.

[24] Former Education Code section 72247 and current Education Code section 76360.

[25] Former Education Code section 72248 and current Education Code section 76361.

[26] Former Education Code sections 72250 – 72250.5 and current California Code of Regulations, title 5, section 58507.

[27] Former Education Code section 72251.

[28] Education Code section 76140.

Education Code section 76300, subdivision (f) authorizes but does not require the governing board of a community college district to exempt special part-time students admitted pursuant to section 76001 from the student enrollment fee. This refers to students who attend a community college while still in high school. Since admitting these students is discretionary, collecting fees from them is not a new program or higher level of service within the meaning of article XIII B, section 6.

In sum, staff finds that collecting enrollment fees constitutes a new program or higher level of service within the meaning of article XIII B, section 6 for all students except for nonresidents, and except for special part-time students (pursuant to Ed. Code, § 76300, subd. (f)).

Refunds for program changes: California Code of Regulations, title 5, sections 58500 through 58508,[29] also pertain to community college student fees. Section 58500 defines the enrollment fee, section 58501 states the semester, quarter or fractional unit fee, section 58501.1 discusses the differential enrollment fee, section 58502 states the enrollment fee shall be charged at the time of enrollment, and section 58503 requires students to be charged for variable unit classes at the time of enrollment, based on the number of units in which the college enrolls the student. Section 58507 authorizes students to add or drop classes during the term pursuant to district policy, and requires the enrollment fee to be adjusted accordingly. Section 58508 governs refunds for program changes made during the first two weeks of instruction for a primary term-length course, or by the 10 percent point of the length of the course for a short-term course.

Prior law did not address enrollment fee refunds because there were no fees. Prior law did, however, require community colleges to impose a fee of $10 per course, not to exceed $20, for a student program change consisting of dropping one or more courses any time after two weeks from the commencement of instruction in any term. In 1987, this fee was made permissive and was not to exceed one dollar ($1) "for the actual pro rata cost for services relative to a program change consisting of adding or dropping one or more courses any time after two weeks from the commencement of instruction in any term."[30]

In disputing that program changes constitute a new program or higher level of service, DOF points out that California Code of Regulations, title 5, section 58507 authorizes, but does not require community colleges to allow students to add or drop classes during the term. This section reads as follows:

> A community college district may allow a student to add or drop classes during the term pursuant to district policy. The enrollment fee or differential enrollment fee shall be adjusted to reflect added or dropped courses as allowed by district policy.

DOF is correct that the first activity, allowing a student to add or drop courses, is not required. However, the fee adjustment (a separate activity) is mandatory upon request. Section 58508 states:

> (a) A community college district governing board shall refund upon request any enrollment fee paid by a student pursuant to Sections 58501 or 58501.1 for program

[29] California Code of Regulations, title 5, section 58509 was not pled by claimant. This analysis does not address section 58509.

[30] Former Education Code sections 72250 and 72250.5. Both statutes excused the fee for changes initiated or required by the community college.

changes made during the first two weeks of instruction for a primary term – length course, or by the 10 percent point of the length of the course for a short-term course.

(b) A student shall be allowed at least two weeks from the final qualifying date of the program change specified in Subsection (a) [sic] to request an enrollment fee refund.

(c) A community college district shall not refund any enrollment fee paid by a student for program changes made after the first two weeks of instruction for a primary term-length course, or after the 10 percent point of the length of the course for a short-term course, unless the program change is a result of action by the district to cancel or reschedule a class or to drop a student pursuant to section 55202 (g) where the student fails to meet a prerequisite.

(d) When refunding an enrollment fee pursuant to subsection (a), a community college district may retain once each semester or quarter an amount not to exceed $10.00.

Allowing the student program changes pursuant to section 58507 is an activity that is not required. The statute states that a "community college **may** allow a student to add or drop classes" (emphasis added). Use of the word "may" is permissive.[31] Thus, changing programs is an activity within the discretion of the community college district to allow. The court of appeal has concluded that discretionary actions of local agencies are not new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution.[32] In *City of Merced*, the court found that the exercise of eminent domain was discretionary and therefore not a cost which plaintiff was required or mandated to incur. The same is true in section 58507, which authorizes but does not require community colleges to allow program changes. Therefore, staff finds that section 58507 of title 5 of the California Code of Regulations is not a new program or higher level of service because the community college district is authorized but not required to allow a student to add or drop classes.

However, refunding the enrollment fee on request (within the first two weeks of instruction for a primary term – length course, or by the 10 percent point of the length of the course for a short-term course) is a required activity, separate from the program change, pursuant to section 58508. These two sections are reconcilable in that section 58508 requires a refund within the first two weeks of instruction, but section 58507 authorizes but does not require community college districts to allow program changes after that two-week period, or 10 percent point of length of the course for a short-term course. The fee refund is triggered by the state regulation in section 58508, not by the community college district.

Thus, staff finds that subdivisions (a) and (b) of section 58508 of title 5 of the California Code of Regulations is a new program or higher level of service because it expressly requires a refund upon request of any enrollment fee for program changes made during the first two weeks of instruction, or 10 percent point of length of the course for a short-term course; and requires allowing at least two weeks from the final qualifying date of the program change for students to request an enrollment fee refund.

Staff also finds that subdivisions (c) and (d) are not new programs or higher levels of service because they do not require a community college activity. Subdivision (c) is a prohibition,

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[31] Education Code section 75.

[32] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783.

because it prohibits the community college from making refunds except under certain circumstances, and subdivision (d) merely allows the community college to retain $10 from the student fees refunded.

Subdivision (e) governs refunds for students in active or reserve military service who withdraw from courses due to military orders. This subdivision requires a refund "if the district has adopted a withdrawal policy pursuant to section 55758." Therefore, it is not required. Subdivision (f) authorizes the district to determine if the student received federal Title IV funds during enrollment prior to refunding the enrollment fee or tuition. This subdivision is also not required. Therefore, staff finds subdivisions (e) and (f) of section 58508 of title 5 of the California Code of Regulations do not constitute a new program or higher level of service.

Fee waivers: The fee waiver provisions of Education Code section 76300 provide as follows:

- Subdivision (e) exempts the enrollment fee for (1) students enrolled in noncredit courses designated by section 84757; (2) California State University (CSU) or University of California (UC) students enrolled in remedial classes provided on a CSU or UC campus for whom the district claims an attendance apportionment pursuant to an agreement between the district and the CSU or UC; (3) student enrolled in credit contract education courses under certain conditions.
- Subdivision (f) authorizes (but does not require) fee exemption for special part-time students admitted pursuant to Education Code section 76001.
- Subdivision (g) requires fees to be waived for recipients of Aid to Families with Dependent Children (AFDC) or Supplemental Security Income/State Supplementary Program (SSI), or a general assistance program, or those who demonstrate financial need in accordance with federal methodology. The fee waiver is also required for students who demonstrate eligibility according to income standards established by the Board of Governors and section 58620 of title 5 of the California Code of Regulations.
- Subdivision (h) requires a fee waiver for dependents or unmarried surviving spouses of members of the California National Guard who die or become permanently disabled as a result of an event that occurred during active service of the state.
- Subdivision (i) states legislative intent to fund fee waivers for students who demonstrate eligibility pursuant to subdivisions (g) and (h), and requires the Board of Governors to allocate to districts two percent of the fees waived pursuant to those subdivisions. Subdivision (i) also requires the Board of Governors, from funds provided in the annual Budget Act, to allocate to districts $.91 per credit unit waived pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services.

Prior law did not require fee waivers because there were no enrollment fees.

The DOF, in its 8/30/02 comments on 99-TC-13, contends that waiving fees is not an "activity," but the preclusion of participation in the new program of collecting enrollment fees. DOF cites language in the Board of Governors Fee Waiver Program Manual for 2001/2002, stating that waivers are simply a transaction in which no money is received. DOF argues that upon proof of eligibility for a waiver, the community colleges neither provide anything to, nor collect anything from, the student. DOF concludes that since fee waivers prohibit colleges from participation in

the new program of enrollment fees, for this particular test claim, providing fee waivers for exempt students is not a state-mandated activity. DOF admits that the fee waiver is granted "upon proof of eligibility."[33]

In comments of 9/25/01, DOF notes that the determinations for fee waiver eligibility required by Education Code sections (g) and (h) are alternative methods for determining student eligibility for BOGGs and not additional requirements. As students receive Board of Governors fee waivers without achieving any of the criteria listed above, by meeting income limits, an eligibility determination is not necessarily contingent on performance of any of these activities and they should not be considered higher levels of service. Furthermore, according to DOF the analysis of BOGG determinations pursuant to California Code of Regulations, title 5, section 58620 focuses on every activity, requirement, and criteria for determining Board of Governors eligibility, so any costs identified with section 58620 would include these activities. BOGG determination is discussed below.

The new activity for community colleges is not waiving the fee; rather it is determining the student's eligibility for the fee waiver required (not authorized) in section 76300 for students who belong to one of the following groups:

(1) Those enrolled in noncredit courses designated by section 84757 (e.g., courses on parenting, English as a second language, those for immigrants eligible for educational services in citizenship, etc.);

(2) CSU or UC students enrolled in remedial classes provided on a CSU or UC campus for whom the district claims an attendance apportionment pursuant to an agreement between the district and the CSU or UC;

(3) Students enrolled in credit contract education courses pursuant to section 78021, if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting and if these students are not included in the calculation of the average daily attendance of that district;

(4) A recipient of benefits under the AFDC, SSI, or a general assistance program, or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid.

(5) Any student who demonstrates eligibility according to income standards established by the Board of Governors and contained in section 58620 of title 5 of the California Code of Regulations (this section governs eligibility for BOGGs, discussed below).

(6) A student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National Guard who, in the line of duty and while in the active service of the state (as defined), was killed, died of a

[33] Education Code section 76300, subdivision (g) reads in pertinent part, "The governing board of a community college district also shall waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by the Board of Governors and contained in section 58620 of Title 5 of the California Code of Regulations." (Emphasis added.) Education Code section 76300, subdivision (i)(1) reads in pertinent part "It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) and (h). (Emphasis added.)

> disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state.

The test claim legislation requires community colleges to grant fee waivers for the groups of students specified above "for any student who demonstrates eligibility."[34] Thus, the community colleges must determine if a student is eligible for the waivers through an application process. A student qualifies for a waiver by being a member of only one of the groups specified above. Therefore, staff finds that determining eligibility for a fee waiver for each student applicant by determining which one of the groups to which the student belongs, of the groups listed in Education Code section 76300, subdivisions (e), (g) and (h), is a new program or higher level of service.

Eligibility for a Board of Governors grant is included by reference[35] in Education Code section 76300, subdivision (g), which states, in pertinent part:

> The governing board of a community college district also shall waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by the Board of Governors and contained in Section 58620 of the California Code of Regulations.

Since claimant also pled section 58620 of title 5 of the California Code of Regulations, it is discussed separately below.

Board of Governors Grants ("BOGGs")

BOGG regulations: California Code of Regulations, title 5, sections 58600 - 58630 govern the distribution of a BOGG, which is "an instrument used by a community college district to process the financial assistance provided to a low-income student."[36]

Section 58611 requires community college districts to report to the CCC the number of and amounts provided for BOGGs. Section 58612 requires a district to provide BOGGs "to all students who are eligible and who apply for this assistance." This section also states a presumption of student eligibility for the remainder of the academic year until the beginning of the following fall term, and states that nothing in the chapter prohibits community college districts from establishing an application deadline for BOGGs. Section 58613 requires BOGGS to be made in the amount of enrollment fees calculated after program changes (pursuant to section 58507, discussed above). Section 58620 lists the eligibility criteria for a BOGG, which is California residency and one of the criteria under the rubric of either (1) income standards;[37] (2)

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[34] *Ibid.*

[35] California Code of Regulations, title 5, section 58620.

[36] California Code of Regulations, title 5, section 58601.

[37] The income standards are: (A) be single and independent student having no other dependents and whose total income in the prior year was equal to or less than 150% of the U.S. Department of Health and Human Services (HHS) Poverty Guidelines for a family of one. Or be a married, independent student having no dependents other than a spouse, whose total income of both student and spouse in the prior year was equal to or less than 150% of the HHS Poverty Guidelines for a family of two. (B) Be a student who is dependent in a family having a total income in the prior year equal to or less than 150% of the HHS Poverty Guidelines for a family of that size, not including the student's income, but including the student in the family size. (C) Provide documentation of taxable or untaxed income. (D) Be a student who is married or a single head of household in a family having a total income in the prior

recipient of benefits described in Education Code section 76300, subdivision (g);[38] or (3) need-based financial aid eligibility.[39]

Prior law did not require community colleges to determine or document eligibility for or provide BOGGs to students.

In its 9/25/01 comments, DOF asserts that much of the infrastructure for determining whether a student is eligible to have fees waived already existed prior to 1975. For example, Education Code section 76355[40] requires the governing board of a community college district to adopt rules and regulations that either exempt low-income students from any health service fee or provide for the payment of the fee from other sources. Education Code section 69648 requires the community colleges to adopt rules and regulations to, among other activities, identify students who would be eligible for extended opportunity programs and services (EOPS) based on socioeconomic disadvantages. Both of these sections existed when enrollment fee waivers were implemented in 1984 and still exist. DOF argues that section 58620 of the California Code of Regulations merely clarifies the process for identifying low-income students and does not constitute a higher level of service.

Claimant argues that the legislation enacting the health fee merely required adoption of rules and regulations that either exempt "low-income" students or provide for payment of fees from other sources. But the legislation provided no guidance or direction as to the method or means to determine whether a student was "low-income," and said nothing of the BOGG factors of section 58620 of the California Code of Regulations. Claimant states that DOF's argument fails because there was no "infrastructure" to determine the specific requirements of section 58620 until 1987. Claimant also notes that the existence of "infrastructure," or lack thereof, is not one of the statutory exceptions set forth in Government Code section 17556, and therefore irrelevant.

Staff finds that determining eligibility for BOGGs is a new program or higher level of service.

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year equal to or less than 150% of the HHS Poverty Guidelines for a family of that size. (E) Be an independent student whose estimated family contribution as determined by federal methodology is equal to zero or a dependent student for whom the parent portion of the estimated family contribution as determined by federal methodology is equal to or less than zero. (F) For purposes of this subsection HHS Poverty guidelines used each year shall be the most recently published guidelines immediately preceding the academic year for which a fee waiver is requested.

[38] The benefits described in Education Code section 76300, subdivision (g) are for recipients of Aid to Families with Dependent Children, the general assistance program, or demonstration of financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. Subsection (2) also lists: (A) At the time of enrollment be a recipient of benefits under the Temporary Assistance to Needy Families (TANF) program. A dependent student whose parents(s) or guardian(s) are recipients of TANF shall be eligible if the TANF program grant includes a grant for the student or if the TANF grant is the sole source of income for the parent or guardian. (B) At the time of enrollment be a recipient of benefits under the Supplemental Security Income (SSI) program. A dependent student whose parent(s) or guardian(s) are recipients of SSI shall be eligible if the SSI program grant is the sole source of income for the parent or guardian(s). (C) At the time of enrollment be a recipient of benefits under the General Assistance program. (D) Provide documentation that the student if [sic] a recipient of benefits under one of the programs identified in Education Code section 76300(g) and (h) at the time of enrollment. Documentation sufficient to meet the requirements of this subdivision shall provide official evidence of these benefits.

[39] Need-Based Financial Aid Eligibility means any student who has been determined financially eligible for federal and/or state needed [sic] based financial aid.

[40] Former Education Code section 72246.

DOF's argument is unconvincing. The health fee promulgated in Education Code section 76355, cited by DOF, is not mandatory. Subdivision (b) states that the governing board "may decide whether the fee shall be mandatory or optional." Since the health fee is optional, the "infrastructure" cited by DOF is also optional. More importantly, nothing in the record indicates that a "BOGG" determination, or even a substantially similar determination, must be made for waiver of the optional health fee pursuant to section 76355, or the student's "social or economic disadvantages" to determine eligibility for the extended opportunity program pursuant to section 69648.[41]

Determination of eligibility for a BOGG, however, partially overlaps with determining eligibility for a fee waiver. In fact, anyone eligible for a BOGG is eligible for a fee waiver,[42] but eligibility for a BOGG includes other non-fee-waiver criteria as well. Therefore, staff finds that determining eligibility for and providing BOGGs to students who apply is a new program or higher level of service. Staff finds that the exception to this activity is determinations that must already be performed for fee waivers that must also be performed for BOGGs, such as determining whether the student receives AFDC, general assistance, and SSI. In other words, determination of AFDC, general assistance and SSI qualifies a student for both a fee waiver and a BOGG, so those determinations are not a new program or higher level of service, but are already encompassed in the fee waiver determinations described above.

Because districts are required to report to the CCC the number of and amounts provided for BOGGs, which is a new requirement, staff also finds that this reporting is a new program or higher level of service. (Cal. Code Regs., tit. 5, § 58611).

BOGG Executive Orders: Claimant alleges that the *Board of Governors Fee Waiver Program and Special Programs, 2000-2001 Program Manual* ("BOGG Program Manual")[43] is a state mandate. The BOGG Program Manual is issued by the CCC to assist community college financial aid staff,[44] and includes requirements for financial aid office staff. It contains interpretations of the student financial aid sections of title 5 of the California Code of Regulations, and requires community college financial aid offices to perform documentation and training duties. Because the CCC enforces the title 5 regulations, the CCC's interpretation of the title 5 regulations is entitled to some consideration.[45] Therefore, staff finds that the BOGG Program Manual constitutes an executive order within the meaning of Government Code section 17516 to the extent that it contains requirements issued by a state agency.

The 2000-2001 BOGG Program Manual requires the following activities:

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[41] Eligibility for EOPs is stated in title 5, section 56220 of the California Code of Regulations, which were adopted in 1987. Eligibility criteria include California residency, less than 70 units of degree-credit completion, eligibility for a BOGG pursuant to section 58620 (1) or (2), and be educationally disadvantaged as determined by the EOPS director or designee, who must consider specific factors.

[42] Education Code section 76300, subdivision (g).

[43] California Community Colleges Chancellor's Office, Board of Governors Fee Waiver Program and Special Programs, 2000-2001 Program Manual, effective July 1, 2000 – June 30, 2001.

[44] A copy of the BOGG Program Manual and other forms are available at the California Community College Chancellor's Office website: <http://www.cccco.edu/divisions/ss/financial%20assistance/financial%5F assistance.htm.> [as of Jan. 7, 2003].

[45] *Yamaha Corporation of America v. State Board of Equalization* (1998) 19 Cal. 4th 1, 15.

(1) Documenting public benefits for recipients of Temporary Assistance to Needy Families (TANF), SSI/SSP, and General Assistance, (Section 4.2.2), or

(2) Documenting those eligible under income standards (Section 4.3.4); and

(3) Attending training offered by the Chancellor's Office within the first year of appointment for new directors/managers/ coordinators/officers in charge of day-to-day operations of the financial aid office (Section 11.3).

These are new requirements that were unnecessary before the test claim legislation because there were no enrollment fees for which BOGGs were needed.

Staff finds therefore, pursuant to the BOGG Program Manual, the following are new programs or higher levels of service: (1) documenting public benefits for recipients of Temporary Assistance to Needy Families (TANF), SSI/SSP, and General Assistance, or documenting those eligible under income standards; and (2) for new directors/managers/coordinators/officers in charge of day-to-day operations of the financial aid office, attending training offered by the Chancellor's Office within the first year of their appointment. (Cal. Community Colleges Chancellor's Office, Board of Governors Fee Waiver Program and Special Programs, 2000-2001 Program Manual, effective July 1, 2000 – June 30, 2001, Sections 4.2.2, 4.3.4 and 11.3). Staff finds that the remainder of the BOGG Program Manual is not a new program or higher level of service.

District reporting and accountability: Claimant pled California Code of Regulations, title 5, section 58630, which requires districts to identify separately in district accounts dollars allocated for financial assistance, and requires adoption of procedures to document all financial assistance provided on behalf of students pursuant to chapter 9 of title 5 of the California Code of Regulations. The procedures must include rules for retention of support documentation that will enable an independent determination regarding accuracy of the district's certification of need for financial assistance.

Prior to adoption of section 58630, there was no requirement for community colleges to account for financial assistance funds separately in district accounts.

Therefore, staff finds that the following activities constitute a new program or higher level of service pursuant to section 58630 of title 5 of the California Code of Regulations: identifying dollars for financial assistance in separate district accounts; adopting procedures that will document all financial assistance provided on behalf of students pursuant to chapter 9 of title 5 of the California Code of Regulations; and including in the authorized procedures rules for retention of support documentation which will enable an independent determination regarding accuracy of the district's certification of need for financial assistance.

In summary, staff finds the following activities constitute new programs or higher levels of service on community college districts within the meaning of article XIII B, section 6 for all students except nonresidents and special part-time students:[46]

- Calculating and collecting the student enrollment fee for each student enrolled except for nonresidents, and except for special part-time students cited in section 76300, subdivision (f). (Ed. Code, § 76300, subds. (a) & (b); Cal. Code Regs., tit. 5, §§ 58501, 58502 & 58503.);

[46] Education Code sections 76300, subdivision (f), and 76001.

- Issuing refunds upon request for any enrollment fee for program changes made during the first two weeks of instruction for a primary term-length course, or by the 10 percent point of the length of the course for a short-term course, and allowing at least two weeks from the final qualifying date of the program change to request an enrollment fee refund. (Cal. Code Regs., tit. 5, § 58508.);
- Determining eligibility for a fee waiver for each student applicant by determining which one of the groups to which the student belongs, of the groups listed in Education Code section 76300, subdivisions (e), (g) and (h);
- Determining eligibility for and providing BOGGs to students who apply, except for determinations that must already be performed for fee waivers that must also be performed for BOGGs, such as determining whether the student receives AFDC, general assistance, or SSI. (Cal.Code Regs., tit. 5, §§ 58612, 58613 & 58620.);
- Reporting to the CCC the number of and amounts provided for BOGGs. (Cal. Code Regs., tit. 5, § 58611.);
- (1) Documenting public benefits for recipients of Temporary Assistance to Needy Families, SSI/SSP, and General Assistance, or (2) Documenting those eligible for BOGGs under income standards; and (3) for new directors/managers/coordinators/ officers in charge of day-to-day operations of the financial aid office, attending training offered by the Chancellor's Office within the first year of their appointment. (Cal. Community Colleges Chancellor's Office, Board of Governors Fee Waiver Program and Special Programs, 2000-2001 Program Manual, effective July 1, 2000 – June 30, 2001, Sections 4.2.2, 4.3.4 & 11.3);
- Identifying dollars for financial assistance in separate district accounts; adopting procedures that will document all financial assistance provided on behalf of students pursuant to chapter 9 of title 5 of the California Code of Regulations; and including in the procedures the rules for retention of support documentation which will enable an independent determination regarding accuracy of the district's certification of need for financial assistance. (Cal. Code Regs., tit. 5, § 58630.)

Staff also finds that all other test claim statutes, regulations, and executive orders (including the remainder of the BOGG Program Manual) not cited above are not new programs or higher levels of service within the meaning of article XIII B, section 6.[47]

Issue 3: Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

In order for the activities listed above to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, two criteria must apply. First, the activities must impose costs mandated by the state.[48] Second, no statutory exceptions as listed in

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[47] The additional activities pled by claimant include: "entering the student enrollment fee collection and waiver information into the district cashier system and data processing and accounting systems," and "determination of credit courses." These activities do not appear in the test claim statute or regulations and therefore would be more appropriately discussed in the parameters and guidelines should the Commission approve this test claim.

[48] *Lucia Mar Unified School Dist., supra,* 44 Cal.3d 830, 835. Government Code section 17514.

Government Code section 17556 can apply. Government Code section 17514 defines "costs mandated by the state" as follows:

> ...any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

Government Code section 17556, subdivision (d) precludes finding costs mandated by the state if after hearing, the Commission finds that the "local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

Government Code section 17556, subdivision (e) precludes findings costs mandated by the state if the test claim statute provides for offsetting savings which result in no net costs, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund it.

Collection of enrollment fees (Ed. Code, § 76300, subds. (a) & (b); Cal. Code Regs., tit. 5, §§ 58501, 58502 & 58503.): In response to the *Enrollment Fee Collection* test claim, the DOF originally commented as follows: "For the most part, DOF agrees that the test claim statutes constitute a new program or higher level of service because community college districts had not previously been required to collect enrollment fees from students." However, DOF concludes that reimbursement should be denied because the statutory scheme sets up a mechanism whereby community college districts are automatically provided with funding for their costs of administering the program.[49] Since collection of enrollment fees is entwined with the entire admission process it would be extremely difficult or impossible to accurately isolate the tasks involved with collecting enrollment fees. DOF submits that the Legislature has validly determined that two percent of the revenue from fees is adequate to compensate community college districts for administering the test claim statutes.

In its response, claimant first quotes the Community College Chancellor's Office comments, which like the test claim, note that colleges are compensated in the amount of two percent of the enrollment fees collected for the cost of collecting the enrollment fee. Claimant cites the legislative history provided by the CCC that quoted the Legislative Analyst's conclusion that the two percent revenue credit was an insufficient reimbursement. Claimant goes on to quote the applicable provisions of Government Code section 17556, subdivisions (d) and (e), as follows:

> The Commission shall not find costs mandated by the state, as defined in section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the Commission finds that: [¶]...[¶]
> (d) The local agency or school district has the **authority to levy** services charges, fees, or assessments **sufficient to pay** for the mandated program or increased level of service.

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[49] Education Code, section 76300, subdivision (c) states that for purposes of computing apportionments to community college districts, the Chancellor shall subtract 98% of the revenues received by districts from enrollment fees from the total revenue owed to each district.

(e) **The statute or executive order provides for offsetting savings** to local agencies or school districts **which result in no net costs** to the local agencies or school districts, or includes **additional revenue that was specifically intended to fund the costs** of the state mandate **in an amount sufficient** to fund the cost of the state mandate. (Emphasis added by claimant).

Claimant asserts these two Government Code subdivisions require the Commission to make findings of law and fact. Regarding subdivision (d), it can be determined that as a matter of law, neither the test claim statutes nor other laws provide the "authority to levy service charges, fees, or assessments" for the collection of enrollment fees. The "revenue credit" is not a service fee, charge, or assessment upon the consumer (student) of a service provided by the college district. Regarding subdivision (e), as a matter of law, the test claim statutes do not include "offsetting savings" which result in no net costs. A new program was added, and no other mandated program was removed by the statute. However, as a matter of law, the test claim statutes did include "additional revenue that specifically intended to fund the costs of the mandate" in the form of the revenue credit. According to claimant, this begs the question of fact of whether the additional revenue is "sufficient to fund the cost of the state mandate." The entire cost to implement the mandate will vary from district to district, so it cannot be determined as a matter of fact that the revenue credit is sufficient for any or all districts. The revenue credit can in the usual course of the mandate process be addressed by the annual claiming process whereby the claimants are required by law to report their cost of implementing the mandate from which they must deduct other reimbursement and funds, in this case, the two-percent revenue credit.

Regarding DOF's statement that the collection of enrollment fees is entwined with the entire admission process making it extremely difficult, if not impossible to accurately isolate the specific tasks involved with collecting enrollment fees, claimant notes this is without foundation, and is neither a statutory exception to reimbursement of costs mandated by the state, nor a practical argument. The parameters and guidelines determine which activities are reimbursable and the cost accounting methods to be used, and the claimants have the burden of complying with the parameters and guidelines, not the state. Also, enrollment fee collection involves a high volume of uniform transactions (collecting the fee) comprised of identifiable direct costs (staff time and forms to collect the fee). After several years of data are accumulated, claimant asserts that this mandate would be a candidate for a uniform cost allowance.

Staff finds the community colleges' revenue credit does not preclude reimbursement for the fee collection activities specified. Government Code section 17556, subdivision (d), by its express terms, only applies to "fees, or assessments **sufficient to pay** for the mandated program or increased level of service" (emphasis added). Likewise, subdivision (e) only applies to "revenue ...in an amount **sufficient to fund** the cost of the state mandate" (emphasis added). As set forth below, the record indicates that the revenue credit is insufficient to fund these activities.

The test claim statute reads in pertinent part as follows:

> **76300**. (a) The governing board of each community college district shall charge each student a fee pursuant to this section. [¶]...[¶]
> (c) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

Claimant submitted a declaration that it incurred about $677,640 (or $4.60 per student) in staffing and other costs in excess of the two percent of the enrollment fees retained during July 1998 to June 1999.[50] The assertion of insufficient fee authority is not only undisputed, but is supported by the LAO's legislative history submitted by the CCC.[51] Thus, staff finds that Government Code section 17556, subdivision (d) does not preclude reimbursement because the record indicates that the fee is not sufficient to pay for the program.

Similarly, staff finds that Government Code section 17556, subdivision (e) does not preclude reimbursement because there is nothing in the record to indicate that the offsetting savings or additional revenue is sufficient to fund the mandate. Specifically, there is nothing in the record to indicate the two percent revenue credit is sufficient to fund the mandate.[52]

Regarding DOF's assertion regarding the Legislature's valid determination that two percent of the revenue from fees is adequate to compensate community college districts for administering the test claim statutes, staff disagrees. DOF cites no authority for this, nor is there statutory language in the test claim statute to support it. In fact, the Legislature did not make a determination that two percent of the enrollment fee is adequate to compensate community colleges.

Even if the Legislature had expressly determined the fee adequate, the determination would not prevent finding the existence of a mandate. Two cases have held legislative declarations unenforceable that attempt to limit the right to reimbursement. In *Carmel Valley Fire Protection District v. State of California*,[53] the court held that "Legislative disclaimers, findings and budget control language are no defense to reimbursement." The *Carmel Valley* court called such language "transparent attempts to do indirectly that which cannot lawfully be done directly."[54] Similarly, in *Long Beach Unified School District v. State of California*,[55] the Legislature deleted requested funding from an appropriations bill and enacted a finding that the executive order did not impose a state-mandated local program. The court held that "unsupported legislative disclaimers are insufficient to defeat reimbursement. . . .[The district,] pursuant to Section 6, has a constitutional right to reimbursement of its costs in providing an increased service mandated by the state. The Legislature cannot limit a constitutional right."[56] If the Legislature could not prevent a mandate explicitly as the authorities indicate, it certainly could not prevent one implicitly.

In its 8/30/02 comments on the draft staff analysis on the *Enrollment Fee Collection* test claim, DOF asserts that the community colleges have sufficient fee authority pursuant to Education

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[50] Declaration of Carrie Bray, Director, Accounting Services, Los Rios Community College District, June 22, 2000.

[51] Office of the Legislative Analyst, analysis of Assembly Bill No. 1 (1983-1984 2d Ex. Sess.) January 23, 1984.

[52] Should the Commission approve staff's recommendation, the two percent fee would be determined to be an offset in the parameters and guidelines per California Code of Regulations, title 2, section 1183.1, subdivision (a), paragraphs (8) and (9).

[53] *Carmel Valley, supra*, 190 Cal.App.3d at page 521.

[54] *Id.* at page 541.

[55] *Long Beach Unified, supra*, 225 Cal.App.3d 155.

[56] *Id.* at page 184.

Code section 70902, subdivision (b) (9), for enrollment fee collection. This statute covers fees of a governing board "as it is required to establish by law," or "as it is authorized to establish by law." The fees in existing law that fall within the authorization provided in section 70902, subdivision (b) (9) are for the following purposes: apprenticeship courses, health, parking and transportation, instructional materials, course auditing, student body center building and operations, fees for classes not eligible for state apportionments, and fees for physical education courses requiring use of nondistrict facilities.[57]

For fee authority pursuant to Education Code section 70902, subdivision (b) (9) to apply, it must be "required or authorized by law." There is nothing in the record to indicate the existence of any fee authority "required or authorized by law," however, for collecting enrollment fees other than that listed in Education Code section 76300. The record indicates this section 76300 authority is not "sufficient to pay for the mandated program" within the meaning of Government Code section 17556, subdivision (d). Therefore, staff finds that the fee authority in Education Code section 70902, subdivision (b) (9) does not preclude reimbursement under this test claim.

Refunds for program changes (Cal. Code Regs., tit. 5, § 58508, subd. (d)): According to DOF, costs for processing refunds do not constitute state mandated costs because community college districts have preexisting regulatory authority to charge up to $10 per semester or quarter for refunding a student's enrollment fees pursuant to California Code of Regulations, title 5, section 58508, subdivision (d). The regulations provide that governing boards shall refund enrollment fees when a student makes a request within a specified time and, when the district does refund fees, it may retain once each semester or quarter a maximum of $10. Therefore, according to DOF, claimant has the "authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service." (Gov. Code, § 17556, subd. (d).) Consequently, DOF argues that the Commission cannot find costs mandated by the State with respect to the claimant's cost of processing fee refunds. The applicable parts of section 58508 read as follows:

> (a) A community college district governing board shall refund upon request any enrollment fee paid by a student pursuant to Section 58501 or 58501.1 for program changes made during the first two weeks of instruction for a primary term-length course, or by the 10 percent point of the length of the course for a short-term course. [¶]...[¶]
> (d) When refunding an enrollment fee pursuant to Subsection (a), a community college district may retain once each semester or quarter an amount not to exceed $10.00.

Claimant asserts that this regulation did not "pre-exist" the collection of enrollment fees, but was adopted as a result of the establishment of enrollment fees. There were no enrollment fees to refund until there were enrollment fees. The need to refund fees is a foreseeable consequence of collecting them and is properly an activity to be included in the cost mandated by the state subject to reimbursement. There is no statutory assertion that the $10 is adequate for the refunding process. As with the two percent revenue credit, it will be a reduction of the total cost of implementing the mandate.

Staff recognizes the colleges' authority to retain up to $10 of the enrollment fee, and that the regulations cap the amount at $10. Staff finds, as with the enrollment fee revenue credit and fee waiver allocation discussed above, that the $10 retention does not preclude reimbursement so

[57] Education Code sections 76350 through 76395.

long as the authority is insufficient to cover the cost of providing the service. Therefore, staff finds that Government Code section 17556, subdivision (d), does not apply to the activity of refunding enrollment fees for program changes.

Fee waivers & BOGGs (Ed. Code, § 76300, subds. (e), (g) & (h); Cal. Code Regs., tit. 5, §§ 58612, 58613 & 58620.): DOF argues that costs associated with fee waivers should not be included in this claim because a statutory compensation mechanism currently exists for those costs. Education Code section 76300, subdivision (i), states legislative intent to provide sufficient funds for fee waivers for every student who demonstrates eligibility pursuant to subdivisions (g) and (h) (referring to students who receive AFDC, SSI or other general assistance or dependents or surviving spouses of members of the California National Guard who are killed or permanently disabled in the line of duty). This section also requires the Community Colleges Board of Governors, from funds in the annual budget act, to allocate to community colleges two percent of the fees waived under subdivisions (g) and (h) of section 76300. Finally, this section requires the Board of Governors to allocate from funds in the annual budget act ninety-one cents ($0.91) per credit unit waived pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived.

Thus, DOF argues that costs associated with fee waivers should not be included in the test claim.

In its 9/25/01 comments on the *Enrollment Fee Waivers* test claim, 00-TC-15, DOF argued that funding is provided to cover costs associated with determining eligibility for fee waivers. DOF disputes the number of fee waiver determinations pled by claimant, estimating it to be roughly 36 percent of the number asserted by claimant. DOF also asserts that the average time to make a fee waiver is overstated by claimant, since students only need to demonstrate that they meet one of the seven criteria. DOF says it believes that the total cost of the fee waiver determination is less than $70,000, and that the Glendale Community College District received $66,000 for Student Financial Aid Administration and $22,888 for Fee Waiver Administration, both allocated as authorized by Education Code section 76300, subdivision (i). DOF believes that eligibility determination is fully funded and not a reimbursable mandate.

In its 11/12/01 rebuttal to DOF's comments on *Enrollment Fee Waivers* (00-TC-15), claimant objects to DOF's comments as legally incompetent and in violation of California Code of Regulations, title 2, section 1183.02(d) because (1) they are not signed under penalty of perjury by an authorized representative that they are true and complete to the best of the representative's personal knowledge or information and belief, and (2) they are not supported by documentary evidence authenticated by declarations under penalty of perjury (Cal. Code Regs., tit. 2, § 1183.02 (c)(2).). Claimant argues that DOF's comments constitute hearsay.

Claimant also disputes DOF's assertion of revenue sufficient to fund any requirements for determining eligibility for fee waivers or BOGGs. Claimant asserts that Government Code section 17556, subdivision (e), indicates that test claim statutes must include the offsetting revenue in the same legislation, and that claimant already identified the offsetting revenue in the test claim as 7% of the fees waived from July 1, 1999 through July 4, 2000 and at ninety-one cents ($0.91) per credit unit waived thereafter pursuant to Education Code section 76300, subdivision (i)(2). Claimant asserts that the cost to implement the mandate will vary from district to district so it cannot be determined if this identified revenue is sufficient for any or all of them.

Staff finds that Education Code section 76300, subdivision (i), does not preclude finding a mandate for determining fee waivers. Claimant's assertion in the record indicates that legislative allocations are not sufficient to pay for the waivers under the fee collection program. In sum, staff finds that neither Government Code section 17556, subdivisions (d) and (e), nor the statute's reimbursement mechanism, precludes reimbursement for costs associated with fee waivers or BOGGs. Revenue as a result of Education Code section 76300, subdivision (i), or any other source, would be determined as offsetting revenue in the parameters and guidelines for this test claim.[58]

District reporting and accountability (Cal. Code Regs., tit. 5, § 58630): In its 9/25/01 comments, DOF argues that the reporting and accounting activities do not constitute reimbursable mandates because claimant seeks reimbursement to document and account for funds allocated for collection of enrollment fees, but section 58630 only refers to identification and documentation of financial assistance, not enrollment fee collection. Therefore, any attempt to claim reimbursement for the accounting and documentation of enrollment fees should be denied. DOF also asserts that this activity receives funding from both the two percent funds for fee waiver administration and the seven percent fund for Student Financial Aid Administration.

DOF is correct in observing that section 58630 only pertains to financial assistance. As to prior receipt of funding, Education Code section 76300, subdivision (i)(2) states, "From funds provided in the annual Budget Act, the Board of Governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to ninety-one cents ($0.91) per credit unit waived pursuant to subdivision (g) and (h) **for determination of financial need and delivery of student financial aid services**, on the basis of the number of students for whom fees are waived." (Emphasis added.) This funding would be considered as an offset in the parameters and guidelines for this test claim should the Commission adopt this analysis.

In summary, there is nothing in the record to indicate that the Legislature repealed other programs or appropriated sufficient funds for enrollment fee collection or fee waivers or BOGGs.

Conclusion

Based on the foregoing analysis, staff concludes that the test claim legislation imposes a partial reimbursable state-mandated program on community college districts within the meaning of

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[58] California Code of Regulations, title 2, section 1183.1, subdivision (a), paragraphs (8) and (9).

[59] Declaration of Carrie Bray, Director, Accounting Services, Los Rios Community College District, June 22, 2000.

[60] Should the Commission approve staff's recommendation, the two percent and $10 fees may be determined to be offsets when the parameters and guidelines are adopted per California Code of Regulations, title 2, section 1183.1, subdivision (a), paragraphs (8) and (9).

[61] *Carmel Valley, supra*, 190 Cal.App.3d at page 521.

[62] *Id.* at page 541.

[63] *Long Beach Unified, supra*, 225 Cal.App.3d 155.

[64] *Id.* at page 184.

article XIII B, section 6 of the California Constitution and Government Code section 17514 for all students except nonresidents and special part-time students[65] for the following activities:

- Calculating and collecting the student enrollment fee for each student enrolled except for nonresidents, and except for special part-time students cited in section 76300, subdivision (f), (Ed. Code, § 76300, subds. (a) & (b); Cal. Code Regs., tit. 5, §§ 58501, 58502 & 58503.);
- Issuing refunds upon request for any enrollment fee for program changes made during the first two weeks of instruction for a primary term-length course, or by the 10 percent point of the length of the course for a short-term course, and allowing at least two weeks from the final qualifying date of the program change to request an enrollment fee refund. (Cal. Code Regs., tit. 5, § 58508.);
- Determining eligibility for a fee waiver for each student applicant by determining which one of the groups to which the student belongs, of the groups listed in Education Code section 76300, subdivisions (e), (g) and (h);
- Determining eligibility for and providing BOGGs to students who apply, except for determinations that must already be performed for fee waivers that must also be performed for BOGGs, such as determining whether the student receives AFDC, general assistance, or SSI. (Cal. Code Regs., tit. 5, §§ 58612, 58613 & 58620.);
- Reporting to the CCC the number of and amounts provided for BOGGs. (Cal. Code Regs., tit. 5, § 58611.);
- (1) Documenting public benefits for recipients of Temporary Assistance to Needy Families, SSI/SSP, and General Assistance, or (2) Documenting those eligible for BOGGs under income standards; and (3) for new directors/managers/coordinators/ officers in charge of day-to-day operations of the financial aid office, attending training offered by the Chancellor's Office within the first year of their appointment. (Cal. Community Colleges Chancellor's Office, Board of Governors Fee Waiver Program and Special Programs, 2000-2001 Program Manual, effective July 1, 2000 – June 30, 2001, Sections 4.2.2, 4.3.4 & 11.3.);
- Identifying dollars for financial assistance in separate district accounts; adopting procedures that will document all financial assistance provided on behalf of students pursuant to chapter 9 of title 5 of the California Code of Regulations; and including in the procedures the rules for retention of support documentation which will enable an independent determination regarding accuracy of the district's certification of need for financial assistance. (Cal. Code Regs., tit. 5, § 58630.)

Staff also finds that all other test claim statutes, regulations, and executive orders (including the remainder of the BOGG Program Manual) not cited above are not new programs or higher levels of service within the meaning of article XIII B, section 6.

[65] Education Code sections 76300, subdivision (f), and 76001.

Recommendation

Staff recommends that the Commission adopt the staff analysis and approve the test claim for the activities listed above.

Should the Commission adopt staff's recommendation to approve this test claim, the enrollment fee, fee waiver compensation, and refund-processing fee would be identified as offsets[66] in the parameters and guidelines.

[66] California Code of Regulations, title 2, section 1183.1, subdivision (a), paragraphs (8) and (9).

Authority to Operate Student Health Centers and Provide Health Supervision and Service

72244. The governing board of any community college district may provide health supervision and services, including direct or indirect medical and hospitalization services, and operate a student health center or centers wherein students in grades 13 and 14 and other persons authorized by the governing board may be diagnosed and treated. School physicians shall be authorized to provide medical treatment at such centers.

(Enacted by Stats. 1976, Ch. 1010.)

Fee for Physical Education Courses Requiring Use of Nondistrict Facilities

72245. The governing board of a community college district may impose a fee on a participating student for the additional expenses incurred when physical education courses are required to use nondistrict facilities.

(Enacted by Stats. 1976, Ch. 1010.)

Health Fees

72246. (a) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than seven dollars and fifty cents ($7.50) for each semester, and five dollars ($5) for summer school, or five dollars ($5) for each quarter for health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health center or centers, authorized by Section 72244, or both.

(b) If pursuant to this section a fee is required, the governing board of a district shall decide the amount of the fee, if any, that a part-time student is required to pay. The governing board may decide whether the fee shall be mandatory or optional.

(c) The governing board of a district maintaining a community college shall adopt rules and regulations that either exempt low-income students from any fee required pursuant to subdivision (a) or provide for the payment of the fee from other sources.

(d) The governing board of a district maintaining a community college shall adopt rules and regulations that exempt from any fee required pursuant to subdivision (a): (1) students who depend exclusively upon prayer for healing in accordance with the teachings of a bona fide religious sect, denomination, or organization; (2) students who are attending a community college under an approved apprenticeship training program.

(e) All fees collected pursuant to this section shall be deposited in the fund of the district designated by the California Community Colleges Budget and Accounting Manual. These fees shall be expended only for the purposes for which they were collected.

Authorized expenditures shall not include, among other things, athletic trainers' salaries, athletic insurance, medical supplies for athletics, physical examinations for intercollegiate athletics, ambulance services and the salaries of health professionals for athletic events, any deductible portion of accident claims filed for athletic team members, or any other expense that is not available to all students. No student shall be denied a service supported by student health fees on account of participation in athletic programs.

(Amended by Stats. 1981, Ch. 930, Sec. 10.1.)

Parking Service Fees

72247. The governing board of a community college district may require of students in attendance in grades 13 and 14 and employees of the district, the payment of a toll, in an amount not to exceed twenty dollars ($20) per semester forty dollars ($40) per regular school year to be fixed by the board, for parking services.

Such toll shall only be required of students and employees using such services. All such tolls collected shall be deposited in the designated fund of the district in accordance with the California Community Colleges Budget and Accounting Manual and shall be expended only for parking services or for purposes of reducing the costs to students and faculty of the college of using public transportation to and from the college.

Tolls collected for use of parking services provided for by investment of student body funds under the authority of Section 76064 shall be deposited in a designated fund in accordance with the California Community Colleges Budget and Accounting Manual for repayment to the student organization.

"Parking services," as used in this section, means the purchase, construction, and operation and maintenance of parking facilities.

(Amended by Stats. 1981, Ch. 930.)

Transportation Service Fees

72248. (a) The governing board of a community college district may require of students in attendance in grades 13 and 14 and employees at a campus of the district the payment of a fee for purposes of reducing fares for services provided by common carriers or municipally owned transit systems to such students and employees, as provided in subdivision (b).

(b) Fees authorized by subdivision (a) for transportation services may be required only of students and employees using such services, or, in the alternative, of either of the following groups of people:

(1) Upon the favorable vote of a majority of the students and a majority of the employees of a campus of the district, voting at an election on the question of whether or not the governing board should require all students and employees at the campus to be assessed fees for transportation services for a two-year period, the fees may be required of all students and all employees of a campus of the community college district; or

(2) Upon the favorable vote of a majority of the students at a campus of the district voting at an election on the question of whether or not the governing board should require all students to be assessed fees for transportation services for a two-year period, the fees may be required of all students at the campus of the community college district; provided that the employees shall not be entitled to use such services.

(c) In the event that fees are required to be assessed to all students and employees or all students as provided in subparagraphs (1) and (2) of subdivision (b) for a two-year period, such authorization may be continued for additional two-year periods by the governing board maintaining the campus, upon the favorable vote of a majority of the students and a majority of the employees or, in the case of subdivision (b) (2), upon the favorable vote of a majority of the students of such campus, voting in an election on the question of whether or not such required fees should be continued.

(d) If pursuant to this section a fee is required of students for transportation services, any fee required of a part-time student shall be a pro rata lesser amount than of full-time students, depending on the number of units for which such part-time student is enrolled. In addition, a governing board maintaining transportation services shall adopt rules and regulations governing the exemption of low-income students from required fees, and may adopt rules and regulations to provide for the exemption of others.

(e) The total fees to be fixed by the governing board of a community college

district pursuant to this section and Section 72247 shall not exceed the amount prescribed in Section 72247.

(Enacted by Stats. 1976, Ch. 1010.)

Program Changes: Imposition of Fee

Text of section effective August 1, 1983 until July 1, 1987

72250. (a) The governing board of a community college district shall impose a fee of ten dollars ($10) per course, not to exceed a total amount of twenty dollars ($20), for a student program change consisting of dropping one or more courses any time after two weeks from the commencement of instruction in any term. The fee shall not be charged for changes due to special circumstances affecting the student's ability to complete the course or for changes initiated or required by the community college.

(b) Each community college district shall submit a report to the Chancellor of the California Community Colleges which provides information regarding all of the following:

(1) The number of students who drop courses after the second week.

(2) Revenues derived from fees assessed pursuant to subdivision (a).

(3) The number of fee waivers granted students due to a request initiated by the community college on the basis of special circumstances affecting the student's ability to complete the course.

(c) This section shall become inoperative on July 1, 1987, and, as of January 1, 1988, is repealed, unless a later enacted statute which becomes effective on or before January 1, 1988, deletes or extends the dates on which it becomes inoperative and is repealed.

(Amended and repealed by Stats. 1983, Ch. 565. Effective August 1, 1983. Inoperative July 1, 1987. Repeal operative January 1, 1988. See section of same number below.)

Program Changes: Imposition of Fee

Text of section effective August 1, 1983 until September 27, 1983

72250. The governing board of a community college district may impose a fee, not to exceed one dollar ($1), for the actual pro rata cost for services relative to a program change consisting of adding or dropping one or more courses any time after two weeks from the commencement of instruction in any term. Such fee shall not be charged for changes initiated or required by the community college.

This section shall become operative July 1, 1987.

(Added by Stats. 1983, Ch. 565. Effective August 1, 1983. Operative July 1, 1987. See section of same number above.)

Program Changes: Imposition of Fee

Text of section effective September 27, 1983

72250.5. The governing board of a community college district may impose a fee, not to exceed one dollar ($1), for the actual pro rata cost for services relative to a program change consisting of adding one or more courses any time after two weeks from the commencement of instruction in any term. Such fee shall not be charged for changes initiated or required by the community college.

(Added by renumbering Section 72250, as added by Stats. 1983, Ch. 565, Sec. 1.5, by Stats. 1983, Ch. 1095. Effective September 27, 1983.)

Charge for Late Application Fee

72251. The governing board of any community college district may impose a late application fee of not to exceed two dollars ($2) for any application for admission or readmission which is filed after the date established by the governing board for the filing of applications for admission or readmission to the community college.

(Enacted by Stats. 1976, Ch. 1010.)

Limitation on Campaign Expenditures and Contributions

72254. The governing board of a community college district may by resolution limit campaign expenditures or contributions in elections to district offices.

(Enacted by Stats. 1976, Ch. 1010.)

Use of Funds for Membership or Participation in Discriminatory Organizations

72255. No funds under the control of a community college district shall ever be used for membership or for any participation involving a financial payment or contribution, on behalf of the district or any individual employed by or associated therewith, in any private organization whose membership practices are discriminatory on the basis of race, creed, color, sex, religion, or national origin. This section does not apply to any public funds which have been paid to an individual officer or employee of the district as salary, or to any funds which are used directly or indirectly for the benefit of student organizations.

(Added by Stats. 1978, Ch. 1099.)

Report on Part-Time Employment Patterns and Practices

72256. The Board of Governors of the California Community Colleges shall publish a statewide report on part-time employment patterns and practices in each community college district to be submitted to the Legislature no later than January 1, 1982. At the least, the report shall include a comparison of full-time and part-time faculty in the areas of teaching workload, related academic activities, remuneration, types of certificates, types of classes taught, length of employment, and whether or not the faculty members are evaluated. Information on assignments performed by full-time instructors which is in addition to their full-time assignment and for which additional compensation is provided shall be included in the report.

(Added by Stats. 1980, Ch. 1177.)

Article 3. Delineation of Functions

(Article 3 enacted by Stats. 1976, Ch. 1010)

Legislative Intent

72280. By enacting this article the Legislature declares its intent to more specifically delineate the powers, duties, and functions of the community college district governing boards and the powers, duties, and functions of the Board of Governors of the California Community Colleges.

(Amended by Stats. 1981, Ch. 470.)

Definitions

72281. As used in this article, "board of governors" means the Board of Governors of the California Community Colleges. "District governing board" means the governing board of a community college district. "District" means a community college district.

(Enacted by Stats. 1976, Ch. 1010.)

Rules and Regulations

72282. The district governing board shall establish rules and regulations not inconsistent with the regulations of the board of governors and the laws of this state for the government and operation of one or more community colleges in the

(a) Loans, with or without interest, to any student body organization established in another community college of the district for a period not to exceed three years.

(b) Invest money in permanent improvements to any community college district property including, but not limited to, buildings, automobile parking facilities, gymnasiums, swimming pools, stadia and playing fields, where such facilities, or portions thereof, are used for conducting student extracurricular activities or student spectator sports, or when such improvements are for the benefit of the student body. Such investment shall be made on condition that the principal amount of the investment plus a reasonable amount of interest thereon shall be returned to the student body organization as provided herein. Any community college district approving such an investment shall establish a fund in accordance with the California Community Colleges Budget and Accounting Manual in which moneys derived from the rental of community college district property to student body organizations shall be deposited. Moneys collected by the governing board for automobile parking facilities as authorized by Section 72242 shall be deposited in the fund designated by the California Community Colleges Budget and Accounting Manual if the parking facilities were provided for by investment of student body funds under this section. Moneys shall be returned to the student body organization as contemplated by this section exclusively from such special fund and only to the extent that there are moneys in such special fund. Whenever there are no outstanding obligations against the special fund, all moneys therein may be transferred to the general fund of the school district by action of the local governing board.

Two or more student body organizations of the same community college district may join together in making such investments in the same manner as is authorized herein for a single student body. Nothing herein shall be construed so as to limit the discretion of the local governing board in charging rental for use of community college district property by student body organizations as provided in Section 76060.

(Amended by Stats. 1981, Ch. 930.)

Supervision and Audit of Student Funds

76065. The governing board of any community college district shall provide for the supervision of all funds raised by any student body or student organization using the name of the college.

The cost of supervision may constitute a proper charge against the funds of the district.

The governing board of a community college district may also provide for a continuing audit of student body funds with community college district personnel.

(Enacted by Stats. 1976, Ch. 1010.)

Student Political Organization Activity

76067. Any student political organization which is affiliated with the official youth division of any political party that is on the ballot of the State of California may hold meetings on a community college campus and may distribute bulletins and circulars concerning its meetings, provided that there is no endorsement of such organization by the school authorities and no interference with the regular educational program of the school.

(Enacted by Stats. 1976, Ch. 1010.)

Article 7. Exercise of Free Expression

(Article 7 enacted by Stats. 1976, Ch. 1010)

Exercise of Free Expression by Students: Adoption of Rules and Regulations

76120. The governing board of a community college district shall adopt rules and regulations relating to the exercise of free expression by students upon the premises of each community college maintained by the district, which shall include reasonable provisions for the time, place, and manner of conducting such activities.

Such rules and regulations shall not prohibit the right of students to exercise free expression including, but not limited to, the use of bulletin boards, the distribution of printed materials or petitions, and the wearing of buttons, badges, or other insignia, except that expression which is obscene, libelous or slanderous according to current legal standards, or which so incites students as to create a clear and present danger of the commission of unlawful acts on community college premises, or the violation of lawful community college regulations, or the substantial disruption of the orderly operation of the community college, shall be prohibited.

(Enacted by Stats. 1976, Ch. 1010.)

Article 8. Administration of Punishment to Students

(Article 8 enacted by Stats. 1976, Ch. 1010)

Administration of Punishment to Students

76130. The governing board of any community college district shall adopt rules and regulations authorizing instructors, supervisors, and other certificated personnel to administer reasonable punishment to students when such action is deemed an appropriate corrective measure.

(Amended by Stats. 1981, Ch. 470.)

Article 9. Nonresident Tuition

(Article 9 enacted by Stats. 1976, Ch. 1010)

Nonresident Tuition

76140. A community college district may admit and shall charge a tuition fee to nonresident students. The district may exempt from all or parts of the fee:

(a) All nonresidents who enroll for six or fewer units. Exemptions made pursuant to this subdivision shall not be made on an individual basis; or

(b) Any nonresident who is both a citizen and resident of a foreign country, provided that the nonresident has demonstrated a financial need for the exemption and not more than 10 percent of the nonresident foreign students attending any community college district may be so exempted. Exemptions made pursuant to this subdivision may be made on an individual basis.

A district may contract with a state, a county contiguous to California, the federal government, a foreign country, or an agency thereof, for payment of all or a part of a nonresident student's tuition fee.

Attendance of nonresident students shall not be reported as resident average daily attendance for state apportionment purposes, except as provided by statute in which case a nonresident tuition fee may not be charged.

The nonresident tuition fee shall be set by the governing board of each community college district not later than February 1 of each year for the succeeding fiscal year. Such fee may be paid in installments, as determined by the governing board of the district.

The fee established by the governing board pursuant to the preceding paragraph shall represent for nonresident students enrolled in 30 semester units or 45 quarter units of credit per fiscal year (a) the amount which was expended by the district for the current expense of education as defined by the California Community College Budget and Accounting Manual in the preceding fiscal year increased by the projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for the current fiscal year and succeeding fiscal year and divided by the average daily attendance of all students (including nonresident students) attending in the district in the preceding fiscal year, or (b) the current expense of education in the preceding fiscal year of all districts increased by the projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for the current fiscal year and succeeding fiscal year and divided by the average daily attendance of all students (including nonresident students) attending all districts during the preceding fiscal year, or (c) an amount not to exceed the fee established by the governing board of any contiguous district. However, should the district's preceding fiscal year average daily attendance of all students attending in the district in noncredit courses be equal to or greater than 10 percent of the district's total average daily attendance of all students attending in the district, the district in calculating (a) above may substitute instead the data for current expense of education in grades 13 and 14 and average daily attendance in grades 13 and 14 of all students attending in the district.

The governing board of each community college district shall also adopt a tuition fee per unit of credit for nonresident students enrolled in more or less than 15 units of credit per term by dividing the fee determined in the preceding paragraph by 30 for colleges operating on the semester system and 45 for colleges operating on the quarter system and rounding to the nearest whole dollar. The same rate shall be uniformly charged nonresident students attending any terms or sessions maintained by the community college. The rate charged shall be the rate established for the fiscal year in which the term or session ends.

Any loss in district revenue generated by the nonresident tuition fee shall not be offset by additional state funding.

The provisions of this section which require a mandatory fee for nonresidents shall not apply to any district which borders on another state and has fewer than 500 average daily attendance.

(Amended by Stats. 1983, Ch. 317. Effective July 19, 1983.)

Apprentices Exemption from Nonresident Fee

76142. No fee may be charged to any apprentice who is not a resident of California for attendance in a California community college in classes of related and supplemental instruction as provided under Section 3074 of the Labor Code and in accord with the requirements as set forth in subdivision (d) of Section 3078 of that code.

(Enacted by Stats. 1976, Ch. 1010.)

Nonresident Tuition Fee: Residence Determination

76143. For purposes of the nonresident tuition fee, a community college district shall disregard the time during which a student living in the district resided outside the state, if:

(1) The change of residence to a place outside the state was due to a job transfer and was made at the request of the employer of the student or the employer of the student's spouse or, in the case of a student who resided with, and was a dependent of, the student's parents, the change of residence was made at the request of an employer of either of the student's parents.

(2) Such absence from the state was for a period of not more than four years.

(3) At the time of application for admission to a college maintained by the district, the student would qualify as a resident if the period of the student's absence from the state was disregarded.

A nonresident tuition fee shall not be charged to a student who meets each of the conditions specified in subdivisions (1) to (3), inclusive.

(Amended by Stats. 1977, Ch. 36.)

Article 10. Miscellaneous

(Article 10 enacted by Stats. 1976, Ch. 1010)

Certain Students' Residences More Than 60 Miles From Nearest Attendance Center

76160. Any student under 21 years of age, and any student under 25 years of age who has been honorably discharged or is otherwise returning from active or inactive military service with the armed forces of the United States, who resides within this state and more than 60 miles from the nearest public community college measured by the usual vehicular route between the student's home and the college, may request to attend credit courses at any public community college in the state, whether or not the student's residence is in a district maintaining a community college. The governing board of the district maintaining the community college designated by the student shall admit the student provided all requirements for admission are met.

The provisions of this section shall not apply to any student residing in a district maintaining a community college if that district maintains adequate dormitories or housing facilities or provides adequate transportation for the student between the student's home and the community college attendance center.

If the student resides within territory not included within any community college district and resides more than 60 miles from the nearest community college, measured by the usual vehicular route between the student's home and the attendance center, there shall be paid to the parents or other persons having charge or control of the student and directly to adult students and married minors, by the district in which the student attends, a maintenance allowance not to exceed four dollars ($4) per calendar day, including weekends and school holidays, for the portion of a semester, quarter, or other session or term in which the student is enrolled full time in credit classes in a community college under this section. Community college districts shall receive reimbursement from the chancellor's office for allowances paid to students from nondistrict territory for the prior fiscal year not to exceed the maximum amount as provided in Section 84604.9.

No later than 60 days after the close of each fiscal year the chancellor shall determine the daily allowance rate for the prior fiscal year. If claims made by community colleges exceed total funds raised by nondistrict territories for that purpose prior to July 1, 1978, the chancellor shall prorate the allowances made under this section. No later than 90 days after the close of each fiscal year the community college districts shall pay eligible students at the rate prescribed by the chancellor.

The chancellor shall prescribe procedures for the submission of claims by community college districts and verification of the claims by the appropriate county superintendent of schools.

For the purpose of this section, a person shall be deemed to be honorably discharged from the armed forces (a) if he or she was honorably discharged from the armed forces of the United States or (b) if he or she was inducted into the armed forces of the United States under the "Universal Military Training and Service Act," and (1) satisfactorily completes his or her period of training and service under that act and is issued a certificate to that effect pursuant to that act,

78 Cal.Rptr.2d 1
98 Cal. Daily Op. Serv. 6683, 98 Daily Journal D.A.R. 9211
(Cite as: 19 Cal.4th 1, 960 P.2d 1031, 78 Cal.Rptr.2d 1)

Supreme Court of California

YAMAHA CORPORATION OF AMERICA, Plaintiff and Respondent,
v.
STATE BOARD OF EQUALIZATION, Defendant and Appellant.

No. S060145.

Aug. 27, 1998.

Seller of musical instruments sought refund of use taxes assessed on musical instruments that it purchased outside state, stored within state, and ultimately gave away as promotional gifts. The Superior Court, Los Angeles County, No. BC 079 444, Daniel A. Curry, J., ordered refund for gifts to out-of-state recipients, and State Board of Equalization appealed. The Court of Appeal reversed. The Supreme Court granted review, superseding opinion of Court of Appeal. The Supreme Court, Brown, J., held that Board's interpretation of sales and use tax statutes, set out in its Business Taxes Law Guide opinion summaries, were not entitled to degree of judicial deference given to quasi-legislative rules.

Reversed and remanded.

Mosk, J., filed concurring opinion, which George, C.J., and Werdegar, J., joined.

Opinion, 61 Cal.Rptr.2d 244, vacated.

West Headnotes

[1] Administrative Law and Procedure 796
15Ak796 Most Cited Cases

The standard for judicial review of agency interpretation of law is the independent judgment of the court, giving deference to the determination of the agency appropriate to the circumstances of the agency action.

[2] Statutes 219(1)
361k219(1) Most Cited Cases

Agency interpretation of a statute does not carry the same weight, and it is not reviewed under the same standard, as a quasi-legislative regulation; disapproving *Rizzo v. Board of Trustees*, 27 Cal.App.4th 853, 32 Cal.Rptr.2d 892; *DeYoung v. City of San Diego*, 147 Cal.App.3d 11, 194 Cal.Rptr. 722; *Rivera v. City of Fresno*, 6 Cal.3d 132, 98 Cal.Rptr. 281, 490 P.2d 793.

[3] Administrative Law and Procedure 797
15Ak797 Most Cited Cases

When a court assesses the validity of quasi-legislative rules, the scope of its review is narrow; if the court is satisfied that the rule in question lay within the lawmaking authority delegated by the Legislature, and that it is reasonably necessary to implement the purpose of the statute, judicial review is at an end.

[4] Administrative Law and Procedure 416.1
15Ak416.1 Most Cited Cases

Because interpretation is an agency's legal opinion, however "expert," rather than the exercise of a delegated legislative power tomake law, it commands a commensurably lesser degree of judicial deference than quasi-legislative rule.

[5] Statutes 219(1)
361k219(1) Most Cited Cases

Whether judicial deference to an agency's interpretation is appropriate and, if so, its extent is fundamentally situational; court must consider complex factors material to the substantive legal issue before it, the particular agency offering the interpretation, and the comparative weight the factors ought in reason to command.

[6] Administrative Law and Procedure 416.1
15Ak416.1 Most Cited Cases

If an agency has adopted an interpretive rule in accordance with Administrative Procedure Act (APA) provisions, that circumstance weighs in favor of judicial deference; however, even formal interpretive rules do not command the same weight as quasi-legislative rules. 5 U.S.C.A. § 551 et seq.

[7] Taxation ⚖1336
371k1336 Most Cited Cases

State Board of Equalization's interpretation of sales and use tax statutes, set out in its Business Taxes Law Guide opinion summaries, were entitled to some consideration by court in use tax refund case, but not degree of judicial deference given to quasi-legislative rules.

***2*4**1032 Daniel E. Lungren, Attorney General, Carol H. Rehm, Jr., David S. Chaney and Philip C. Griffin, Deputy Attorneys General, for Defendant and Appellant.

Bewley, Lassleben & Miller, Jeffrey S. Baird, Joseph A. Vinatieri and Kevin P. Duthoy, Whittier, for Plaintiff and Respondent.

Daniel Kostenbauder, Lawrence V. Brookes, Berkeley, Wm. Gregory Turner and Dean F. Andal as Amici Curiae on behalf of Plaintiff and Respondent.

BROWN, Justice.

For more than 40 years, the State Board of Equalization (Board) has made available for publication as the Business Taxes Law Guide summaries of opinions by its attorneys of the business tax effects of a wide range of transactions. Known as "annotations," the summaries are prompted by actual requests for legal opinions by the Board, its field auditors, and businesses subject to statutes within its jurisdiction. The annotations are *5 brief statements — often only a sentence or two — purporting to state definitively the tax consequences of specific hypothetical business transactions. [FN1] More extensive analyses, called "back-ups," are available to those who request them.

FN1. Two examples, drawn at random, illustrate the annotation form: "Beer Can Openers, furnished by breweries to retailers with beer, are not regarded as 'self consumed' by the breweries. 10/2/50." (2A State Bd. of Equalization, Bus. Taxes Law Guide, Sales & Use Tax Annots. (1998) Annot. No. 280.0160, p. 3731.) "Bookmarks Sold For $2.00 'Postage And Handling'. A taxpayer located in California offers a bookmark to customers for a $2.00 charge, designated as postage and handling. Most of the orders received for the bookmark are from out of state. [¶] Assuming that the charge for the bookmark is 50 percent or more of its cost, the taxpayer is considered to be selling the bookmarks rather than consuming them (Regulation 1670(b)). Accordingly, when a bookmark is sent to a California customer through the U.S. Mail, the amount of postage shown on the package is considered to be a nontaxable transportation charge. For example, when a bookmark is sent to a California customer, if the postage on the envelope is shown as 25 cents, then the taxable gross receipts from the transfer is $1.75. If the bookmark is mailed to a customer located outside California, tax does not apply to any of the $2.00 charge. 12/5/88." (*Id.*, Annot. No. 280.0185, pp. 3731-3732.)

FACTS

The taxpayer here, Yamaha Corporation of America (Yamaha), sells musical instruments nationwide. It purchased a quantity of these outside California without paying tax ("extax"), stored them in its resale inventory in a California warehouse, and eventually gave them away to artists, musical equipment dealers and media representatives as promotional gifts. Delivery was made by shipping the instruments via common carrier, either inside or outside California. Yamaha made similar gifts of brochures and other advertising material. Following an audit, the Board determined Yamaha had used the musical instruments and promotional materials *in* California and was thus subject to the state's use tax, an impost levied as a percentage of the property's purchase price. (See Rev. & Tax.Code, § 6008 et seq.) Yamaha paid the taxes determined by the Board to be due (about $700,000) under protest and then brought this refund suit. Although it did not contest the tax assessed on property given to California residents, Yamaha contended no tax was due on the gifts to *out-of-state* recipients.

The superior court decided Yamaha's out-of-state

gifts were excluded from California's use tax, and ordered a refund. That disposition, however, was overturned by the Court of Appeal. Casting the issue as whether Yamaha's promotional gifts had occurred in California or in the state of the donee, the Court of Appeal looked to an annotation in the Business Taxes Law Guide. According to the guide, gifts are subject to California's use tax *6 "[w]hen the donor divests itself of control over the property in this state ..." [FN2] ***3 (2A State Bd. of Equalization, Bus. Taxes Law Guide, Sales & Use Tax Annots., *supra*, Annot. No. 280.0040, p. 3731.) **1033 Adopting that annotation as dispositive, the Court of Appeal reversed the judgment of the superior court and reinstated the Board's tax assessment. We granted Yamaha's petition for review and now reverse the Court of Appeal's judgment and order the matter returned to that court for further proceedings consistent with our opinion.

FN2. The annotation on which the Board relied -- Annotation No. 280.0040 -- purports to interpret section 6009.1 of the Revenue and Taxation Code, excluding from the definition of storage and use "keeping, retaining or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state." Captioned "Advertising Material -- Gifts," the annotation provides that "Advertising or promotional material shipped or brought into the state and temporarily stored here prior to shipment outside state is subject to use tax when a gift of the material [is] made and title passes to the donee in this state. When the donor divests itself of control over the property in this state the gift is regarded as being a taxable use of the property. 10/11/63." (2A State Bd. of Equalization, Bus. Taxes Law Guide, Sales & Use Tax Annots., *supra*, Annot. No. 280.0040, p. 3731.)

DISCUSSION

I

[1] The question is what legal effect courts must give to the Board's annotations when they are relied on as supporting its position in taxpayer litigation. In the broader context of administrative law generally, the question is what standard courts apply when reviewing an agency's *interpretation* of a statute. In effect, the Court of Appeal held the annotations were entitled to the same "weight" or "deference" as "quasi- legislative" rules. [FN3] The Court of Appeal adopted the following formulation: "[A] long-standing and consistent administrative construction of a statute by an administrative agency charged with its enforcement and interpretation is entitled to great weight unless it is either 'arbitrary, capricious or without rational basis' [citations], *7 or is 'clearly erroneous or unauthorized.' [Citation.] Opinions of the administrative agency's counsel construing the statute," the court went on to say, "are likewise entitled to consideration. [Citations.] Especially where there has been acquiescence by persons having an interest in the matter," the court added, "courts will generally not depart from such an interpretation unless it is unreasonable or clearly erroneous." As this extract from the Court of Appeal opinion indicates, the court relied on a skein of cases as supporting these several, somewhat inconsistent, propositions of administrative law.

FN3. Throughout, we use the terms "quasi-legislative" and "interpretive" in their traditional administrative law senses; i.e., as indicating both the constitutional source of a rule or regulation and the weight or judicial deference due it. (See, e.g., 1 Davis & Pierce, Administrative Law (3d ed. 1994) § 6.3, pp. 233-248.) Of course, administrative rules do not always fall neatly into one category or the other; the terms designate opposite ends of an administrative continuum, depending on the breadth of the authority delegated by the Legislature. (See *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 575-576, 38 Cal.Rptr.2d 139, 888 P.2d 1268; cf. *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 574-575, 59 Cal.Rptr.2d 186, 927 P.2d 296 [comparing the two kinds of rules and suggesting that while interpretive rules are not quasi-legislative in the traditional sense, "an agency would arguably still have to adopt these regulations in accordance with

> [Administrative Procedure Act rulemaking requirements]." The issue is not strictly presented by this case, however: Government Code section 11342, subdivision (g) declares that "[r]egulation" does not include "legal rulings of counsel issued by the ... State Board of Equalization."].)

We reach a different conclusion. An agency interpretation of the meaning and legal effect of a statute is entitled to consideration and respect by the courts; however, unlike quasi-legislative regulations adopted by an agency to which the Legislature has confided the power to "make law," and which, if authorized by the enabling legislation, bind this and other courts as firmly as statutes themselves, the binding power of an agency's *interpretation* of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation. Justice Mosk may have provided the best description when he wrote in *Western States Petroleum Assn. v. Superior Court, supra,* 9 Cal.4th 559, 38 Cal.Rptr.2d 139, 888 P.2d 1268, that " 'The appropriate degree of judicial scrutiny in any particular case is perhaps not susceptible of precise formulation, but lies somewhere along a continuum with nonreviewability at one end and independent judgment at the other.' [Citation.] Quasi-legislative administrative decisions are properly placed at that point of the continuum at which judicial review is more deferential; ministerial and informal actions do not merit such deference, and therefore lie toward the opposite end of the continuum." ***4**1034(*Id.* at pp. 575-576, 38 Cal.Rptr.2d 139, 888 P.2d 1268; see also *Bodinson Mfg. Co. v. California E. Com.* (1941) 17 Cal.2d 321, 325-326, 109 P.2d 935 [An "administrative interpretation ... will be accorded great respect by the courts and will be followed if not clearly erroneous. [Citations.] But such a tentative ... interpretation makes no pretense at finality and it is the duty of this court ... to state the true meaning of the statute finally and conclusively, even though this requires the overthrow of an earlier erroneous administrative construction. [Citations.] The ultimate interpretation of a statute is an exercise of the judicial power ... conferred upon the courts by the Constitution and, in the absence of a constitutional provision, cannot be exercised by any other body."].)

Courts must, in short, independently judge the text of the statute, taking into account and respecting the agency's interpretation of its meaning, of course, whether embodied in a formal rule or less formal representation. Where the meaning and legal effect of a statute is the issue, an agency's interpretation is one among several tools available to the court. Depending *8 on the context, it may be helpful, enlightening, even convincing. It may sometimes be of little worth. (See *Traverso v. People* ex rel. *Dept. of Transportation* (1996) 46 Cal.App.4th 1197, 1206, 54 Cal.Rptr.2d 434.) Considered alone and apart from the context and circumstances that produce them, agency interpretations are not binding or necessarily even authoritative. To quote the statement of the Law Revision Commission in a recent report, "The standard for judicial review of agency interpretation of law is the *independent judgment* of the court, giving *deference* to the determination of the agency *appropriate* to the circumstances of the agency action." (Judicial Review of Agency Action (Feb.1997) 27 Cal. Law Revision Com. Rep. (1997) p. 81, italics added.)

II

[2] Here, the Court of Appeal relied on language from its prior cases suggesting broadly that an agency interpretation of a statute carries the *same* weight -- that is, is reviewed under the same standard -- as a quasi- legislative regulation. Unlike the annotations here, however, quasi-legislative rules are the substantive product of a delegated *legislative* power conferred on the agency. The formulation on which the Court of Appeal relied is thus apt to lead a court (as it led here) to abdicate a quintessential judicial duty -- applying its independent judgment de novo to the merits of the *legal* issue before it. The fact that in this case the Court of Appeal determined Yamaha's tax liability by giving the Board's annotation a weight amounting to unquestioning acceptance only compounded the error.

We derive these conclusions from long-standing administrative law decisions of this court. Although the web making up that jurisprudence is not seamless, on the whole it is both logical and coherent. In *Culligan Water Conditioning v. State*

Bd. of Equalization (1976) 17 Cal.3d 86, 130 Cal.Rptr. 321, 550 P.2d 593 (*Culligan*), the taxpayer sued for a refund of sales and use taxes paid under protest on ion-exchange equipment used to condition water and leased to residential subscribers: Because it came from a service business rather than the rental of property, the taxpayer contended, the income was not subject to the Sales and Use Tax Law. In refund litigation, the Board relied on an affidavit of its assistant chief counsel characterizing the transactions as leases taxable under the Sales and Use Tax Law. The trial court rejected the Board's position, calling it an unwarranted extension of the words of the statute, and awarded judgment to the taxpayer. (17 Cal.3d at p. 92, 130 Cal.Rptr. 321, 550 P.2d 593.)

Justice Sullivan began his opinion for a unanimous court by asking what was "the appropriate standard of review applicable to the [use tax] assessment against" the taxpayer. (*Culligan, supra,* 17 Cal.3d at p. 92, 130 Cal.Rptr. 321, 550 P.2d 593.) The Board *9 contended its assessment was based on an "administrative classification" and could be judicially overturned only if it was "arbitrary, capricious or without rational basis." (*Ibid.*) Our opinion pointed out, however, that the basis for the Board's tax assessment "was not embodied in any formal regulation or even interpretative ruling covering the water ***5 **1035 conditioning industry as a whole." (*Ibid.*) Instead, its basis "was nothing more than the Board auditor's interpretation of two existing regulations." (*Ibid.*) "If the Board had promulgated a formal regulation determining the proper classification of receipts derived from the rental of exchange units ... and the regulation had been challenged in the [refund] action," our *Culligan* opinion went on to say, "the proper scope of reviewing such regulation *would* be one of limited judicial review as urged by the Board. [Citations.]" (*Ibid.*, italics added.)

That was not the case in *Culligan,* however. Instead of adopting a formal regulation, the Board and its staff had considered the facts of the taxpayer's particular transactions, interpreted the statutes and regulations they deemed applicable, and "arrived at certain conclusions as to plaintiff's tax liability and assessed the tax accordingly." (17 Cal.3d at p. 92, 130 Cal.Rptr. 321, 550 P.2d 593.) Far from being "the equivalent of a regulation or ruling of general application," the Board's argument was "merely its litigating position in this particular matter." (*Id.* at p. 93, 130 Cal.Rptr. 321, 550 P.2d 593.) In an important footnote to its opinion, the *Culligan* court disapproved language in several Court of Appeal decisions "indicating that the proper scope of review of such litigating positions of the Board (announced either in tax bulletins or merely as the result of an individual audit) is to determine whether the Board's assessment was arbitrary, capricious or had no reasonable or rational basis." (*Id.* at p. 93, fn. 4, 130 Cal.Rptr. 321, 550 P.2d 593.)

Although the Court of Appeal in this case cited *Culligan, supra,* 17 Cal.3d 86, 130 Cal.Rptr. 321, 550 P.2d 593, it regarded *American Hospital Supply Corp. v. State Bd. of Equalization* (1985) 169 Cal.App.3d 1088, 215 Cal.Rptr. 744 (*American Hospital*) as the decisive precedent. The question there was whether disposable paper menus, used for patients' meals in hospitals, were subject to the sales tax. In concluding they were, the Court of Appeal relied on a ruling of Board counsel interpreting a quasi-legislative regulation of the Board. "Interpretation of an administrative regulation," the court wrote, "like [the] interpretation of a statute, is a question of law which rests with the courts. However, the agency's own interpretation of its regulation is entitled to great weight." (*Id.* at p. 1092, 215 Cal.Rptr. 744.) The Board's interpretation could be overturned, the opinion went on to state, only if it was " 'arbitrary, capricious or without rational basis.' " (*Ibid.*)

The *American Hospital* opinion also rejected the taxpayer's contention that because the rule at issue was only an interpretation and not a quasi-legislative rule, it was not entitled to deference. *10 (*American Hospital, supra,* 169 Cal.App.3d at p. 1092, 215 Cal.Rptr. 744.) Instead, the court read *Culligan* as standing for the *opposite* proposition. Because we had said the rule at issue there did not cover an entire industry, the Court of Appeal reasoned *Culligan* had held in effect that it was nothing more than a " 'litigating position' " and could be ignored. (119 Cal.App.3d at p. 1093, 215 Cal.Rptr. 744.) On that basis, *American Hospital* concluded that because the Board's position on the taxability of paper menus *was* embodied in a "formal regulation" *and* covered the entire hospital industry, it was entitled to same deference as a quasi-legislative rule: "[It] must prevail because it

is neither 'arbitrary, capricious or without rational basis' (*Culligan Water Conditioning v. State Bd. of Equalization, supra,* 17 Cal.3d 86, 92, 130 Cal.Rptr. 321, 550 P.2d 593) nor is it 'clearly erroneous or unauthorized' (*Rivera v. City of Fresno* [(1971)] 6 Cal.3d 132, 140, 98 Cal.Rptr. 281, 490 P.2d 793)." (*Ibid.*)

We think the Court of Appeal in *American Hospital, supra,* 169 Cal.App.3d 1088, 215 Cal.Rptr. 744, and the Court of Appeal in this case by relying on it, failed to distinguish between two classes of rules -- quasi-legislative and interpretive -- that, because of their differing legal sources, command significantly different degrees of deference by the courts. Moreover, *American Hospital* misread our opinion in *Culligan* when it identified the feature that distinguishes one kind of rule from the other. Although the Court of Appeal here did not rely on other prior cases as much as on *American Hospital,* it cited several that appear to perpetuate the same ***6 **1036** confusion. (See *Rizzo v. Board of Trustees* (1994) 27 Cal.App.4th 853, 861, 32 Cal.Rptr.2d 892; *DeYoung v. City of San Diego* (1983) 147 Cal.App.3d 11, 18, 194 Cal.Rptr. 722; *Rivera v. City of Fresno* (1971) 6 Cal.3d 132, 140, 98 Cal.Rptr. 281, 490 P.2d 793.)

[3] It is a "black letter" proposition that there are two categories of administrative rules and that the distinction between them derives from their different sources and ultimately from the constitutional doctrine of the separation of powers. One kind -- quasi-legislative rules -- represents an authentic form of substantive lawmaking: Within its jurisdiction, the agency has been delegated the Legislature's lawmaking power. (See, e.g., 1 Davis & Pierce, Administrative Law, *supra,* § 6.3, at pp. 233-248; 1 Cooper, State Administrative Law (1965) Rule Making: Procedures, pp. 173-176; Bonfield, State Administrative Rulemaking (1986) Interpretive Rules, § 6.9.1, pp. 279-283; 9 Witkin, Cal. Procedure (4th ed. 1997) Administrative Proceedings, § 116, p. 1160 [collecting cases].) Because agencies granted such substantive rulemaking power are truly "making law," their quasi-legislative rules have the dignity of statutes. When a court assesses the validity of such rules, the scope of its review is narrow. If satisfied that the rule in question lay within the lawmaking authority delegated by the Legislature, and that it *11 is reasonably necessary to implement the purpose of the statute, judicial review is at an end.

We summarized this characteristic of quasi-legislative rules in *Wallace Berrie & Co. v. State Bd. of Equalization* (1985) 40 Cal.3d 60, 65, 219 Cal.Rptr. 142, 707 P.2d 204 (*Wallace Berrie*): " '[I]n reviewing the legality of a regulation adopted pursuant to a delegation of legislative power, the judicial function is limited to determining whether the regulation (1) is "within the scope of the authority conferred" [citation] and (2) is "reasonably necessary to effectuate the purpose of the statute" [citation].' [Citation.] These issues do not present a matter for the independent judgment of an appellate tribunal; rather, both come to this court freighted with [a] strong presumption of regularity....' [Citation.] Our inquiry necessarily is confined to the question whether the classification is 'arbitrary, capricious or [without] reasonable or rational basis.' (*Culligan, supra,* 17 Cal.3d at p. 93, fn. 4, 130 Cal.Rptr. 321, 550 P.2d 593 [citations].)" [FN4]

FN4. In one respect, our opinion in *Wallace Berrie* may overstate the level of deference -- even quasi-legislative rules are reviewed independently for consistency with controlling law. A court does not, in other words, defer to an agency's view when deciding whether a regulation lies within the scope of the authority delegated by the Legislature. The court, not the agency, has "final responsibility for the interpretation of the law" under which the regulation was issued. (*Whitcomb Hotel, Inc. v. Cal. Emp. Com.* (1944) 24 Cal.2d 753, 757, 151 P.2d 233; see cases cited, *post,* at p. 7 of 78 Cal.Rptr.2d, at p. 1037 of 960 P.2d; *Environmental Protection Information Center v. Department of Forestry & Fire Protection* (1996) 43 Cal.App.4th 1011, 1022, 50 Cal.Rptr.2d 892 [Standard of review of challenges to "fundamental legitimacy" of quasi-legislative regulation is " 'respectful nondeference.' "].)

[4] It is the other class of administrative rules, those *interpreting* a statute, that is at issue in this case. Unlike quasi-legislative rules, an agency's

interpretation does not implicate the exercise of a delegated lawmaking power; instead, it represents the agency's view of the statute's legal meaning and effect, questions lying within the constitutional domain of the courts. But because the agency will often be interpreting a statute within its administrative jurisdiction, it may possess special familiarity with satellite legal and regulatory issues. It is this "expertise," expressed as an interpretation (whether in a regulation or less formally, as in the case of the Board's tax annotations), that is the source of the presumptive value of the agency's views. An important corollary of agency interpretations, however, is their diminished power to bind. Because an interpretation is an agency's *legal opinion*, however "expert," rather than the exercise of a delegated legislative power to make law, it commands a commensurably lesser degree of judicial deference. (*Bodinson Mfg. Co. v. Cal. Emp. Com., supra,* 17 Cal.2d at pp. 325-326, 109 P.2d 935.)

In *International Business Machines v. State Bd. of Equalization* (1980) 26 Cal.3d 923, 163 Cal.Rptr. 782, 609 P.2d 1, we contrasted **1037 ***7 the narrow *12 standard under which quasi-legislative rules are reviewed — "limited," we wrote, "to a determination whether the agency's action is arbitrary, capricious, lacking in evidentiary support, or contrary to procedures provided by law" (*id.* at p. 931, fn. 7, 163 Cal.Rptr. 782, 609 P.2d 1) — with the broader standard courts apply to interpretations. The quasi-legislative standard of review "is *inapplicable* when the agency is not exercising a discretionary rule-making power, but merely *construing* a controlling statute. The appropriate mode of review in such a case is one in which the judiciary, although taking ultimate responsibility for the construction of the statute, accords great weight and respect to the administrative construction. [Citation.]" (*Ibid.*, italics added; see also *California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 11, 270 Cal.Rptr. 796, 793 P.2d 2 ["courts are the ultimate arbiters of the construction of a statute"]; Dyna-Med, Inc. v. Fair Employment & Housing Com. *(1987) 43 Cal.3d 1379, 1389, 241 Cal.Rptr. 67, 743 P.2d 1323 ["The final meaning of a statute ... rests with the courts."];* Morris v. Williams *(1967) 67 Cal.2d 733, 748, 63 Cal.Rptr. 689, 433 P.2d 697 [" 'final responsibility for the interpretation of the law rests with the courts.' "].)*

[5] Whether judicial deference to an agency's interpretation is appropriate and, if so, its extent — the "weight" it should be given — is thus fundamentally *situational.* A court assessing the value of an interpretation must consider complex factors material to the substantive legal issue before it, the particular agency offering the interpretation, and the comparative weight the factors ought in reason to command. Professor Michael Asimow, an administrative law adviser to the California Law Revision Commission, has identified two broad categories of factors relevant to a court's assessment of the weight due an agency's interpretation: those "indicating that the agency has a comparative interpretive advantage over the courts," and those "indicating that the interpretation in question is probably correct." (Cal. Law Revision Com., Tent. Recommendation, Judicial Review of Agency Action (Aug.1995) p. 11 (Tentative Recommendation); see also Asimow, *The Scope of Judicial Review of Decisions of California Administrative Agencies* (1995) 42 UCLA L.Rev. 1157, 1192-1209.)

[6] In the first category are factors that "assume the agency has expertise and technical knowledge, especially where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion. A court is more likely to defer to an agency's interpretation of its own regulation than to its interpretation of a statute, since the agency is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another." (Tentative Recommendation, *supra,* at p. 11.) The second group of *13 factors in the Asimow classification — those suggesting the agency's interpretation is likely to be correct — includes indications of careful consideration by senior agency officials ("an interpretation of a statute contained in a regulation adopted after public notice and comment is more deserving of deference than [one] contained in an advice letter prepared by a single staff member" (Tentative Recommendation, *supra,* at p. 11)), evidence that the agency "has consistently maintained the interpretation in question, especially if [it] is long-standing" (*ibid.*) ("[a] vacillating position ... is entitled to no deference" (*ibid.*)), and indications that the agency's interpretation was contemporaneous with legislative enactment of the statute being interpreted. If an agency has adopted

an interpretive rule in accordance with Administrative Procedure Act provisions -- which include procedures (e.g., notice to the public of the proposed rule and opportunity for public comment) that enhance the accuracy and reliability of the resulting administrative "product" -- that circumstance weighs in favor of judicial deference. However, even formal interpretive rules do not command the same weight as quasi-legislative rules. Because " 'the ultimate resolution of ... legal questions rests with the courts' " (*Culligan, supra,* 17 Cal.3d at p. 93, 130 Cal.Rptr. 321, 550 P.2d 593), judges play a greater role when reviewing the persuasive value of interpretive rules than they do in determining the validity of quasi-legislative rules.

***8 **1038** A valuable judicial account of the process by which courts reckon the weight of agency interpretations was provided by Justice Robert Jackson's opinion in *Skidmore v. Swift & Co.* (1944) 323 U.S. 134, 65 S.Ct. 161, 89 L.Ed. 124 (*Skidmore*), a case arising under the federal Fair Labor Standards Act. The question for the court was whether private firefighters' " waiting time" was countable as "working time" under the act and thus compensable. (323 U.S. at p. 136, 65 S.Ct. 161.) "Congress," the *sKidmore* opinion observed, "did not utilize the services of an administrative agency to find facts and to determine in the first instance whether particular cases fall within or without the Act." (*Id.* at p. 137, 65 S.Ct. 161.) "Instead, it put this responsibility on the courts. [Citation.] But it did create the office of Administrator, impose upon him a variety of duties, endow him with powers to inform himself of conditions in industries and employments subject to the Act, and put on him the duties of bringing injunction actions to restrain violations. Pursuit of his duties has accumulated a considerable experience in the problems of ascertaining [the issue in suit] and a knowledge of the customs prevailing in reference to their solution.... He has set forth his views of the application of the Act under different circumstances in an interpretative bulletin and in informal rulings. They provide a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it. [Citation.]" (*Id.* at pp. 137-138, 65 S.Ct. 161.)

*14 No statute prescribed the deference federal courts should give the administrator's interpretive bulletins and informal rulings, and they were "not reached as a result of ... adversary proceedings." (*Skidmore, supra,* 323 U.S. at p. 139, 65 S.Ct. 161.) Given those features, Justice Jackson concluded, the administrator's rulings "do not constitute an interpretation of the Act or a standard for judging factual situations which *binds* a ... court's processes, as an authoritative pronouncement of a higher court might do." (*Ibid.*, italics added.) Still, the court held, the fact that "the Administrator's policies and standards are not reached by trial in adversary form does not mean that they are not entitled to respect." (*Id.* at p. 140, 65 S.Ct. 161.) "We consider that the rulings, interpretations and opinions of the Administrator under this Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance." (*Ibid.*)

[7] The parallels between the statutory powers and administrative practice of the Board in interpreting the Sales and Use Tax Law, and those of the federal agency described in *Skidmore,* are extensive. As with Congress, our Legislature has not conferred adjudicatory powers on the Board as the means by which sales and use tax liabilities are determined; instead, the validity of those assessments is settled in tax refund litigation like this case. (Rev. & Tax.Code, § 6933.) Like the federal administrator in *Skidmore,* the Board has not adopted a formal regulation under its quasi-legislative rulemaking powers purporting to interpret the statute at issue here. As in *Skidmore,* however, the Board and its staff have accumulated a substantial "body of experience and informed judgment" in the administration of the business tax law "to which the courts and litigants may properly resort for guidance." (323 U.S. at p. 140, 65 S.Ct. 161.) Some of that experience and informed judgment takes the form of the annotations published in the Business Taxes Law Guide.

The opinion in the *Skidmore* case and Professor Asimow's account for the Law Revision Commission -- together spanning a half-century of judicial and scholarly comment on the characteristics and role of administrative interpretations -- accurately describe their value and the criteria by which courts judge their weight. The deference due an agency interpretation -- including the Board's annotations at issue here -- turns on a legally informed, commonsense

assessment of their contextual merit. "The weight of such a judgment in a particular case," to borrow again from Justice Jackson's opinion in *Skidmore*, "will depend upon *the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors* ***1039*** ***9* *which give it power to persuade, if lacking power* *15* *to control.* " (*Skidmore, supra,* 323 U.S. at p. 140, 65 S.Ct. 161, italics added.)

As we read the brief filed by the Attorney General, the Board does not contend for any greater judicial weight for its annotations. Its brief on the merits states that "Yamaha is correct that the annotations are not regulations, and they are not binding upon taxpayers, the Board itself, or the Court. Nevertheless, the annotations are digests of opinions written by the legal staff of the Board which are evidentiary of administrative interpretations made by the Board in the normal course of its administration of the Sales and Use Tax Law.... [T]he annotations have substantial precedential effect within the agency. [¶] The interpretation represented in [the] annotations is certainly entitled to some consideration by the Court."

We agree.

CONCLUSION

In deciding this case, the Court of Appeal gave greater weight to the Board's annotation than it warranted. Although the standard used by the Court of Appeal was not the correct one and prejudiced the taxpayer, regard for the structure of appellate decisionmaking suggests the case should be returned to the Court of Appeal. That court can then consider the merits of the use tax issue and the value of the Board's interpretation in light of the conclusions drawn here. To the extent language in *Rizzo v. Board of Trustees, supra,* 27 Cal.App.4th at page 861, 32 Cal.Rptr.2d 892, *DeYoung v. City of San Diego, supra,* 147 Cal.App.3d at page 18, 194 Cal.Rptr. 722, and *Rivera v. City of Fresno, supra,* 6 Cal.3d at page 140, 98 Cal.Rptr. 281, 490 P.2d 793, is inconsistent with the foregoing views, it is disapproved. We express no opinion on the merits of the underlying question of Yamaha's use tax liability.

DISPOSITION

The judgment of the Court of Appeal is reversed and the cause is remanded to that court for further proceedings consistent with this opinion.

GEORGE, C.J., and KENNARD, BAXTER and CHIN, JJ., concur.

MOSK, Justice, concurring.

I concur in the judgment of the majority that the Court of Appeal's formulation of the standard of review for tax annotations, the summaries of tax opinions of the State Board of Equalization's (Board) legal counsel published in the Business Taxes Law Guide, was not quite correct. Specifically the Court of Appeal erred in suggesting that it would defer to *16 the Board's or its legal counsel's rule unless that rule is "arbitrary and capricious." The majority do not purport to change the well-established, if not always consistently articulated, body of law pertaining to judicial review of administrative rulings, but merely attempt to clarify that law. I write separately to further clarify the relevant legal principles and their application to the present case.

The appropriate starting point of a discussion of judicial review of administrative regulations is an analysis of quasi-legislative regulations, those regulations formally adopted by an agency pursuant to the California Administrative Procedures Act (APA) and binding on the agency. "The proper scope of a court's review is determined by the *task* before it." (*Woods v. Superior Court* (1981) 28 Cal.3d 668, 679, 170 Cal.Rptr. 484, 620 P.2d 1032, italics added.) In the case of quasi-legislative regulations, the court has essentially two tasks. The first duty is "to determine whether the [agency] exercised [its] quasi-legislative authority within the bounds of the statutory mandate." (*Morris v. Williams* (1967) 67 Cal.2d 733, 748, 63 Cal.Rptr. 689, 433 P.2d 697 (*Morris*).) As the *Morris* court made clear, this is a matter for the independent judgment of the court. "While the construction of a statute by officials charged with its administration, including their interpretation of the authority invested in them to implement and carry out its

provisions, is entitled to *great weight*, nevertheless 'Whatever the force of administrative construction ... *final responsibility for the interpretation of the law rests with the courts.*' [Citation.] Administrative regulations***10 **1040 that alter or amend the statute or enlarge or impair its scope are void and courts not only may, but it is their obligation to strike down such regulations. [Citations.]" (*Ibid.*, italics added.) This duty derives directly from statute. "Under Government Code [[FN1]] section 11373 [now § 11342.1], '[e]ach regulation adopted [by a state agency], to be effective, must be within the scope of authority conferred....' Whenever a state agency is authorized by statute 'to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, *no regulation adopted is valid or effective unless consistent and not in conflict with the statute....*' ([§ 11342.2].)" (*Morris, supra*, 67 Cal.2d at p. 748, 63 Cal.Rptr. 689, 433 P.2d 697, fn. omitted, italics added by *Morris* court.)

FN1. All further statutory references are to the Government Code unless otherwise stated.

The court's second task arises once it has completed the first. "If we conclude that the [agency] was empowered to adopt the regulations, we must also determine whether the regulations are 'reasonably necessary to effectuate thepurpose of the statute.' [(§ 11342.2).] In making such a determination, the court will not 'superimpose its own policy judgment upon the *17 agency in the absence of an arbitrary and capricious decision.' [Citations.]" (*Morris, supra*, 67 Cal.2d at pp. 748-749, 63 Cal.Rptr. 689, 433 P.2d 697.)

In *California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 11, 270 Cal.Rptr. 796, 793 P.2d 2 (*Rank*) we further clarified the two tasks and two distinct standards of review for courts scrutinizing agency regulations. We stated: "As we said in *Pitts v. Perluss* (1962) 58 Cal.2d 824[, 833, 27 Cal.Rptr. 19, 377 P.2d 83], '[a]s to quasi-legislative acts of administrative agencies, "judicial review is limited to an examination of the proceedings before the officer to determine whether his action has been arbitrary, capricious, or entirely lacking in evidentiary support, or whether he has failed to follow the procedure and give the notices required by law." ' [Citations.] When, however, a regulation is challenged as inconsistent with the terms or intent of the authorizing statute, the standard of review is different, because the courts are the ultimate arbiters of the construction of a statute. Thus, [the *Morris* court] in finding that the challenged regulations contravened legislative intent, rejected the agency's claim that the only issue for review was whether the regulations were arbitrary and capricious." (*Ibid.*, fn. omitted.) The *Rank* court then proceeded to reiterate the *Morris* formulation that " '[w]hile the construction of a statute by officials charged with its administration ... is entitled to great weight, ... final responsibility for the interpretation of the law rests with the courts.' " (*Ibid.*) [FN2] (We will henceforth refer to this standard as the "independent judgment/great weight standard.")

FN2. Certain of our own cases have confused the standards of review in this two-pronged test. For example, in *Wallace Berrie & Co. v. State Bd. of Equalization* (1985) 40 Cal.3d 60, 65, 219 Cal.Rptr. 142, 707 P.2d 204, after stating the above two-pronged test, declared that neither prong " 'present[s] a matter for the independent judgment of an appellate tribunal; rather, both come to this court freighted with [a] strong presumption of regularity....' [Citation.] Our inquiry necessarily is confined to the question whether the classification is 'arbitrary, capricious or [without] reasonable or rational basis.' [Citation.]" As the discussion of *Rank* and *Morris* above makes clear, the first prong of the inquiry -- whether the regulation is "within the scope of the authority conferred" -- is *not* limited to the "arbitrary and capricious" standard of review,but employs the independent judgment/great weight standard. (*Rank, supra*, 51 Cal.3d at p. 11, 270 Cal.Rptr. 796, 793 P.2d 2; *Morris, supra*, 67 Cal.2d at pp. 748-749, 63 Cal.Rptr. 689, 433 P.2d 697.) This confusion is in part responsible for the misstatements of the Court of Appeal in the present case.

There is an important qualification to the independent judgment/great weight standard articulated above, when a court finds that the Legislature has *delegated* the task of interpreting or elaborating on a statute to an administrative agency. A court may find that the Legislature has intended to delegate this interpretive or gap-filling power when it employs open-ended statutory language that an agency is authorized to apply or "when an issue of interpretation is heavily freighted with policy choices which the agency is empowered to make." (Asimow, *The Scope of Judicial Review of Decisions of *18 California Administrative Agencies* (1995) ***11**104142 UCLA L.Rev. 1157, 1198-1199 (Asimow).) For example, in *Moore v. California State Bd. of Accountancy* (1992) 2 Cal.4th 999, 9 Cal.Rptr.2d 358, 831 P.2d 798 (*Moore*), we reviewed a regulation by the Board of Accountancy, the agency statutorily chartered to regulate the accounting profession in this state. The regulation provided that those unlicensed by that board could not use the title "accountant," interpreting a statute, Business and Professions Code section 5058, that forbids use of titles "likely to be confused with" the titles of "certified public accountant" and "public accountant." (2 Cal.4th at p. 1011, 9 Cal.Rptr.2d 358, 831 P.2d 798.) As we stated, "the Legislature delegated to the Board the authority to determine whether a title or designation not identified in the statute is likely to confuse or mislead the public." (*Id.* at pp. 1013-1014, 9 Cal.Rptr.2d 358, 831 P.2d 798.)

Thus, the agency's interpretation of a statute may be subject to the most deferential "arbitrary and capricious" standard of review when the agency is expressly or impliedly delegated interpretive authority. Such delegation may often be implied when there are broadly worded statutes combined with an authorization of agency rulemaking power. But when the agency is called upon to enforce a detailed statutory scheme, discretion is as a rule correspondingly narrower. In other words, a court must always make an independent determination whether the agency regulation is "within the scope of the authority conferred," and that determination includes an inquiry into the extent to which the Legislature intended to delegate discretion to the agency to construe or elaborate on the authorizing statute.

The above schema applies to so-called "interpretive" regulations as well as quasi-legislative regulations. As the majority observe, "administrative rules do not always fall neatly into one category or the other...." (Maj. opn., *ante*, at p. 3, fn. 3 of 78 Cal.Rptr.2d, at p. 1033, fn. 3 of 960 P.2d.) Indeed, regulations subject to the formal procedural requirements of the APA include those that "interpret" the law enforced or administered by a government agency, as well as those that "implement" or "make specific" such law. (§ 11342, subd. (b).) As we recently stated: "A written statement of policy that an agency intends to apply generally, that is unrelated to a specific case, and that predicts how the agency will decide future cases is essentially *legislative* in nature even if it merely *interprets* applicable law." (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 574-575, 59 Cal.Rptr.2d 186, 927 P.2d 296, italics added.) [FN3] Moreover, all regulations are "interpretive" to some extent, because all *19 regulations implicitly or explicitly interpret "the authority invested in them to implement and carry out [statutory] provisions...." (*Morris, supra*, 67 Cal.2d at p. 748, 63 Cal.Rptr. 689, 433 P.2d 697.)

FN3. I note that in federal law, by contrast, the term "interpretive rule" is given a particular significance and legal status. According to statute, "substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency" are required to be published in the Federal Register. (5 U.S.C. § 552(a)(1)(D).) But such "interpretive rules," and "general statements of policy" are explicitly exempt from the notice and hearing provisions of the federal APA. (5 U.S.C. § 553(b)(3)(A).) No such distinction exists in California law.

Of course, some regulations may be properly designated "interpretive" inasmuch as they have no purpose other than to interpret statutes. (See, e.g., *International Business Machines v. State Bd. of Equalization* (1980) 26 Cal.3d 923, 163 Cal.Rptr. 782, 609 P.2d 1.) In the case of such regulations, courts will be engaged only in the first of the two

tasks discussed above, i.e., ensuring that the regulation is within the scope of the statutory authority conferred, employing the independent judgment/great weight test. (See *id.* at p. 931, fn. 7, 163 Cal.Rptr. 782, 609 P.2d 1.)

In sum, when reviewing a quasi-legislative regulation, courts consider whether the regulation is within the scope of the authority conferred, essentially a question of the validity of an agency's statutory interpretation, guided by the independent judgment/great weight standard. (*Rank, supra,* 51 Cal.3d at p. 11, 270 Cal.Rptr. 796, 793 P.2d 2.) This is in contrast to the second aspect of the inquiry, whether a regulation is "reasonably necessary**1042 ***12 to effectuate the statutory purpose," wherein courts "will not intervene in the absence of an arbitrary or capricious decision." (*Ibid.*, citing *Morris, supra,* 67 Cal.2d at p. 749, 63 Cal.Rptr. 689, 433 P.2d 697.) Courts may also employ the "arbitrary and capricious" standard in reviewing whether the agency's construction of a statute is correct if the court determines that the particular statutory scheme in question explicitly or implicitly delegates this interpretive or "gap-filling" authority to an administrative agency. (See *Moore v. California State Bd. of Accountancy, supra,* 2 Cal.4th at pp. 1013- 1014, 9 Cal.Rptr.2d 358, 831 P.2d 798; Asimow, *supra,* 42 UCLA L.Rev. at p. 1198.)

What standard of review should be employed for administrative rulings that were not formally adopted under the APA? Such regulations fall generally into two categories. The first is the class of regulations that *should* have been formally adopted under the APA, but were not. In such cases, the law is clear that in order to effectuate the policies behind the APA courts are to give *no* weight to these interpretive regulations. (*Tidewater Marine Western, Inc. v. Bradshaw, supra,* 14 Cal.4th at p. 576, 59 Cal.Rptr.2d 186, 927 P.2d 296; *Armistead v. State Personnel Board* (1978) 22 Cal.3d 198, 204-205, 149 Cal.Rptr. 1, 583 P.2d 744.) To hold otherwise would help to perpetuate the problem of avoidance by administrative agencies of " 'the mandatory requirements of the [APA] of public notice, opportunity to be heard by the public, filing with the Secretary of State, and publication in the [California Code of Regulations].' " *20 (*Armistead, supra,* 22 Cal.3d at p. 205, 149 Cal.Rptr. 1, 583 P.2d 744.) For these reasons, and quite apart from any expertise the agency may possess in interpreting and administering the statute, courts in effect ignore the agency's illegal regulation.

In the second category are those regulations that are not subject to the APA because they are expressly or implicitly exempted from or outside the scope of APA requirements. For such rulings, the standard of judicial review of agency interpretations of statutes is basically the same as for those rules adopted under the APA, i.e., the independent judgment/great weight standard. (See, e.g., *Wilkinson v. Workers' Comp. Appeals Bd.* (1977) 19 Cal.3d 491, 501, 138 Cal.Rptr. 696, 564 P.2d 848 [applying essentially this standard to a statutory interpretation arising within the context of the Workers' Compensation Appeals Board's decisional law]; see also Asimow, *supra,* 42 UCLA L.Rev. at pp. 1200-1201; Judicial Review of Agency Action (Feb.1997) 27 Cal. Law Revision Com. Rep. (1997) pp. 81-82 (Judicial Review of Agency Action).)

The Board counsel's legal ruling at issue in this case is an example of express exemption from the APA. Section 11342, subdivision (g), specifies that the term "regulation" for purposes of the APA does not include "legal rulings of counsel issued by the Franchise Tax Board or State Board of Equalization...." It is therefore evident that our decisions pertaining to regulations that fail to be approved according to required APA procedures are inapposite. It also appears evident that these rulings, as agency interpretations of statutory law, are also to be reviewed under the independent judgment/great weight standard.

But, as the majority point out, the precise weight to be accorded an agency interpretation varies depending on a number of factors. Professor Asimow states that deference is especially appropriate not only when an administrative agency has particular expertise, but also by virtue of its specialization in administering a statute, which "gives [that agency] an intimate knowledge of the problems dealt with in the statute and the various administrative consequences arising from particular interpretations." (Asimow, *supra,* 42 UCLA L.Rev. at p. 1196.) Moreover, deference is more appropriate when, as in the present case, the agency is interpreting "the statute [it] enforces" rather than "some other statute, the common law, the

[C]onstitution, or prior judicial precedents." (*Ibid.*)

Another important factor, as the majority recognize, is whether an administrative construction is consistent and of long standing. (Maj. opn., *ante*, at p. 7 of 78 Cal.Rptr.2d; at p. 1037 of 960 P.2d) This factor is particularly important for resolution of the present case because the tax annotation with which the case is principally concerned, *21 Business ***13 **1043 Taxes Law Guide Annotation No. 280.0040, was first published in 1963, and *Yamaha Corp. of America* does not contest that it has represented the Board's position on the tax question at issue at least since that time. (See now 2A State Bd. of Equalization, Bus. Taxes Law Guide, Sales & Use Annots. (1998) Annot. No. 280.0040, p. 3731 (hereafter Annotation No. 280.0040).)

As the Court of Appeal has stated: "Long-standing, consistent administrative construction of a statute by those charged with its administration, particularly where interested parties have acquiesced in the interpretation, is entitled to great weight and should not be disturbed unless clearly erroneous." (*Rizzo v. Board of Trustees* (1994) 27 Cal.App.4th 853, 861, 32 Cal.Rptr.2d 892). This principle has been affirmed on numerous occasions by this court and the Courts of Appeal. (See, e.g., *DeYoung v. City of San Diego* (1983) 147 Cal.App.3d 11, 18, 194 Cal.Rptr. 722; *Nelson v. Dean* (1946) 27 Cal.2d 873, 880-881, 168 P.2d 16; *Whitcomb Hotel, Inc. v. Cal. Emp. Com.* (1944) 24 Cal.2d 753, 757, 151 P.2d 233; *Thornton v. Carlson* (1992) 4 Cal.App.4th 1249, 1256-1257, 6 Cal.Rptr.2d 375; *Lute v. Governing Board* (1988) 202 Cal.App.3d 1177, 1183, 249 Cal.Rptr. 161; *Napa Valley Educators' Assn. v. Napa Valley Unified School Dist.* (1987) 194 Cal.App.3d 243, 252, 239 Cal.Rptr. 395; *Horn v. Swoap* (1974) 41 Cal.App.3d 375, 382, 116 Cal.Rptr. 113.) Moreover, this principle applies to administrative practices embodied in staff attorney opinions and other expressions short of formal, quasi-legislative regulations. (See, e.g., *DeYoung, supra*, 147 Cal.App.3d 11, 19-21, 194 Cal.Rptr. 722 [long-standing interpretation of city charter provision embodied in city attorney's opinions]; *Napa Valley Educators' Assn., supra*, 194 Cal.App.3d at pp. 251-252, 239 Cal.Rptr. 395 [evidence in the record of the case, including a declaration by official with the State Department of Education, shows long-standing practice of following a certain interpretation of an Education Code provision].)

Two reasons have been advanced for this principle. First, "When an administrative interpretation is of long standing and has remained uniform, it is likely that numerous transactions have been entered into in reliance thereon, and it could be invalidated only at the cost of major readjustments and extensive litigation." (*Whitcomb Hotel, Inc. v. Cal. Emp. Com., supra*, 24 Cal.2d at p. 757, 151 P.2d 233; see also *Nelson v. Dean, supra*, 27 Cal.2d at p. 881, 168 P.2d 16; *Rizzo v. Board of Trustees, supra*, 27 Cal.App.4th at p. 862, 32 Cal.Rptr.2d 892.)

Second, as we stated in *Moore, supra*, 2 Cal.4th at pages 1017-1018, 9 Cal.Rptr.2d 358, 831 P.2d 798, "a presumption that the Legislature is aware of an administrative construction of a statute should be applied if the agency's interpretation of the statutory provisions is of such longstanding duration that the Legislature may be *22 presumed to know of it." As the Court of Appeal has further articulated: " '[L]awmakers are presumed to be aware of long-standing administrative practice and, thus, the reenactment of a provision, or the failure to substantially modify a provision, is a strong indication the administrative practice was consistent with underlying legislative intent.' " (*Rizzo v. Board of Trustees, supra*, 27 Cal.App.4th at p. 862, 32 Cal.Rptr.2d 892; see also *Thornton v. Carlson, supra*, 4 Cal.App.4th at p. 1257, 6 Cal.Rptr.2d 375; *Lute v. Governing Board, supra*, 202 Cal.App.3d at p. 1183, 249 Cal.Rptr. 161; *Napa Valley Educators' Assn. v. Napa Valley Unified School Dist., supra*, 194 Cal.App.3d at p. 252, 239 Cal.Rptr. 395; *Horn v. Swoap, supra*, 41 Cal.App.3d at p. 382, 116 Cal.Rptr. 113.) I note that in the present case, the statute under consideration, Revenue and Taxation Code section 6009.1, has been amended twice since the issuance of Annotation No. 280.0040. (Stats.1965, ch. 1188, § 1, p. 3004; Stats.1980, ch. 546, § 1, p. 1503.)

To state the matter in other terms, courts often recognize the propriety of assigning great weight to administrative interpretations of law either by reference to an explicit or implicit delegation of power by the Legislature to an administrative agency (see *Moore, supra*, 2 Cal.4th at pp. 1013-1014, 9 Cal.Rptr.2d 358, 831 P.2d 798;

Asimow, *supra,* 42 UCLA L.Rev. at pp. 1198-1199), or by noting the agency's specialization and expertise in interpreting the statutes it is ***14 **1044 charged with administering (see *Physicians & Surgeons Laboratories, Inc. v. Department of Health Services* (1992) 6 Cal.App.4th 968, 982, 8 Cal.Rptr.2d 565; Asimow, *supra,* 42 UCLA L.Rev. at pp. 1195-1196). But there is a third reason for paying special heed to an administrative interpretation: the reality that the administrative agency -- by virtue of the necessity of performing its administrative functions -- creates a body of de facto law in the interstices of statutory law, which is relied on by the business community and the general public to order their affairs and, after a sufficient passage of time, is presumptively accepted by the Legislature. In the present case, this third rationale for according great weight to an administrative interpretation is particularly applicable. Thus, judicial deference in this case is owed not so much to the tax annotation per se but to a long-standing practice of enforcement and interpretation by Board staff of which the annotation is evidence.

There are also particularly sound reasons why the principle of giving especially greater weight to long-standing administrative practice should apply when, as in this case, that practice is embodied in a published ruling of the Board's legal counsel. These rulings have a special legal status. As noted, they have been specifically exempted from the APA by section 11342, subdivision (g). The purpose of this exemption was stated by the Franchise Tax Board staff in its enrolled bill report to the Governor immediately prior the enactment of the 1983 amendment containing the exemption, and its statement could be equally well applied to the Board of *23 Equalization. "Department counsel issues a large number of legal rulings in several forms which address specific problems of taxpayers. While these opinions address specific problems, *they are intended to have general application to all taxpayers similarly situated.* This bill provides that such rulings are not regulations, and accordingly, not subject to the [Office of Administrative Law (OAL)] review process. This statutory determination will permit the department to continue to provide a valuable service to taxpayers. If rulings were deemed to be regulations, the service would have to be discontinued because of the administrative burdens created by the OAL review process." (Franchise Tax Bd. staff, Enrolled Bill Rep., Assem. Bill No. 227 (1983-1984 Reg. Sess.) Sept. 16, 1983, p. 3, italics added.)

Thus, the passage of the 1983 amendment to section 11342 was evidently designed for the benefit of taxpayers, so that they would continue to have information about the effective legal positions of the two tax boards. The complexity of tax law and its application to the manifold factual situations of individual taxpayers appears to far outpace an agency's capacity to promulgate and amend formal regulations. Given the importance of certainty in tax law, the Board has long engaged in the practice of issuing legal opinions to individual taxpayers. (See 1 Cal. Taxes (Cont., Ed., Bar Supp.1996) § 2.152, p. 347.) The Legislature recognized such practice, and recognized the propriety of taxpayer reliance on such rulings, in Revenue and Tax Code section 6596. That section provides that if a person's failure to make a timely payment or return "is due to the person's reasonable reliance on written advice from the [B]oard," that person would be relieved of certain payment obligations. The authorization in section 11342 to publish such individual rulings without following APA requirements is a further legislative means of facilitating business planning and increasing taxpayer certainty about tax law. Publication of this information allows taxpayers subject to the sales and use tax to structure their affairs accordingly, and, if they perceive the need, lobby the Board or the Legislature to overturn these legal rulings. As the Attorney General states in his brief, such rulings, while not binding on the agency, "have substantial precedential effect within the agency." There is accordingly no reason to decline to extend to such legal rulings, insofar as they embody the Board's long-standing interpretations of the sales and use tax statutes, the especially great weight accorded to other representations of long-standing administrative practice. [FN4]

FN4. Yamaha and amicus curiae claim that tax annotations are frequently inconsistent, and that the Board legal staff has been lax in purging the Business Taxes Law Guide of outdated annotations. Obviously, to extent that an old annotation does *not* represent the Board's long- standing,

consistent, interpretation, it does not merit the same consideration. (See *Hudgins v. Neiman Marcus Group, Inc.* (1995) 34 Cal.App.4th 1109, 1125, 41 Cal.Rptr.2d 46.) In the present case, Yamaha does not contend that Annotation No. 280.0040 is inconsistent with other annotations, or with the Board's actual practice, since it was issued.

***15 **1045 Tax annotations representing the Board's long-standing position may usefully be contrasted to positions the Board might adopt in the context of *24 litigation. In *Culligan Water Conditioning v. State Bd. of Equalization* (1976) 17 Cal.3d 86, 130 Cal.Rptr. 321, 550 P.2d 593, we found that such litigating positions were not entitled to as great a level of deference as administrative rulings that were "embodied in formal regulation[s] or even interpretive ruling[s] covering the ... industry as a whole...." (*Id.* at p. 92, 130 Cal.Rptr. 321, 550 P.2d 593). [FN5] The tax annotation at issue in this case, although originally addressing an individual taxpayer's query, was published and has represented the Board's categorical position regarding taxation of gifts originating from a California source. The annotation, therefore, being both an interpretive ruling of a general nature, and one of long standing, is deserving of significantly greater weight than if the Board had adopted its position only as part of the present litigation. [FN6]

FN5. I note that some of the *Culligan* court's language may be open to misinterpretation. The Board in that case contended that the proper standard of review was whether its position was "arbitrary, capricious or without rational basis." (17 Cal.3d at p. 92, 130 Cal.Rptr. 321, 550 P.2d 593.) The court disagreed, holding that " '[t]he interpretation of a regulation, like the interpretation of the statute, is, of course, a question of law [citations], and while an administrative agency's interpretation of its own regulation obviously deserves great weight [citations], the ultimate resolution of such legal questions rests with courts.' " (*Id.* at p. 93, 130 Cal.Rptr. 321, 550 P.2d 593.) In expressing its disagreement with the proposition that the Board's litigating position deserves the highest level of deference, the *Culligan* court differentiated such positions from "formal regulation" of a general nature, which, the court agreed, would be overturned only if arbitrary and capricious. (*Id.* at p. 92, 130 Cal.Rptr. 321, 550 P.2d 593.) Perhaps because the *Culligan* court was focused on making a distinction between regulations of a general nature and litigating positions, it did not articulate the two-pronged judicial inquiry into the validity of quasi-legislative regulations as discussed above, nor did it specify that the arbitrary and capricious standard applied only to the *second* prong.

Nonetheless, the *Culligan* court was correct in holding that statutory interpretations contained in formal regulations merit more deference, all other things being equal, than an agency's litigating positions.

FN6. Moreover, although the *Culligan* court referred to "litigating positions of the Board (announced either in tax bulletins or merely as the result of an individual audit)" (*Culligan Water Conditioning v. State Bd. of Equalization, supra*, 17 Cal.3d at p. 93, fn. 4, 130 Cal.Rptr. 321, 550 P.2d 593), it was not implying that all material contained in tax bulletins were "litigating positions." Indeed the *Culligan* court cited *Henry's Restaurants of Pomona, Inc. v. State Bd. of Equalization* (1973) 30 Cal.App.3d 1009, 106 Cal.Rptr. 867, as an example of a case typifying the limited judicial review appropriate for regulations of a general nature. (*Culligan, supra*, at p. 92, 130 Cal.Rptr. 321, 550 P.2d 593.) The court in *Henry's Restaurants* considered the Board's interpretation of a sales tax question issued in the form of a General Sales Tax Bulletin. (30 Cal.App.3d at p. 1014, 106 Cal.Rptr. 867.) The citation to *Henry's Restaurants* shows that the *Culligan* court's reference to "litigating positions of the Board ... announced ... in tax bulletins" was not to legal rulings of a general nature that might be contained in tax bulletins.

It may be argued that regulations formally adopted in compliance with the APA should intrinsically be assigned greater weight than tax annotations, because the former are promulgated only after a notice and comment period, whereas the latter are devised by the Board's legal staff without public input. *25 In the abstract, that argument is not without merit. But even if the statutory interpretations contained in tax annotations are not, *ab initio,* as reliable or worthy of deference as formally adopted regulations, the well-established California case law quoted above demonstrates that such reliability may be earned subsequently. Tax annotations that represent the Board's administrative practices may, if they withstand the test of time, merit a weight that initially may not have been intrinsically warranted. Or in other words, while formal APA adoption is one factor in favor of giving greater weight to an agency construction of a statute, the fact that a rule is of long- standing and the statute it interprets has been reenacted are other such factors.

In sum, as the Attorney General correctly sets forth in his brief, the appropriate standard **1046 of review for Annotation No. 280.0040 ***16 can be stated as follows: (1) the court should exercise its independent judgment to determine whether the Board's legal counsel correctly construed the statute; (2) the Board's construction of the statute is nonetheless entitled to "great weight"; (3) when, as here, the Board is construing a statute it is charged with administering and that statutory interpretation is long-standing and has been acquiesced in by persons interested in the matter, and by the Legislature, it is particularly appropriate to give these interpretations great weight. (*Rizzo v. Board of Trustees, supra,* 27 Cal.App.4th at p. 861, 32 Cal.Rptr.2d 892.) [FN7]

FN7. The majority quote at length from (*Skidmore v. Swift & Co.* (1944) 323 U.S. 134, 65 S.Ct. 161) to describe the proper standard of judicial review of administrative rulings. I note that the United States Supreme Court has at least partly abandoned *Skidmore* 's open-ended formulation in favor of a more bright line one. (See *Chevron v. Natural Resources Defense Council* (1984) 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694.) In any case, I agree with the majority that many of the factors discussed in Justice Jackson's opinion in *Skidmore* are appropriate considerations under the governing California decisions, and that the discussion in *Skidmore* may be a useful guide to the extent it is consistent with the independent judgment/great weight test subsequently developed under California law.

The Court of Appeal in this case, although it stated the standard of review nearly correctly, reflected some of the confusion found in our case law when it suggested that it would defer to the Board's annotation unless it was "arbitrary, capricious or without rational basis." It is therefore appropriate to remand to the Court of Appeal for reconsideration in light of the proper standard of review.

GEORGE, C.J., and WERDEGAR, J., concur.

78 Cal.Rptr.2d 1, 19 Cal.4th 1, 960 P.2d 1031, 98 Cal. Daily Op. Serv. 6683, 98 Daily Journal D.A.R. 9211

END OF DOCUMENT

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Last Updated: 7/25/2002
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Claim Number: 99-TC-13
Issue: Enrollment Fee Collection

Mailing Information: Draft Staff Analysis

Mailing List

Related Matter(s)

00-TC-15 Enrollment Fee Waivers

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EXHIBIT C

STATE OF CALIFORNIA

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(916) 445-8752
HTTP://WWW.CCCCO.EDU

August 4, 2000

Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Enrollment Fee Collection Program, CSM 99-TC-13
Los Rios Community College District, Claimant
Education Code 76300
Chapter 72, Statutes of 1999, et al.
Title 5, California Code of Regulations, Sections 58500-58508

Dear Ms. Higashi:

As an interested state agency, the Chancellor's Office has reviewed the above test claim in light of the following questions addressing key issues before the Commission:

- Do the subject statutes, executive orders, standards and procedures result in a new program or higher level of service within an existing program upon local entities within the meaning of section 6, article XIII B of the California Constitution and section 17514 of the Government Code? If so, are costs associated with the mandate reimbursable?

- Do any of the provisions of Government Code section 17556 preclude the Commission from finding that the provisions of the subject statutes impose a reimbursable state-mandated program upon local entities?

Amidst substantial controversy, AB 1XX (Stats. 1984, ch. 1459, § 1) adding Education Code section 72252 was enacted in 1984 to require community college students to pay an enrollment fee for the first time. AB 1XX represented a compromise between then Governor George Deukmejian and the Legislature on the issue of community college funding. The prior year Governor Deukmejian had cut the community college budget $96.5 million and instructed the Legislature to make up the difference with fees. Instead, the Legislature tried to restore the lost funding. Deukmajian vetoed those efforts and again instructed the Legislature to enact enrollment fees. The stalemate continued through the fall. With reduced funding community colleges were forced to begin laying off staff and cutting courses. The outlook for the next term

was disaster. This funding crisis increased the pressure for a compromise. Educational organizations that had long opposed tuition in community colleges for philosophical reasons agreed to support a compromise funding plan that included restoration of the $96.5 million and enrollment fees. On September 13, 1983, the Board of Governors of the California Community Colleges resolved to accept the imposition of $50 per semester enrollment fees, explaining that they had chosen that which was "perceived as the lesser of two evils given the then current impasse."[1] Negotiations continued between the Governor and Legislative leaders until the AB1XX agreement was reached. The bill was introduced on January 23, 1984, and signed into law by the Governor just three days later.

Education Code section 72252 required community colleges to collect the newly enacted enrollment fees. This requirement was clearly a higher level of service for community colleges. To compensate the community colleges, the statute provided a revenue credit of two percent of the enrollment fees charged. The Legislative Analyst prepared an analysis of AB 1XX dated January 23, 1984, which concluded that there were "[p]otential major costs to the community college districts, not reimbursable."[2] The Legislative Analyst identified two mandates on local community college districts, one of which was the requirement that enrollment fees be collected from students. In that same report, the Legislative Analyst explains that while there was no data available to estimate the costs related to the mandates, "[t]he bill provides no appropriation for these purposes, but contains a self-financing authority disclaimer."[3] It is assumed that the self-financing authority disclaimer noted by the Legislative Analyst's report is a reference to the revenue credit of two percent. If that is an accurate interpretation, the Legislative Analyst concluded that the two percent revenue credit was an insufficient reimbursement for the locally mandated program.

While the amount of the enrollment fee changed several times over the years, the two percent revenue credit for community colleges remained constant. The fee history is as follows:

- Statutes of 1984 – 72252(b) added to charge students enrolled in six or more credit courses $50.00 per semester and students enrolled in less than six units $5.00 per unit.
- Statutes of 1987 – 72252(b) amended to charge $5.00 per unit up to a maximum of $50.00 per semester.
- Statutes of 1992 – 72252(b) amended to charge $10.00 per unit per semester
- Statutes of 1993 – 72252 repealed; new section 76300 added which was substantially similar to repealed section 72252; new section 76300 charged $13.00 per unit
- Statutes of 1995 - On July 1, 1995, Education Code section 76300 was permitted to sunset because the Legislature and the governor failed to agree on reauthorization of the enrollment fee by that date. However, Section 76300 was subsequently reenacted as an urgency

[1] Letter to Honorable Richard Katz from Board of Governors President James M. Tatum, December 1, 1983. (Appendix A)
[2] Legislative Analyst, Analysis of Assembly Bill No. 1XX (Katz) 1983-1984 Second Extraordinary Session, January 23, 1984, p. 1. (Appendix B)
[3] Legislative Analyst, Analysis of Assembly Bill No. 1XX (Katz) 1983-1984 Second Extraordinary Session, January 23, 1984, pp. 11-12. (Appendix B)

measure effective August 3, 1995, by Assembly Bill 825 (Stats. 1995, ch. 308, § 20). The new version of Section 76300 continued the $13 enrollment fee and is identical to the prior version except that there was no longer a sunset provision. Prior to the passage of AB 825, the Chancellor's Office advised that, during the lapse of the enrollment fee statute, districts could continue to collect fees from students who voluntarily agreed to pay the fee so long as students were also advised that they could enroll and defer payment of the fee pending legislative action. Section 47 of AB 825 establishes the retroactive authority for this practice by providing that, "The governing board of a community college district shall charge the fee described in Section 76300 of the Education Code, as added by this act, to a student enrolled in the community college district who registered or enrolled between July 1, 1995, and the date upon which this act becomes operative."

- Statutes of 1999 – 73600 amended to charge $12.00 per unit in FY 98/99 and $11.00 per unit in FY 99/00.

The Chancellor's Office maintains records of the enrollment fee revenues charged by the community college districts. However, the Chancellor's Office does not collect detailed information on expenditures. In Fiscal Year 98/99 Los Rios Community College District collected $6,980,484 in fees pursuant to Education Code section 76300, two percent, or $139,610 of which was a revenue credit. Statewide, the enrollment fees totaled $164,146,576 and the two percent revenue credit totaled $3,282,932 in Fiscal Year 98/99. The Chancellor's Office is available to work cooperatively with the Commission, other state agencies, and interested parties in resolving this claim.

Sincerely,

Patrick J. Lenz
Executive Vice Chancellor

RB:sj
Attachments

cc: Ralph Black

APPENDIX A

DEC 02 1983

BOARD OF GOVERNORS
CALIFORNIA COMMUNITY COLLEGES
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Sheila Swanson
Beverly Benedict Thomas
Jane M. Tolmach
Al Villa

Sec'd

December 1, 1983

Honorable Richard Katz
State Capitol
Room 3146
Sacramento, CA 95814

Dear Assemblyman Katz:

In all of the recent discussion and debate regarding community college finance, there has developed some apparent confusion about the position taken by the California Community Colleges Board of Governors regarding the imposition of tuition. This letter is to restate that position in order to avoid future confusion and misunderstanding.

On September 13, 1983, the Board of Governors, in light of the then current crisis facing the community colleges, resolved to accept the imposition of tuition as a part of a compromise funding plan. The Board of Governors determined that greater damage would be done to the quality of and access to the community colleges by virtue of the continuing budget impasse than would occur as a result of the imposition of tuition in the amount of $50 a semester.

In essence, the Board chose what it perceived as the lesser of two evils given the then current impasse.

The Board's acceptance of the compromise funding plan was also conditioned upon several other points: The 1982-83 base must be fully restored with general funds; the Governor must hold to his promise not to increase fees during his first term; adequate student financial aid must be provided; and districts with heavy enrollment losses should be protected against future drastic reductions in state support. In addition, new student fees should not be levied until the spring (the Governor had proposed fees for the full year).

I trust this clarifies the position of the Board of Governors. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

James M. Tatum

James M. Tatum
President

APPENDIX B

ANALYSIS OF ASSEMBLY BILL NO. 1XX (Katz)

1983-84 Second Extraordinary Session

Fiscal Effect:

Cost:

1. $15 million General Fund cost in 1984-85, 1985-86, and 1986-87 with $7.5 million cost in 1987-88 for student financial aid.
2. $100,000 General Fund cost in 1984-85 for fee study.
3. Major one-time loss of savings in General Fund apportionments in 1984-85.
4. Minor administrative costs to community college Chancellor's office.
5. Mandated Local Program. Potential major costs to community college districts, not reimbursable.

Revenue:

1. One-time $28 million transfer from Capital Outlay Fund for Public Higher Education to General Fund in 1983-84.
2. In 1984-85, general fee increase of $74.4 million offset by a loss of $19.7 million in permissive fees for a net fee increase of $54.7 million. Corresponding net fee increase in subsequent years through January 1, 1988.

Analysis:

This bill makes numerous changes in the laws governing community college finances. The major changes affect (1) student fees, (2) student financial aid, (3) sources of funding the colleges, and (4) a delay in apportionment adjustments for loss of ADA.

1. Student Fee Provisions

A. General Fee Requirement (Section 7). This bill requires the governing board of each of California's 70 community college districts, commencing August 1, 1984, to charge students enrolled in credit courses a general fee each semester as shown below:

Credit Units	Fee Per Semester
Six units or more	$50
Less than six units	$5 per unit

1. Fee Exemptions. This general fee shall not apply to students who, at the time of enrollment are recipients of benefits under the AFDC, the SSI/SSP, or the General Assistance programs.

2. Deferral of Fee. Districts shall allow a student to defer payment of the general fee for up to two months if the student has applied for financial aid.

3. Fee Revenue. For the purposes of computing apportionments to the community college districts, 98 percent of the revenues received from the general fee shall be deemed to be local property tax revenue, consequently offsetting state General Fund support. Districts retain the remaining 2 percent.

4. Noncompliance Penalty. The Chancellor shall reduce apportionments by up to 10 percent to any district which does not collect the general fee.

5. Sunset. The general fee is in effect until January 1, 1988 at which time it is repealed by provisions in this bill.

6. Fee Limit. There is no provision for the general fee specified in this bill to be increased during its term of authorization.

Fiscal Effect. Our analysis indicates that major revenues would accrue to the community college districts under the provisions of the general fee authorized by this bill. A precise estimate of this revenue is not possible because:

- the number of students who are AFDC, SSI/SSP, or General Assistance recipients is unknown;
- the number of units taken by part-time students is unknown; and
- the fee's effect on student attendance is unknown.

While a precise estimate is not possible, we can illustrate what fee revenues might be if (a) credit students in 1984-85 followed the same distribution pattern of full-time to part-time as they did in 1982-83, (b) 5 percent of the students in each category were exempted from the fee, (c) part-time students took an average of three units (one course) per semester, and (d) enrollment in 1984-85 were greater than in 1983-84 but still 5 percent less than the 1982-83 level.

Under these assumptions, the general fee revenue in 1984-85 would be $74.4 million as shown in Table 1.

Table 1

Estimated 1984-85 Fee Revenues[a]
$50/$5

	Enrollment		Annual Fee		Totals
Over six units	601,761	x	$100	=	$60,176,100
Under six (average three)	474,850	x	$30	=	14,245,500
Total					$74,421,600

a. Assumes that 1984-85 total enrollment would be 5 percent less than 1982-83 enrollment and that 5 percent of 1984-85 enrollment would be exempt from fees.

B. Suspension of Currently Authorized Permissive Fees. This bill suspends (subject to certain conditions), until January 1, 1988, the current authority for community college districts to levy fees for:

- health services
- eye protection devices,
- field trips in California,
- field trip insurance,
- instructional materials,
- materials for adult classes,
- late application,
- adding courses,
- physical education use of nondistrict facilities, and
- transportation for adults.

All other permissive fees are continued. This bill reauthorizes the above listed fees on January 1, 1988.

1. Conditions. The following conditions are contained in the bill:

- Health. Districts must continue to provide their 1983-84 level of health service, if any, in 1984-85 and thereafter.

- Parking. While the current parking fee is not suspended by the bill, the bill places a limit on the fee in that it may not exceed the actual cost of providing parking services as defined.

Fiscal Effect. Based on the latest available data, community college districts are collecting approximately $19.6 million in 1983-84 from the permissive fees terminated by this bill as shown in Table 2

Table 2

Permissive Fees
Suspended by AB 1XX

Fee		Estimated 1983-84 Revenues	Bill Section
1.	Health fee (with maintenance of effort)	$7,057,278	4.5 and 4.7
2.	Eye protection devices	2,315	2.0
3.	Field trips in California	185,430	8.0
4.	Field trip insurance	108	9.0
5.	Instructional materials	11,856,795	10.5
6.	Material fee for adult classes	261,560	11.5
7.	Late application	121,285	6.5
8.	Physical education (use of nondistrict facilities)	15,856	3.5
9.	Add fee	160,500	5.7
10.	Transportation for adults	13,000	12.5
	Total	$19,674,127	

Source: Association of Community College Administrators.

2. Student Financial Aid (Section 19)

This bill appropriates $52.5 million from the General Fund to the Board of Governors of the California Community Colleges for the provision of (1) financial aid directly to low-income students and (2) reimbursements to districts for fee revenue lost due to the exemptions (discussed above) in accordance with the following schedule:

Fiscal Year	Amount
1984-85	$15,000,000
1985-86	15,000,000
1986-87	15,000,000
1987-88 (half year)	7,500,000
Total	$52,500,000

The Chancellor of the CCC shall provide for the allocation of these funds in accordance with certain guidelines and submit a plan of allocation to the California Postsecondary Education Commission and the Legislature by June 15, 1984.

If the appropriation exceeds the determined need for financial aid, the excess shall revert to the General Fund. If the appropriation is less than the determined need for financial aid, the Chancellor shall certify to the Department of Finance the amount of the additional funds which are required. Upon receipt of this certification, the Director of Finance shall take any administrative action available to him or her to transfer the additional funds, pursuant to the Budget Act or otherwise.

The bill does not specify how the "determination of need" is to be made.

Fiscal Effect. While the bill makes specific appropriations for financial aid as shown above, the exact cost of this aid will depend on the determination of need and subsequent action by the Director of Finance.

3. Revenue From the Capital Outlay Fund for Public Higher Education (COFPHE) (Section 20)

This bill transfers, from the unencumbered balance of the COFPHE, $28 million to the state General Fund operative on the effective date of this act.

Fiscal Effect. The Governor's 1984-85 Budget estimates that the surplus in the COFPHE as of June 30, 1984, will be $29.6 million. The budget further shows that $95.4 million will be added to this for a 1984-85 COFPHE balance of $125 million. This $125 million is distributed as follows:

- $110.4 million for higher education capital outlay expenditure, and
- $14.6 million for a reserve for economic uncertainty.

Consequently, the effect of this $28 million transfer in 1983-84 means that additional tidelands oil revenue will have to be identified in order to meet the $125 million COFPHE balance required by current law.

4. Provision For Loss of ADA (Section 15)

This bill modifies the current provision of law relating to the reduction of apportionments caused by a decline in a district's ADA.

Under current law, if a district loses ADA in the current fiscal year below the level authorized for the preceding fiscal year, the Chancellor shall reduce the base revenues in the subsequent year by a specified incremental cost rate. Put simply, if a district's ADA in 1983-84 is below ADA in 1982-83, an adjustment will be made in the district's 1984-85 revenue.

This bill prohibits this adjustment for the 1984-85 fiscal year and further provides that an adjustment will be made in 1985-86 if a district's 1984-85 ADA is below its 1982-83 level. In effect, the bill allows districts one year to regain their 1982-83 ADA levels.

Fiscal Effect. It is currently estimated that in 1983-84 enrollment in community college districts will be 8 percent below their 1982-83 level. Since ADA will not be reported until February, there is no accurate information at this time as to what impact this enrollment loss will have on the calculation of ADA loss, and consequently, the calculation of revenue loss (under current law) in 1984-85. We estimate that for every 1 percent loss of ADA statewide, the state would reduce apportionments by approximately $8.8 million.

5. Studies (Section 17)

This bill requires the Chancellor to conduct two studies--one on the impact of the general mandatory fee and one on noncredit courses.

A. Fee Study. The Chancellor shall conduct a study, as specified, of the impact of the mandatory fee required by this measure upon the community colleges. A progress report shall be made before January 1, 1987 and a final report shall be made by July 1, 1987. The CPEC shall submit written comments and recommendations to the Legislature regarding these reports.

B. Noncredit Course Study. The Chancellor shall also conduct a study, as specified, on the level of noncredit courses, enrollments, and ADA offered at the colleges. This report is due March 15, 1985.

Fiscal Effect. The Chancellor's office will incur costs related to these studies. The bill appropriates $100,000 for the fee study. There is no appropriation for the noncredit study, this would have to be done within existing resources.

Mandated Local Program

As noted, the bill creates several mandates on local community college districts. These include:

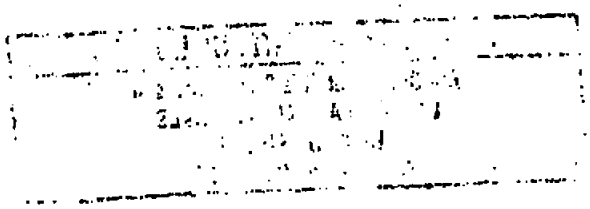
- the mandate that a general fee be assessed students.
- the mandate that health services be maintained at their 1983-84 program level.

There is no data available to estimate total costs related to these mandates.

Pursuant to Article XIII B of the California Constitution, the state must reimburse mandated local costs unless properly disclaimed.

The bill provides no appropriation for these purposes, but contains a self-financing authority disclaimer.

30



BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE

1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550
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(916) 327-0973

October 13, 2000
Sent by Fax and First Class Mail

Ms. Paula Higashi, Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814

RE: Test Claims of Los Rios Community College District
Test Claim No. 99-TC-13, "Enrollment Fee Collection" [Stats. 1984xx, ch. 1, et al.]

Dear Ms. Higashi:

The following comments are submitted on behalf of the Department of Finance (DOF) with respect to Test Claim No. 99-TC-13, "Enrollment Fee Collection," Stats. 1984xx, ch. 1, et al.

For the most part, DOF agrees that the Test Claim statutes constitute a new program or higher level of service because Community College Districts had not previously been required to collect enrollment fees from students. However, it is the position of DOF that the Test Claim should be denied because the statutory scheme sets up a mechanism whereby Community College Districts are automatically provided with funding for their costs of administering the program. (Educ. Code § 76300(c)[for purposes of computing apportionments to community college districts, the Chancellor shall subtract 98% of the revenues received by districts from enrollment fees from the total revenue owed to each district.].) Since the collection of enrollment fees is entwined with the entire admission process it would be extremely difficult, if not impossible, to accurately isolate the specific tasks involved with collecting enrollment fees. Consequently, DOF submits that the Legislature has validly determined that two percent of the revenue from fees is an amount to adequately compensate Community College Districts for their tasks in administering the Test Claim statutes.

DOF further notes that costs associated with fee waivers should not be included in this claim because a statutory compensation mechanism currently exists for those costs. Education Code section 76300(i)(2)[1] allocates two percent of the fees waived under subdivisions

[1]Education Code section 76300(i)(2) provides, as follows: From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g)

(continued...)

(g)[students who are receiving AFDC, SSI or other general assistance benefits], and (h)[dependent, or surviving spouse of member of California National Guard who is killed or permanently disabled in the line of duty] of that statute. Consequently, the costs associated with fee waivers should not be included in this Test Claim.

Lastly, DOF submits that the costs for processing refunds do not constitute state mandated costs because Community College districts have pre-existing regulatory authority to charge up to $10.00 per semester or quarter for refunding a student's enrollment fees. 5 Cal. Code Regs. § 58508, subdivisions (a), and (d), provide that governing boards shall refund enrollment fee when a student makes a request within a specified time and, when the district does refund fees, it "may retain once each semester or quarter an amount not to exceed $10.00." Therefore, the claimant has the "authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service" (Gov. Code § 17556(d)) and, consequently, the Commission cannot find costs mandated by the State with respect to the claimant's costs of processing fee refunds.

Thank you for your time and consideration to this matter.

Sincerely,

LESLIE R. LOPEZ
Deputy Attorney General

For BILL LOCKYER
Attorney General

cc: by Mail: per Commission's Mailing List
by fax to: Keith B. Petersen, SixTen and Associates
Louise Davatz, Los Rios Community College Dist.

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[1](...continued)
and (h). From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 7 percent of the fee waivers provided pursuant to subdivisions (g) and (h) for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992-93 fiscal year.

DEPARTMENT OF FINANCE

GRAY DAVIS, GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

September 25, 2001

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of June 7, 2001, the Department of Finance has reviewed the test claim submitted by the Glendale Community College District (Claimant) asking the Commission to determine whether specified costs incurred under Education Code Section 76300 and California Code of Regulations, Title No. 5, Section Number(s) 58600 - 58630, are reimbursable state mandated costs (Claim No. CSM-00-TC-15 "Enrollment Fee Waivers").

Claimant Allegations and Department of Finance Findings:

Claimant is seeking reimbursement for activities which allegedly are state-mandated local programs. The Department of Finance's findings follow each claimed activity or group of activities.

A. Determine and classify those students who are eligible for a Board of Governor's grant. (Reference California Code of Regulations, Title 5, Section 58612 and 58620).

The Department of Finance asserts that this activity does not constitute a state-mandated local program because:

1) This section does not require a higher level of service. Much of the infrastructure for determining whether a student is eligible to have fees waived already existed prior to 1975.

For example, Education Code Section 72246 (now Education Code Section 76355) required the governing board of a district maintaining a community college to adopt rules and regulations that either exempt low-income students from any health service fee or provide for the payment of the fee from other sources. Additionally, Education Code Section 69648 required the community colleges to adopt rules and regulations to, among other activities, identify students who would be eligible for extended opportunity programs and services (EOPS) based on socioeconomic disadvantages. Both of these sections existed when enrollment fee waivers were implemented in 1984 and exist today. Before the Education Code rewrite of 1976 (Chapter 1010, Statutes of 1976), Education Code Section 72246 existed as Section 25425, thus showing a mechanism for identifying low-income students existed prior to January 1, 1975. Therefore, Finance concludes that California Code of Regulations Section 58620 merely clarifies the process for identifying low-income students and does not constitute a higher level of service.

2) Funding is provided to cover costs associated with determining eligibility for fee waivers.

Finance notes that the Claimants estimated cost appears to be overstated and is likely covered by revenue received for Board of Governor's fee waiver administration.

The Claimant indicates that every enrollment requires determination of fee waiver eligibility. This is not accurate. California Code of Regulations Section 58612 (a) states that Board of Governor's grants are only available to those students who are eligible and **apply** for assistance. Education Code Section 76300 (i) also states legislative intent to provide fee waivers for every student who **demonstrates** eligibility. Many students (possibly up to half in a given district) do not apply for assistance because they know they would not meet the eligibility criteria, they are unaware of the program until after the application deadline set by community colleges pursuant to Section 58612 (c), or a myriad other reasons. Furthermore, Section 58612 (b) permits Board of Governor's grant eligibility to remain for the full academic year. California Community Colleges (CCC) states that 87 percent of fall students also take spring courses. Presumably, the persistence between summer and fall is at least 50 percent. As a result, Finance calculates that Glendale Community College District would make 13,439 fee waiver determinations, roughly 36 percent of the 37,748 determinations asserted by the Claimant. Appendix A illustrates how Finance arrived at this number.

Furthermore, the Claimant states that each fee waiver eligibility determination requires 15 minutes of analysis by a Financial Aid Assistant Technician and 10 minutes of analysis by a Financial Aid Technician. The Claimant indicates that 15,700 person hours are spent on determining financial aid eligibility. However, the Claimant does not state what is performed in this analysis. Finance notes that both Education Code Section 76300(i) and California Code of Regulations Section 58620 (b)(1) and (b)(2) require that a student **demonstrate** eligibility, either through documentation of taxable income or proof that the student is a recipient of benefits under the programs identified in Education Code Section 76300(g) and (h).

Pursuant to section 58620, a California resident gains eligibility for Board of Governor's grants if he or she demonstrates just one of the following criteria:

1) A total income in the prior year that was less than or equal to 150 percent of the US Department of Health and Human Service Poverty Guidelines.
2) An Estimated Family Contribution equal or less than zero.
3) Receipt of benefits under the Temporary Assistance to Needy Families (TANF) program.
4) Receipt of Supplemental Security Income.
5) Receipt of General Assistance.
6) A dependent or surviving spouse of any member of the California National Guard who was killed in the line of duty or died of a disability or became permanently disabled as a result of an event that occurred while in the active service to the state.
7) Eligibility for other Federal or State financial aid.

In fact, any student who receives benefit under the programs listed in criteria 3, 4, or 5, would qualify under criteria 1. Since students only need to demonstrate that they meet one of seven different criteria, Finance asserts that the average time to make a fee waiver determination is overstated by the Claimant.

Based on these conclusions, Finance believes that the total cost for fee waiver determination is less the $70,000. According to 1999-00 CCC apportionment data for the Second Principal Apportionment, Glendale Community College District received $66,999 for Student Financial Aid Administration, specifically determination of financial need and delivery of student financial aid services. Additionally, the district received $22,888 for Fee Waiver Administration. Both of these allocations to the districts are authorized by Education Code Section 76300 (i). The Department of Finance notes that the formula for Board of Governor's fee waiver administration changed starting in 2000-01. Under this change, Glendale receives an additional $12,182 for Student Financial Aid Administration to serve the same workload. In fact, CCC apportionment reports indicate that Glendale received $86,609 for Student Financial Aid Administration in 2000-01. Thus, Finance believes that eligibility determination is fully funded and not a reimbursable state mandate.

B. Determine if a student is a recipient of benefits under the Aid to Families with Dependent Children program, and therefore eligible for a fee waiver (Reference Education Code Section 76300(g)).
C. Determine if a student is a recipient of benefits under the Supplemental Security Income/State Supplementary program, and therefore eligible for a fee waiver (Reference Education Code Section 76300(g)).
D. Determine, if a student is a beneficiary under a general assistance program, and therefore eligible for a fee waiver (Reference Education Code Section 76300(g)).
E. Determine at the time of enrollment if a student demonstrates financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid, and therefore be eligible for a fee waiver (Reference Education Code Section 76300(g)).
F. Determine if a student is the dependent or surviving spouse of any member of the California National Guard who was killed in the line of duty or died of a disability or became permanently disabled as a result of an event that occurred while in the active service to the state, thus making that student eligible for a fee waiver (Reference Education Code Section 76300(h)).

1) These activities do not constitute a higher level of service and are therefore not reimbursable state mandates.

Finance notes that all five of these activities are alternative methods for determining student eligibility for Board of Governor's Grants rather than additional requirements. As students can and do receive Board of Governor's fee waivers without achieving any of the criteria listed in activities B through F, by meeting income limits, an eligibility determination is not necessarily contingent on the performance of any of these activities and they should not be considered higher levels of service. Furthermore, the analysis of Activity A describes California Code Section 58620, which focuses on every activity, requirement, and criteria for determining Board of Governor's eligibility, including activities B through F. Therefore, any costs identified with activity A would be inclusive of these activities.

G. Enter the enrollment fee waiver information into the district cashier system and data processing and accounting systems, and process all agency billings for fee waiver recipients.
H. Separately document and account for the funds allocated for the collection of enrollment fees and financial assistance in order to enable an independent determination regarding the accuracy of the Districts certification of need for financial assistance (Reference California Code of Regulations, Title 5, Section 58630).

I. Prepare and submit reports regarding student enrollment fees waived as required. (Reference California Code of Regulations Title 5, Section 58611).

1) Finance notes that these three activities (G, H, and I) should not be included in this test claim because they are already included in Test Claim No. 99-TC-13, Enrollment Fee Collection.
2) In activity H, the Claimant seeks reimbursement to document and account for funds allocated for the collection of enrollment fees pursuant to Section 58630. However, this section only refers to the identification and documentation of financial assistance, not enrollment fee collection. Therefore, any attempt to claim reimbursement for the accounting and documentation of enrollment fees, pursuant to Section 58630, should be denied.
3) If the COSM determines that these activities should remain in this claim and removed from 99-TC-13, Finance still asserts that activity is not a state reimbursable mandate as it receives funding from both the 2 percent funds for fee waiver administration and the 7 percent fund for Student Financial Aid Administration. In 2000-01, these two programs provided nearly $110,000 to Glendale Community College District. This amount is several thousand greater than the amount of funds we believe are necessary to determine eligibility (based on the methodology proposed in this response) and to input the data. We further note that the estimate on the cost to input data may be overstated by six percent or more if the salary and benefits of a Financial Aid Assistant follow the same pattern as that of a Financial Aid Assistant Technician. As all activities are fully compensated by funds provided to the district and fees levied, we recommend denial of this claim.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your June 7, 2001, letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact James A. Foreman, Principal Program Budget Analyst at (916) 445-0328 or Jim Lombard, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Randal H. Baker
Program Budget Manager

Attachment

Attachment A

DECLARATION OF JAMES A. FOREMAN
DEPARTMENT OF FINANCE
CLAIM NO. CSM-00-TC-15

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

2. We concur that the Education Code Section 76300 and California Code of Regulations, Title No. 5, Section Number(s) 58600 - 58630, relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

Sept. 21, 2007
at Sacramento, CA

James A. Foreman
James A. Foreman

PROOF OF SERVICE

Test Claim Name: "Enrollment Fee Waivers"
Test Claim Number: CSM-00-TC-15

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7 Floor, Sacramento, CA 95814.

On September 21, 2001, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: Glenn Haas
3301 C Street, Room 500
Sacramento, CA 95816

B-29
Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

Glendale Community College District
Attention: Lawrence Serot, Vice President
1500 N. Verdugo Road
Glendale, CA 91208

B-08
State Controller's Office
Division of Audits
Attention: Jim Spano
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Sixten & Associates
Attention: Keith Peterson, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Spector, Middleton, Young & Minney, LLP
Attention: Paul Minney
7 Park Center Drive
Sacramento, CA 95825

G-01
California Community Colleges
Attention: Patrick Ryan
1102 Q Street, Suite 300
Sacramento, CA 95814-6549

Education Mandated Cost Network
Attention: Dr. Carol Berg
1121 L Street, Suite 1060
Sacramento, CA 95814

Reynolds Consulting Group, Inc.
Attention: Sandy Reynolds, President
P.O. Box 987
Sun City, CA 92586

Mandate Resource Services
Attention: Harmeet Barkschat
8254 Heath Peak Place
Antelope, CA 95843

Mandated Cost Systems, Inc.
Attention: Steve Smith, CEO
2275 Watt Avenue, Suite C
Sacramento, CA 95825

E-08
Mr. Gerry Shelton
Department of Education
School Business Services
560 J Street, Suite 150
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 21, 2001 at Sacramento, California.

Jennifer Nelson

DEPARTMENT OF FINANCE
GRAY DAVIS, GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

August 30, 2002

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of July 5, 2002, the Department of Finance has reviewed the draft staff analysis of Claim No. CSM 99-TC-13, titled "Enrollment Fee Collection," submitted by the Los Rios Community College District. Based on our review, we concur with the draft staff analysis finding that the preparation and submittal of reports regarding student enrollment fees collected and waived is not a state reimbursable mandated activity. We do not concur with the draft staff analysis finding of state-reimbursable mandated costs for all students except for nonresident and special part-time students for the following activities:

A) Determining the number of credit courses for each student subject to the student enrollment fees (Education Code (EC) §76300(a); California Code of Regulations (CCR), Title V §58500).

B)
(1) Calculating and collecting the student enrollment fee for each nonexempt student enrolled (EC §76300(b,c); CCR §§58500-58503).
(2) Providing a waiver of student enrollment fees for exempt students (EC §76300(e,g,h))

C) Calculating, collecting, waiving, or refunding student enrollment fees due to subsequent time program changes or withdrawal from school (EC §76300 (e,g,h); CCR §58507-58508)).

D) Processing all agency billings for students whose student enrollment fees are waived (EC §76300(e,g,h)).

As shown in our analysis, it appears that Activity B (1) is the only state-mandated activity within the scope of this test claim. Nevertheless, we believe that this activity is not reimbursable as sufficient funding is available from the fees collected and the others reasons discussed below.

For the purpose of this analysis, we have split the second activity deemed a reimbursable state-mandated program in the CSM draft analysis into two parts, B1 and B2. We note that Activities B2 and C have significant overlap with test claim No. CSM 00-TC-15, titled "Enrollment Fee Waivers," and Activity D is also claimed as a reimbursable state mandated activity in CSM 00-TC-15. While we are responding to these allegations as they relate to this

claim, we request that tasks related to waiving enrollment fees be moved from this mandate to CSM 00-TC-15, pursuant to the authority provided to the executive director of the Commission on State Mandates in Section 1183.06 of the California Code of Regulations, Title II. Both test claims allege costs arising from many of the same statutes and such a consolidation would ensure the complete and fair consideration of all alleged mandated costs arising from these statutes. Alternatively, we request that the two test claims be combined for the same reasons and under the same authority.

Activities A, B(2), C and D do not incur cost mandated by the state as defined in Government Code Section 17514

The Draft Staff Analysis states that Government Code §17514 defines "costs mandated by the state" as "any increased costs which a local agency or school district is required to incur...as a result of any statute...which mandates a new program or higher level of service." Thus, any activity that does not meet the criteria in §17514 is not eligible for reimbursement.

Activity A: The claimant alleges that the community college districts are required to determine the number of credit courses for each student subject to the student enrollment fees (Activity A). We do not disagree with the claim that the calculation of credit courses is necessary to determine the enrollment fee. However, we assert that community college districts were already required to determine the credit course load for every student, regardless of fee waiver status, prior to the August 1, 1984 effective date of the enrollment fee requirement pursuant to (Chapter 1, Statutes of 1984). Such activities that also require a procedure to calculate the number of credit units attempted by each community college student include, but are not limited to, all of the following:

- EC §69533; determine the proper level of Cal Grant awards (Statutes of 1976, Chapter 1010).
- EC §68000 et al; determine whether a student meets the continuous attendance requirements necessary to establish residency (Statutes of 1976, Chapter 1010).
- CCR §55802, 55803, 55806, determine the number of credit units passed in order to meet the minimum requirements for an Associate Degree (effective 8-12-83).
- CCR §59023(d), maintain records on the grades and number of credits towards graduation (Effective 11-7-76).
- Determine level of Federal Pell Grant awards (established as the Basic Educational Opportunity Grant Program in 1974).

We note that activities associated with Statutes of 1976, Chapter 1010, the reorganization of the Education Code, were likely in effect well before 1976. Regardless, this list shows that community college districts were required to calculate credit load well before the establishment of required enrollment fees. We also note that several funded programs established after 1984, but before the eligibility period of reimbursement (July 1, 1998) require the calculation of credit units for each student. Activities include, but are not limited to, providing effectiveness data for the matriculation data base (EC §78214) and using program improvement funds to develop articulated programs that lead to meeting the requirements of transfer—such as the completion of a minimum 56 credit units—to the University of California (UC) and California State University (CSU) (EC §84755(b)(1)).

Whether for student records, matriculation, or to meet federal requirements, the CCC has been required to calculate credit course load for decades. Because the calculation of per student credit load is required for so many purposes in addition to the calculation of enrollment fees, we

assert that Activity A is neither a new activity nor a higher level of service solely associated with the creation of community college enrollment fees. Thus, Activity A should not be eligible for reimbursement.

Activity B2: On page 15 of the test claim, the claimant indicates, "This test claim does not seek reimbursement for the administrative process of determining a student's eligibility for a Board of Governor's Grant or other delivery of student financial aid services." We further note that these activities are the subject of the Enrollment Fee Waivers test claim, CSM 00-TC-15. This portion of the test claim is solely focused on the actual transaction of providing a fee waiver to eligible students. We assert that Activity B2 is not a reimbursable state-mandated activity, but rather the preclusion of participation in the new program of collecting enrollment fees.

Finance notes that tuition grants provided to eligible students at UC or CSU institutions do require the actual transfer of funds to the student and repayment to the university. Thus, there is a cost associated to the provision of UC or CSU tuition grants. However, the CCC institutions do not provide cash grants, but rather waive fees for eligible students (EC §76300(e,g,h)). We note that the CCC Chancellor's Office in the Board of Governor's Fee Waiver Program Manual for 2001/2002 (see attachment), which interprets and clarifies existing law states in Section 7.3, "There are no allocations for the actual student fee waivers. The waivers are simply a transaction in which no money is received." Upon proof of eligibility for a waiver, the community colleges neither provide anything to, nor collect anything from, the student. In other words, a fee waiver means that a college is enjoined from performing the mandated activity of assessing and collecting student fees. Since fee waivers prohibit colleges from participation in the new program of enrollment fees, for this particular test claim, Activity B2 is not a state-mandated activity.

Activity C: The Commission's Draft Staff Analysis states that in order for a statute to impose a reimbursable state mandated program under article XIII B, Section 6 of the California Constitution and Government Code section 17514, the statutory language must mandate or require an activity or task on local governmental agencies. If the statutory language does not mandate or require local governments to perform a task, then compliance with the test claim statute is within the discretion of the local entity and a reimbursable state mandated program does not exist. Finance notes that Activity C focuses on CCR §55807 and CCR §55808. CCR §55807 states that a community college district is authorized, but not required, to allow a student to add or drop courses during a term pursuant to local district policy. CCR §55808 requires the district to refund the enrollment fee to the student if program changes occur within the first two weeks of a regular term or 10 percent of short-term course.

Because permission to add or drop courses is at the discretion of the local community college district, Finance asserts that the requirements of Activity C are operative only if a local district *chooses* to allow program changes within the first two weeks (or 10%) of a term. Therefore, Finance finds that any costs associated with refunds due to program changes in Activity C do not meet the requirements of Government Code §17514 for finding state-mandated reimbursable costs.

Activity D: Finance cannot find any reference, in law or regulations, requiring agency billings for processing student fee waivers. We assert that agency billings are not even necessary in order to comply with EC §76300 as they occur when a third party (such as the military, or a private company) pays a student's tuition. In a third party payment, the college, or more often the student, must bill the third party in order to complete the financial transaction. In the case of a fee waiver, as noted earlier, tuition is not charged by the college to qualifying students,

thereby precluding the need for an agency billing for that student. Thus, Activity D is not a state reimbursable mandated activity.

EC §70902(b(9)) provides community colleges with sufficient authority to charge fees to offset the costs associated with this test claim.

Government Code §17556 (d) provides that the Commission on State Mandates shall not find a reimbursable mandate in a statute or executive order if the affected local agencies have the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program in the statute or executive order. In addition to the fee offsets identified in the Draft Staff analysis, Finance notes other sources of revenue to cover costs associated with any new programs or higher level of service identified in this claim. Finance notes that, EC §70902(b(9)), provides broad authority to the governing board of each community college district to: "Establish student fees as it is required to establish by law, and, in its discretion, fees as it is authorized to establish by law." We note that Contra Costa College, for example, uses this broad authority to charge non-exempt students one dollar per term for the processing of registration materials, including billing statements. Thus, even if Activities B1, B2 and D were still determined to be a new program or higher level of service, it would not be a reimbursable state-mandated activity.

We also note that many districts charge non-exempt students a fee for telephone registration. Thus, districts have used the authority provided in EC §70902(b(9)) to charge a fee to cover costs incurred in procuring required student information, including credit course load, necessary to operate the college and meet the requirements of CCR §59023(d). As a result, even if Activity A was still determined to be a new program or higher level of service, it would not be a reimbursable state-mandated activity as colleges have the ability to charge fees.

While college districts that charge these registration and processing fees typically limit the fee to no more than two dollars per term, nothing in law or regulations precludes the district from charging a larger fee in an attempt to receive more funds for the associated purpose, as long as these charges do not apply to student eligible for a fee waiver.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your July 5, 2002, letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact James A. Foreman, Principal Program Budget Analyst at (916) 445-0328 or Keith Gmeinder, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Jeannie Oropeza

Jeannie Oropeza
Program Budget Manager

Attachment

Attachment A

DECLARATION OF JAMES A. FOREMAN
DEPARTMENT OF FINANCE
CLAIM NO. CSM 99-TC-13

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

2. Attachment B contains the table of contents and section 7 of the Board of Governor's Fee Waiver Program Manual for 2001/2002 developed by the Chancellor's Office of the California Community Colleges

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

Aug. 30, 2002
at Sacramento, CA

James A. Foreman

PROOF OF SERVICE

Test Claim Name: "Enrollment Fee Collection"
Test Claim Number: CSM 99-TC-13

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, CA 95814.

On August 30, 2002, I served the attached request of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

B-29
Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

San Diego Unified School District
Attention: Arthur Palkowitz
4100 Normal Street, Room 3159
San Diego, CA 92103-8363

Centration, Inc.
Attention: Andy Nichols
12150 Tributary Point Drive, Suite 140
Gold River, CA 95670

Mandated Cost Systems
Attention: Steve Smith
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

E-8
Department of Education
Attention: Gerry Shelton
School Fiscal Services
560 J Street, Suite 150
Sacramento, CA 95814

B-8
State Controller's Office
Division of Audits
Attention: Jim Spano
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Spector, Middleton, Young & Minney, LLP
Attention: Paul Minney
7 Park Center Drive
Sacramento CA 95825

SixTen & Associates
Attention: Keith B. Petersen, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

California Community Colleges
Attention: Patrick Ryan
1102 Q Street, Suite 300
Sacramento, CA 95814-6549

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 30, 2002, at Sacramento, California.

Jennifer Nelson

DEPARTMENT OF FINANCE
GRAY DAVIS, GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

February 25, 2003

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

The Department of Finance has reviewed the consolidated draft staff analysis of Test Claims CSM 99-TC-13, titled "Enrollment Fee Collection," and CSM 00-TC-15, titled "Enrollment Fee Waivers." Based on our review, we concur with the draft staff analysis that the following are not state reimbursable mandated activities:

- Determining the number of credit courses for each student subject to the student enrollment fees (Education Code (EC) §76300(a); California Code of Regulations (CCR), Title 5 §58500).
- Preparing and submitting reports regarding student enrollment fees collected.

We also concur that calculating and collecting the student enrollment fee for each student who is not exempt from paying enrollments fees is a state-mandated activity within the scope of this test claim.

We do not concur with the draft staff analysis finding of state-reimbursable mandated costs for all students (with the exception of nonresidents and special part-time students) for the following activities:

1) Determining eligibility for a fee waiver for each student applicant by determining which group to which the student belongs (EC §76300(e), (g), (h)).
2) Determining eligibility for a Board of Governor's Grant (BOGG) (CCR Title 5 §§58612, 58613 & 58620).
3) The following activities associated with the California Community Colleges Chancellor's Office, Board of Governors Fee Waiver Program and Special Programs, 2000-2001 Program Manual:
   a) Documenting public benefits for recipients of TANF, SSI/SSP, and General Assistance (Section 4.2.2)
   b) Documenting those eligible for BOGGs under income standards (Section 4.3.4); and
   c) Training for new directors/managers/coordinators/officers in charge of the financial aid office (Section 11.3)

4) Identifying funding for financial assistance in separate accounts, documenting all financial assistance provided on behalf of students and procedures for the retention of support documentation (CCR, Title 5 §58630).

We continue to dispute the claim that issuing refunds is a state-mandated activity based on our 8/30/02 comments on the draft staff analysis of CSM 99-TC-13, Enrollment Fee Collection.

Activities 1, 2, 3 and 4 do not incur cost mandated by the state as defined in Government Code Section 17514.

The Commission on State Mandate's (CSM) Draft Staff Analysis states that Government Code §17514 defines "costs mandated by the state" as "any increased costs which a local agency or school district is required to incur...as a result of any statute...which mandates a new program or higher level of service." Thus, any activity that does not meet the criteria in §17514 is not eligible for reimbursement.

Activity 1: The CSM states that determining eligibility for a fee waivers for each student applicant, by establishing the financial aid group to which the student belongs (EC §76300(e), (g), (h)), constitutes a state reimbursable mandated activity. However fee waivers are only provided for those students who qualify under EC §76300(g) and (h). We note that EC §76300(e) specifies groups of students for which the fee requirement does not apply. The students are not required to have the fee waived as specified in EC §76300(g) and (h). Because the students defined in EC §76300(e) pay no enrollment fees, and therefore have no need for waivers, thus there is no need for a district to determine waiver eligibility for these students. Consequently, there is no mandated activity associated with EC §76300(e).

With regard to the waivers required pursuant to EC §76300(g) and (h), we note that the onus for demonstrating fee waiver eligibility rest with the student, not the financial aid office. There is nothing in EC §76300 that requires the institution to establish the financial aid group to which the student belongs. Specifically EC §76300(g) states in part:

> "the fee requirement of this section shall be waived for any **student who ... has demonstrated financial need** in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid. The governing board of a community college district also shall waive the fee requirement of this section for any **student who demonstrates eligibility** according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations." [emphasis added]

As it is the student who must demonstrate financial need and eligibility, not the institution, we assert that Activity 1 does not constitute a state reimbursable mandate.

Activity 2: The CSM states that determining eligibility for Board of Governors Grants (BOGGs) constitutes a state reimbursable mandated activity to the extent that workload exceeds that of determining eligibility for a BOG fee waiver. It appears that CSM assumes that BOGGs are a continuing program, separate and apart from that of the Enrollment Fee Waiver Program. The BOGG program was established in 1984 to provide financial aid to needy community college students in the form of cash assistance. As a point of clarification, we note that with the passage of AB 1561 (Chapter 1124, Statutes of 1993), the BOGG program was replaced with

the BOG fee waiver program. Consequently, regulations pertaining to BOGG are obsolete. Since the program no longer exists, we assert that determining the eligibility for BOGGs is not a state mandate.

Even if BOGGs were not obsolete, demonstrating eligibility is not a state-mandated activity. As with fee waivers, documenting eligibility is the responsibility of the student, not the institution. CCR Title 5 §58620 describes the process by which a student documents their eligibility for a Board of Governors grant among three different methods.

Activity 3: The CSM states that three specific activities defined in the California Community College Chancellor's Office, Board of Governors Fee Waiver and Special Programs, 2000-2001 Program Manual (BOGFW manual), constitute state reimbursable mandated activities. The three activities are:

- Documenting public benefits for recipients of TANF, SSI/SSP, and General Assistance (Section 4.2.2);
- Documenting those eligible for BOGGs under income standards (Section 4.3.4); and
- Training for new directors/managers/coordinators/officers in charge of the financial aid office (Section 11.3).

The staff analysis has recommended that the BOGFW Manual is an executive order within the meaning of Government Code section 17516 to the extent that it contains requirements issued by a state agency. After discussions with Chancellor's Office legal staff, we assert that a Chancellor's Office manual, self-described as "sub-regulatory guidance", is not an executive order. While we are currently seeking an official opinion on the authority of the fee waiver manual from the Chancellor's Office, their legal staff has verbally indicated that they do not believe that non-compliance with the BOGFW manual would result in any punitive action. This would be consistent with existing law (EC §70901 and EC §70901.5). As written in these sections, it is the Board of Governor of the California Community Colleges that has the authority to develop and implement CCC policy, not the Chancellor's Office. The Chancellor's Office role is to enforce policy and provide technical assistance. Thus, the BOGFW manual developed and distributed by the Chancellor's Office, is a technical assistance document, not a source of new mandates. Chancellor's Office staff indicates the BOGFW manual was not authorized nor adopted by the Board of Governors.

Nevertheless, should the authority of this manual be judged equivalent to the authority of CCR regulations and/or Education Code statutes, we would still disagree with the magnitude of the mandated activities being claimed under the manual. With respect to the first two activities, we would reiterate the analysis presented for Activity 1, where the demonstration of eligibility rests with the student, not the institution. With regard to the training requirement for new directors/managers/etc., we believe the requirement has been misstated. We would note that only one person from each financial aid office would be required to attend training, not all new directors, managers, coordinators and officers. The BOGFW manual specifically states, "New directors/managers/coordinators/officers (whatever the title of the person in charge of the day-to-day operations of the financial aid office) are required to attend training offered by the Chancellors' Office."

Activity 4: The CSM states that the following BOGG activities constitute a state reimbursable mandate:

- Identifying dollars for financial assistance in separate accounts

- Documenting all financial assistance provided on behalf of students, and
- Developing procedures for the retention of support documentation.

Finance notes that all of the aforementioned activities relate to the administration of the funding mechanism present under the provisions of the obsolete BOGG program. As stated in our analysis of Activity 2, the BOG grant program was replaced by the BOG Fee Waiver Program in 1993. That action altered the funding mechanism for the program, as a fee waiver does not involve the exchange of funds, and the associated recording of those funds, that were required under the BOG Grant program. Therefore, the specific requirements delineated above are obsolete, rendering the claim of state-mandated activities in this case inapplicable.

We reiterate that the costs associated with the original test claims appear to be significantly overstated, and that districts have many alternatives for addressing such costs, irrespective of the sufficiency of funding provided currently for fee collection, waiver and financial aid administration. However, any assertions in addition our comments of 10/13/00, 9/25/01, or 8/30/02 will be best addressed in the latter phases of the test claim adjudication process, if necessary.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your January 8, 2003, letter have been provided with copies of this letter via either United States Mail or, in the case of other State agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact James A. Foreman, Principal Program Budget Analyst at (916) 445-0328 or Keith Gmeinder, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Jeannie Oropeza

Jeannie Oropeza
Program Budget Manager

PROOF OF SERVICE

Test Claim Names: Enrollment Fee Collection and Enrollment Fee Waivers
Test Claim Numbers: CSM 99-TC-13 and CSM 00-TC-15

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, CA 95814.

On February 25, 2003, I served the attached request of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: Michael Havey
3301 C Street, Room 500
Sacramento, CA 95816

B-29
Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

G-01
California Community Colleges
Attention: Fred Harris
1102 Q Street, Suite 300
Sacramento, CA 95814-6549

D-8
Office of the Attorney General
Attention: Julia Je
1300 I Street, 17th Floor
Sacramento, CA 95814

E-8
Department of Education
Attention: Gerry Shelton
School Fiscal Services
1430 N Street, Suite 2213
Sacramento, CA 95814

D-8
Office of the Attorney General
Attention: Leslie Lopez
1300 I Street, 17th Floor
Sacramento, CA 95814

B-8
State Controller's Office
Division of Audits
Attention: Jim Spano
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Education Mandated Cost Network
Attention: Carol Berg, Ph.D.
1121 L Street, Suite 1060
Sacramento, CA 95814

MAXIMUS
Attention: Allan Burdick
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

San Diego Unified School District
Attention: Arthur Palkowitz
4100 Normal Street, Room 3159
San Diego, CA 92103-8363

Santa Monica Community College District
Attention: Thomas J. Donner
1900 Pico Blvd.
Santa Monica, CA 90405-1628

San Jose Unified School District
Attention: William A. Doyle
1153 El Prado Drive
San Jose, CA 95120

San Juan Unified School District
Attention: Diana Halpenny
3738 Walnut Avenue
Carmichael, CA 95608

Ms. Harmeet Barkschat
Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Spector, Middleton, Young & Minney, LLP
Attention: Paul Minney
7 Park Center Drive
Sacramento CA 95825

Centration, Inc.
Attention: Andy Nichols
12150 Tributary Point Drive, Suite 140
Gold River, CA 95670

Centration, Inc.
Attention: Beth Hunter
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730

Mandated Cost Systems
Attention: Steve Smith
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

SixTen & Associates
Attention: Keith B. Petersen, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

Los Rios Community College District
Attention: Mr. Jon Sharpe
1919 Spanos Court
Sacramento, CA 95825

Reynolds Consulting Group, Inc.
Attention: Sandy Reynolds
P.O. Box 987
Sun City, CA 92586

Glendale Community College District
Attention: Mr. Lawrence Serot
1500 N. Verdugo Road
Glendale, CA 91208

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 25, 2003, at Sacramento, California.

clad Polis for JN
Jennifer Nelson

1983 Ed Code

Authority to Operate Student Health Centers and Provide Health Supervision and Service

72244. The governing board of any community college district may provide health supervision and services, including direct or indirect medical and hospitalization services, and operate a student health center or centers wherein students in grades 13 and 14 and other persons authorized by the governing board may be diagnosed and treated. School physicians shall be authorized to provide medical treatment at such centers.

(Enacted by Stats. 1976, Ch. 1010.)

Fee for Physical Education Courses Requiring Use of Nondistrict Facilities

72245. The governing board of a community college district may impose a fee on a participating student for the additional expenses incurred when physical education courses are required to use nondistrict facilities.

(Enacted by Stats. 1976, Ch. 1010.)

Health Fees

72246. (a) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than seven dollars and fifty cents ($7.50) for each semester, and five dollars ($5) for summer school, or five dollars ($5) for each quarter for health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health center or centers, authorized by Section 72244, or both.

(b) If pursuant to this section a fee is required, the governing board of a district shall decide the amount of the fee, if any, that a part-time student is required to pay. The governing board may decide whether the fee shall be mandatory or optional.

(c) The governing board of a district maintaining a community college shall adopt rules and regulations that either exempt low-income students from any fee required pursuant to subdivision (a) or provide for the payment of the fee from other sources.

(d) The governing board of a district maintaining a community college shall adopt rules and regulations that exempt from any fee required pursuant to subdivision (a): (1) students who depend exclusively upon prayer for healing in accordance with the teachings of a bona fide religious sect, denomination, or organization; (2) students who are attending a community college under an approved apprenticeship training program.

(e) All fees collected pursuant to this section shall be deposited in the fund of the district designated by the California Community Colleges Budget and Accounting Manual. These fees shall be expended only for the purposes for which they were collected.

Authorized expenditures shall not include, among other things, athletic trainers' salaries, athletic insurance, medical supplies for athletics, physical examinations for intercollegiate athletics, ambulance services and the salaries of health professionals for athletic events, any deductible portion of accident claims filed for athletic team members, or any other expense that is not available to all students. No student shall be denied a service supported by student health fees on account of participation in athletic programs.

(Amended by Stats. 1981, Ch. 930, Sec. 10.1.)

Parking Service Fees

72247. The governing board of a community college district may require of students in attendance in grades 13 and 14 and employees of the district, the payment of a toll, in an amount not to exceed twenty dollars ($20) per semester

forty dollars ($40) per regular school year to be fixed by the boa parking services.

Such toll shall only be required of students and employees using such services. All such tolls collected shall be deposited in the designated fund of the district in accordance with the California Community Colleges Budget and Accounting Manual and shall be expended only for parking services or for purposes of reducing the costs to students and faculty of the college of using public transportation to and from the college.

Tolls collected for use of parking services provided for by investment of student body funds under the authority of Section 76064 shall be deposited in a designated fund in accordance with the California Community Colleges Budget and Accounting Manual for repayment to the student organization.

"Parking services," as used in this section, means the purchase, construction, and operation and maintenance of parking facilities.

(Amended by Stats. 1981, Ch. 930.)

Transportation Service Fees

72248. (a) The governing board of a community college district may require of students in attendance in grades 13 and 14 and employees at a campus of the district the payment of a fee for purposes of reducing fares for services provided by common carriers or municipally owned transit systems to such students and employees, as provided in subdivision (b).

(b) Fees authorized by subdivision (a) for transportation services may be required only of students and employees using such services, or, in the alternative, of either of the following groups of people:

(1) Upon the favorable vote of a majority of the students and a majority of the employees of a campus of the district, voting at an election on the question of whether or not the governing board should require all students and employees at the campus to be assessed fees for transportation services for a two-year period, the fees may be required of all students and all employees of a campus of the community college district; or

(2) Upon the favorable vote of a majority of the students at a campus of the district voting at an election on the question of whether or not the governing board should require all students to be assessed fees for transportation services for a two-year period, the fees may be required of all students at the campus of the community college district; provided that the employees shall not be entitled to use such services.

(c) In the event that fees are required to be assessed to all students and employees or all students as provided in subparagraphs (1) and (2) of subdivision (b) for a two-year period, such authorization may be continued for additional two-year periods by the governing board maintaining the campus, upon the favorable vote of a majority of the students and a majority of the employees or, in the case of subdivision (b) (2), upon the favorable vote of a majority of the students of such campus, voting in an election on the question of whether or not such required fees should be continued.

(d) If pursuant to this section a fee is required of students for transportation services, any fee required of a part-time student shall be a pro rata lesser amount than full-time students, depending on the number of units for which such part-time student is enrolled. In addition, a governing board maintaining transportation services shall adopt rules and regulations governing the exemption of low-income students from required fees, and may adopt rules and regulations to provide for the exemption of others.

(e) The total fees to be fixed by the governing board of a community college

599

EXHIBIT D

district pursuant to this section and Section 72247 shall not exceed the amount prescribed in Section 72247.

(Enacted by Stats. 1976, Ch. 1010.)

Program Changes: Imposition of Fee

Text of section effective August 1, 1983 until July 1, 1987

72250. (a) The governing board of a community college district shall impose a fee of ten dollars ($10) per course, not to exceed a total amount of twenty dollars ($20), for a student program change consisting of dropping one or more courses any time after two weeks from the commencement of instruction in any term. The fee shall not be charged for changes due to special circumstances affecting the student's ability to complete the course or for changes initiated or required by the community college.

(b) Each community college district shall submit a report to the Chancellor of the California Community Colleges which provides information regarding all of the following:

(1) The number of students who drop courses after the second week.

(2) Revenues derived from fees assessed pursuant to subdivision (a).

(3) The number of fee waivers granted students due to a request initiated by the community college on the basis of special circumstances affecting the student's ability to complete the course.

(c) This section shall become inoperative on July 1, 1987, and, as of January 1, 1988, is repealed, unless a later enacted statute which becomes effective on or before January 1, 1988, deletes or extends the dates on which it becomes inoperative and is repealed.

(Amended and repealed by Stats. 1983, Ch. 565. Effective August 1, 1983. Inoperative July 1, 1987. Repeal operative January 1, 1988. See section of same number below.)

Program Changes: Imposition of Fee

Text of section effective August 1, 1983 until September 27, 1983

72250. The governing board of a community college district may impose a fee, not to exceed one dollar ($1), for the actual pro rata cost for services relative to a program change consisting of adding or dropping one or more courses any time after two weeks from the commencement of instruction in any term. Such fee shall not be charged for changes initiated or required by the community college.

This section shall become operative July 1, 1987.

(Added by Stats. 1983, Ch. 565. Effective August 1, 1983. Operative July 1, 1987. See section of same number above.)

Program Changes: Imposition of Fee

Text of section effective September 27, 1983

72250.5. The governing board of a community college district may impose a fee, not to exceed one dollar ($1), for the actual pro rata cost for services relative to a program change consisting of adding one or more courses any time after two weeks from the commencement of instruction in any term. Such fee shall not be charged for changes initiated or required by the community college.

(Added by renumbering Section 72250, as added by Stats. 1983, Ch. 565, Sec. 1.5, by Stats. 1983, Ch. 1095. Effective September 27, 1983.)

Charge for Late Application Fee

72251. The governing board of any community college district may impose a late application fee of not to exceed two dollars ($2) for any application for admission or readmission which is filed after the date established by the governing board for the filing of applications for admission or readmission to the community college.

(Enacted by Stats. 1976, Ch. 1010.)

Limitation on Campaign Expenditures and Contributions

72254. The governing board of a community college district may by resolution limit campaign expenditures or contributions in elections to district offices.

(Enacted by Stats. 1976, Ch. 1010.)

Use of Funds for Membership or Participation in Discriminatory Organizations

72255. No funds under the control of a community college district shall ever be used for membership or for any participation involving a financial payment or contribution, on behalf of the district or any individual employed by or associated therewith, in any private organization whose membership practices are discriminatory on the basis of race, creed, color, sex, religion, or national origin. This section does not apply to any public funds which have been paid to an individual officer or employee of the district as salary, or to any funds which are used directly or indirectly for the benefit of student organizations.

(Added by Stats. 1978, Ch. 1099.)

Report on Part-Time Employment Patterns and Practices

72256. The Board of Governors of the California Community Colleges shall publish a statewide report on part-time employment patterns and practices in each community college district to be submitted to the Legislature no later than January 1, 1982. At the least, the report shall include a comparison of full-time and part-time faculty in the areas of teaching workload, related academic activities, remuneration, types of certificates, types of classes taught, length of employment, and whether or not the faculty members are evaluated. Information on assignments performed by full-time instructors which is in addition to their full-time assignment and for which additional compensation is provided shall be included in the report.

(Added by Stats. 1980, Ch. 1177.)

Article 3. Delineation of Functions

(Article 3 enacted by Stats. 1976, Ch. 1010)

Legislative Intent

72280. By enacting this article the Legislature declares its intent to more specifically delineate the powers, duties, and functions of the community college district governing boards and the powers, duties, and functions of the Board of Governors of the California Community Colleges.

(Amended by Stats. 1981, Ch. 470.)

Definitions

72281. As used in this article, "board of governors" means the Board of Governors of the California Community Colleges. "District governing board" means the governing board of a community college district. "District" means a community college district.

(Enacted by Stats. 1976, Ch. 1010.)

Rules and Regulations

72282. The district governing board shall establish rules and regulations not inconsistent with the regulations of the board of governors and the laws of this state for the government and operation of one or more community colleges in the

(a) Lo[illegible] with or without interest, to any student body organization established in another community college of the district for a period not to exceed three years.

(b) Invest money in permanent improvements to any community college district property including, but not limited to, buildings, automobile parking facilities, gymnasiums, swimming pools, stadia and playing fields, where such facilities, or portions thereof, are used for conducting student extracurricular activities or student spectator sports, or when such improvements are for the benefit of the student body. Such investment shall be made on condition that the principal amount of the investment plus a reasonable amount of interest thereon shall be returned to the student body organization as provided herein. Any community college district approving such an investment shall establish a fund in accordance with the California Community Colleges Budget and Accounting Manual in which moneys derived from the rental of community college district property to student body organizations shall be deposited. Moneys collected by the governing board for automobile parking facilities as authorized by Section 72247 shall be deposited in the fund designated by the California Community Colleges Budget and Accounting Manual if the parking facilities were provided for by investment of student body funds under this section. Moneys shall be returned to the student body organization as contemplated by this section exclusively from such special fund and only to the extent that there are moneys in such special fund. Whenever there are no outstanding obligations against the special fund, all moneys therein may be transferred to the general fund of the school district by action of the local governing board.

Two or more student body organizations of the same community college district may join together in making such investments in the same manner as is authorized herein for a single student body. Nothing herein shall be construed so as to limit the discretion of the local governing board in charging rental for use of community college district property by student body organizations as provided in Section 76060.

(Amended by Stats. 1981, Ch. 930.)

Supervision and Audit of Student Funds.

76065. The governing board of any community college district shall provide for the supervision of all funds raised by any student body or student organization using the name of the college.

The cost of supervision may constitute a proper charge against the funds of the district.

The governing board of a community college district may also provide for a continuing audit of student body funds with community college district personnel.

(Enacted by Stats. 1976, Ch. 1010.)

Student Political Organization Activity

76067. Any student political organization which is affiliated with the official youth division of any political party that is on the ballot of the State of California may hold meetings on a community college campus and may distribute bulletins and circulars concerning its meetings, provided that there is no endorsement of such organization by the school authorities and no interference with the regular educational program of the school.

(Enacted by Stats. 1976, Ch. 1010.)

Article 7. Exercise of Free Expression

(Article 7 enacted by Stats. 1976, Ch. 1010)

Exercise of Free Expression by Students: Adoption of Rules and Regulations

76120. The governing board of a community college district shall adopt rules and regulations relating to the exercise of free expression by students upon the premises of each community college maintained by the district, which shall include reasonable provisions for the time, place, and manner of conducting such activities.

Such rules and regulations shall not prohibit the right of students to exercise free expression including, but not limited to, the use of bulletin boards, the distribution of printed materials or petitions, and the wearing of buttons, badges, or other insignia, except that expression which is obscene, libelous or slanderous according to current legal standards, or which so incites students as to create a clear and present danger of the commission of unlawful acts on community college premises, or the violation of lawful community college regulations, or the substantial disruption of the orderly operation of the community college, shall be prohibited.

(Enacted by Stats. 1976, Ch. 1010.)

Article 8. Administration of Punishment to Students

(Article 8 enacted by Stats. 1976, Ch. 1010)

Administration of Punishment to Students

76130. The governing board of any community college district shall adopt rules and regulations authorizing instructors, supervisors, and other certificated personnel to administer reasonable punishment to students when such action is deemed an appropriate corrective measure.

(Amended by Stats. 1981, Ch. 470.)

Article 9. Nonresident Tuition

(Article 9 enacted by Stats. 1976, Ch. 1010)

Nonresident Tuition

76140. A community college district may admit and shall charge a tuition fee to nonresident students. The district may exempt from all or parts of the fee:

(a) All nonresidents who enroll for six or fewer units. Exemptions made pursuant to this subdivision shall not be made on an individual basis; or

(b) Any nonresident who is both a citizen and resident of a foreign country, provided that the nonresident has demonstrated a financial need for the exemption and not more than 10 percent of the nonresident foreign students attending any community college district may be so exempted. Exemptions made pursuant to this subdivision may be made on an individual basis.

A district may contract with a state, a county contiguous to California, the federal government, a foreign country, or an agency thereof, for payment of all or a part of a nonresident student's tuition fee.

Attendance of nonresident students shall not be reported as resident average daily attendance for state apportionment purposes, except as provided by statute in which case a nonresident tuition fee may not be charged.

The nonresident tuition fee shall be set by the governing board of each community college district not later than February 1 of each year for the succeeding fiscal year. Such fee may be paid in installments, as determined by the governing board of the district.

The fee established by the governing board pursuant to the preceding paragraph shall represent for nonresident students enrolled in 30 semester units or 45 quarter units of credit per fiscal year (a) the amount which was expended by the district for the current expense of education as defined by the California Community College Budget and Accounting Manual in the preceding fiscal year increased by the projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for the current fiscal year and succeeding fiscal year and divided by the average daily attendance of all students (including nonresident students) attending in the district in the preceding fiscal year, or (b) the current expense of education in the preceding fiscal year of all districts increased by the projected percent increase in the United States Consumer Price Index as determined by the Department of Finance for the current fiscal year and succeeding fiscal year and divided by the average daily attendance of all students (including nonresident students) attending all districts during the preceding fiscal year, or (c) an amount not to exceed the fee established by the governing board of any contiguous district. However, should the district's preceding fiscal year average daily attendance of all students attending in the district in noncredit courses be equal to or greater than 10 percent of the district's total average daily attendance of all students attending in the district, the district in calculating (a) above may substitute instead the data for current expense of education in grades 13 and 14 and average daily attendance in grades 13 and 14 of all students attending in the district.

The governing board of each community college district shall also adopt a tuition fee per unit of credit for nonresident students enrolled in more or less than 15 units of credit per term by dividing the fee determined in the preceding paragraph by 30 for colleges operating on the semester system and 45 for colleges operating on the quarter system and rounding to the nearest whole dollar. The same rate shall be uniformly charged nonresident students attending any terms or sessions maintained by the community college. The rate charged shall be the rate established for the fiscal year in which the term or session ends.

Any loss in district revenue generated by the nonresident tuition fee shall not be offset by additional state funding.

The provisions of this section which require a mandatory fee for nonresidents shall not apply to any district which borders on another state and has fewer than 500 average daily attendance.

(Amended by Stats. 1983, Ch. 317. Effective July 19, 1983.)

Apprentices Exemption from Nonresident Fee

76142. No fee may be charged to any apprentice who is not a resident of California for attendance in a California community college in classes of related and supplemental instruction as provided under Section 3074 of the Labor Code and in accord with the requirements as set forth in subdivision (d) of Section 3078 of that code.

(Enacted by Stats. 1976, Ch. 1010.)

Nonresident Tuition Fee: Residence Determination

76143. For purposes of the nonresident tuition fee, a community college district shall disregard the time during which a student living in the district resided outside the state, if:

(1) The change of residence to a place outside the state was due to a job transfer and was made at the request of the employer of the student or the employer of the student's spouse or, in the case of a student who resided with, and was a dependent of, the student's parents, the change of residence was made at the request of an employer of either of the student's parents.

(2) Such absence from the state was for a period of not more than four years.

(3) At the time of application for admission to a college maintained by the district, the student would qualify as a resident if the period of the student's absence from the state was disregarded.

A nonresident tuition fee shall not be charged to a student who meets each of the conditions specified in subdivisions (1) to (3), inclusive.

(Amended by Stats. 1977, Ch. 36.)

Article 10. Miscellaneous

(Article 10 enacted by Stats. 1976, Ch. 1010)

Certain Students' Residences More Than 60 Miles From Nearest Attendance Center

76160. Any student under 21 years of age, and any student under 25 years of age who has been honorably discharged or is otherwise returning from active or inactive military service with the armed forces of the United States, who resides in this state and more than 60 miles from the nearest public community college measured by the usual vehicular route between the student's home and the college, may request to attend credit courses at any public community college in the state, whether or not the student's residence is in a district maintaining a community college. The governing board of the district maintaining the community college designated by the student shall admit the student provided all requirements for admission are met.

The provisions of this section shall not apply to any student residing in a district maintaining a community college if that district maintains adequate dormitories or housing facilities or provides adequate transportation for the student between the student's home and the community college attendance center.

If the student resides within territory not included within any community college district and resides more than 60 miles from the nearest community college, measured by the usual vehicular route between the student's home and the attendance center, there shall be paid to the parents or other persons having charge or control of the student and directly to adult students and married minors, by the district in which the student attends, a maintenance allowance not to exceed four dollars ($4) per calendar day, including weekends and school holidays, for the portion of a semester, quarter, or other session or term in which the student is enrolled full time in credit classes in a community college under this section. Community college districts shall receive reimbursement from the chancellor's office for allowances paid to students from nondistrict territory for the prior fiscal year not to exceed the maximum amount as provided in Section 84604.9.

No later than 60 days after the close of each fiscal year the chancellor shall determine the daily allowance rate for the prior fiscal year. If claims made by community colleges exceed total funds raised by nondistrict territories for that purpose prior to July 1, 1978, the chancellor shall prorate the allowances made under this section. No later than 90 days after the close of each fiscal year the community college districts shall pay eligible students at the rate prescribed by the chancellor.

The chancellor shall prescribe procedures for the submission of claims by community college districts and verification of the claims by the appropriate county superintendent of schools.

For the purpose of this section, a person shall be deemed to be honorably discharged from the armed forces (a) if he or she was honorably discharged from the armed forces of the United States or (b) if he or she was inducted into the armed forces of the United States under the "Universal Military Training and Service Act," and (1) satisfactorily completes his or her period of training and service under that act and is issued a certificate to that effect pursuant to that act,

153 Cal. 225
94 P. 1053
(Cite as: 153 Cal. 225)

C

In the Matter of the Estate of ELIZABETH HEWLETT MARTIN, Deceased. JOHN Q. HEWLINGS et al., Appellants,
v.
STATE OF CALIFORNIA, Respondent.

Supreme Court of California.

S. F. No. 4596.

March 13, 1908.

ESTATES OF DECEASED PERSONS--COLLATERAL INHERITANCE TAX--VESTED RIGHT OF STATE--REPEAL OF LAW INOPERATIVE.
The right of the state to the tax on collateral inheritance, bequests, or devises provided for in the act approved March 25, 1893, and its amendments while in force, vested immediately upon the death of the ancestor, or testator, and its vested rights thereunder to collect or receive any unpaid taxes could not be affected by the repeal of that act and its amendments by the Collateral Inheritance Tax Act of March 20, 1905.

ID.--CONSTITUTIONAL LAW--PROTECTION OF RIGHTS OF STATE.
Under the limitations prescribed by section 31 of article IV of the constitution, it is not within the power of the legislature, either by the repeal of the law in virtue of which the right of the state to the tax in question vested, or by any other means, to grant or donate it to the successor in estate, or to any other person.

ID.--FORMER PROCEDURE INSERTED IN REPEALING ACT NOT REPEALED.
Notwithstanding the express repeal of the act of 1893 and its amendments, the object of the act of 1905 is merely to establish a different amount of taxation and to make it applicable to different persons; and, in so far as provisions of procedure under the former act are found substantially embodied in the latter, they must be deemed mere amendments, within the scope of section 325 of the Political Code, providing that portions of statutes not altered are to be deemed a law from the time when they were first enacted, and such portions apply to taxes previously assessed, the same as if there were no repealing clause in the new act.

ID.--RE-ENACTMENT NEUTRALIZING REPEAL.
Where there is an express repeal of a statute, and at the same time a re- enactment of a portion of its provisions, such re-enactment neutralizes the repeal, in so far as the old law is continued in force; and, in such case, the part of the old law re-enacted operates without interruption.

APPEAL from an order of the Superior Court of Santa Clara County directing payment of a collateral inheritance tax. M. H. Hyland, Judge.

The facts are stated in the opinion of the court.

*226 S. F. Lieb, for Appellants.

U. S. Webb, Attorney-General, James H. Campbell, District Attorney, and C. M. Lorigan, for Respondent.

SHAW, J.

Elizabeth Hewlett Martin, a resident of this state, died in the county of Santa Clara on January 2, 1905, leaving a valuable estate. By the terms of her will, which was duly probated, she bequeathed to each of the appellants a sum of money greater than five hundred dollars, amounting in the aggregate to $35,415.21. None of the appellants was related to the deceased in a degree nearer than that of brother, and, hence, the legacy came within the terms of the act of 1903 (Stats. 1903, p. 268), amending section 1 of the act imposing a tax on inheritance devises and legacies. Section 27 of an act approved March 20, 1905, which took effect July 1, 1905 (Stats. 1905, p. 350), purports to repeal, unconditionally, the act of 1893 providing for a succession tax and all the subsequent amendments thereto, including that of 1903 above mentioned. In due course of administration of the estate a decree of distribution thereof was rendered by the superior court of Santa Clara County on February 2, 1906, declaring that the appellants respectively were the owners of and entitled to receive the legacies bequeathed to them as aforesaid, subject to whatever inheritance tax might be due thereon. Subsequently, on March 2, 1906, upon due notice, the court made an order

directing the executor of the estate to deduct from each of said legacies a sum equal to five per cent thereof, as and for a succession tax thereon, and to pay said sums so deducted to the county treasurer. This appeal is taken from that order.

The appellants ask us to overrule the decisions of this court in the *Estate of Stanford*, 126 Cal. 112, [54 Pac. 259, 58 Pac. 462], and *Trippet v. State*, 149 Cal. 521, [86 Pac. 1084], and declare that the repeal of the Collateral Inheritance Tax *227 Law of 1893, and its amendments, by the act of 1905, operated to deprive the state of the right to collect or receive all succession taxes, accrued under the former law, which had not been paid or ordered to be paid to the state at the time the repeal took effect, on July 1, 1905. The briefs filed for the appellants in *Trippet v. State*, 149 Cal. 521, [86 Pac. 1084], are referred to by counsel and made to constitute the argument on behalf of the appellants in this case. No additional points are presented. Even if we were disposed to doubt the soundness of those decisions, and were to concede that vested rights would not be affected by overruling them, we would hesitate to overrule decisions so well and thoroughly considered as those mentioned. But after again considering the arguments presented, we are satisfied that the conclusion reached in those cases is correct.

The argument of the appellants is that the decision in *Trippet v. State* is based wholly on the authority and reasoning of the opinion in *Estate of Stanford*, and that the conclusion in the Stanford case was founded solely upon the proposition that the effect of the law of 1893 and its amendments was to provide for the succession to property upon the death of the owner, and not to establish a tax. And this proposition, it is claimed, is false for two reasons: 1. Because the language of the statute does not permit that construction, and, 2. Because, if it did, the title of the act would not include the subject and the act would be void. It is further argued that the law does not in fact provide for a tax, the right of the state thereto does not vest until payment, or until a judicial order has been made for the payment, and that a repeal of the law before either event, as in the present case, extinguishes the inchoate right of the state to the unpaid tax.

The opinion in *Estate of Stanford* does not have the effect claimed. It does not hold that law in question provides that the state shall succeed as an heir in certain classes of cases to five per cent of the property of the decedent. Some of its phraseology may perhaps be consistent with such an idea, if taken separately from the context, but the real meaning and effect of the decision is that the law establishes a succession tax in certain cases, and that the right of the state to such tax vests immediately upon the death of the ancestor or testator, and, hence, that the repeal of the law does not affect *228 the right of the state to the tax. The law, in effect, created a lien in favor of the state on the property for the amount of the tax thereon. This right to the tax in question here, and the lien therefor, vested in and became the property of the state upon the death of Elizabeth Hewlett Martin, in January, 1905. Under the limitations prescribed by section 31 of article IV of the constitution, it is not within the power of the legislature, either by the repeal of the law in virtue of which the right vested, or by any other means, to grant or donate it to the successor in estate or to any other person.

The law of 1893 and its amendments provided that the executor or administrator of the particular estate should deduct from all money legacies, or money of the intestate, in his hands for distribution, the amount of the succession tax due thereon and that he should in other cases collect from the distributee the amount of the tax due on the share distributed, before delivery thereof to the party entitled, and should pay the said tax to the county treasurer for use of the state (Stats. 1895, sec. 6, p. 35; Stats. 1893, sec. 8, p. 195).

If this law is still in force, no order of the court was required to give the executor authority to deduct from the money legacies distributed to the appellants the succession tax thereon and to pay the same to the county treasurer. In that event the order would be harmless, even if unnecessary. It is claimed that the express repeal, by the act of 1905, of the previous law for succession taxes, if not effective to deprive the state of the right to the tax here involved, is, at least, valid so far as it repeals the provisions of sections 6 and 8 aforesaid, providing for its retention and payment by the executor, and, hence, that the executor had no authority to pay the tax for the legatees, and that the court had no power to make the order giving him such authority.

We do not think that these provisions were repealed. The act of 1905 containing the repealing clause above mentioned is practically a revision of the act of 1893 and its amendments, providing for succession taxes. Certain changes are made in the new law in regard to the persons on whom such tax is imposed, the exemptions therefrom, and in the rate of tax to be imposed upon the different persons. These changes are found, for the most part, in sections 1, 2, 3, and 4 of the new law, which cover the subjects embraced in section 1 of the *229 old law. The other portions of the old law are substantially re- enacted in the act of 1905 with a few alterations and additions which do not affect the question. The aforesaid section 6 of the former law is, word for word, the same as section 9 of the new act, and section 8 of the former law is identical with section 11 of the new act, with the exception of a few words of trifling import. We must presume that the legislature of 1905 was aware of its want of power, under the decision of this court in *Estate of Stanford*, to release, surrender, or discharge the taxes previously accrued and remaining uncollected. The re-enactment of the provisions of the former law respecting the payment and collection of succession taxes is to be considered as having been done with knowledge of the existence of these uncollected taxes and with the intent to continue in force the mode and means for the collection thereof. These re-enactments come within the scope and effect of section 325 of the Political Code, declaring that, when a part of a statute is amended, it is "not to be considered as having been repealed and re-enacted in the amended form; but the portions which are not altered are to be considered as having been the law from the time when they were enacted." The rule particularly applicable to this case is thus stated in Sutherland on Statutory Construction (2d ed., sec. 238): "Where there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the re-enactment takes effect at the same time." Speaking of a similar case, the supreme court of the United States, in *Bear Lake I. Co. v. Garland*, 164 U. S. 11, [17 Sup. Ct. 7], say: "Although there is a formal repeal of the old by the new statute, still there never has been a moment of time since the passage of the act of 1888 when these similar provisions have not been in force. Notwithstanding, therefore, this formal repeal, it is, as we think, entirely correct to say that the new act should be construed as a continuation of the old with the modification contained in the new act." The following authorities are of similar effect: Endlich on Interpretation, sec. 490; *Pratt v. Swan*, 16 Utah, 483, [52 Pac. 1094]; *Howlett v. Cheetham*, 17 Wash. 626, [50 Pac. 522]; *230 *Pacific M. S. Co. v. Joliffe*, 2 Wall. 456; *Wright v. Oakley*, 5 Met. 406; *Sabin v. Connor*, 21 Fed. Cas. 125; *United Hebrew Assoc. v. Benshimol*, 130 Mass. 327; *Anding v. Levy*, 57 Miss. 59, [34 Am. Rep. 435]; *Middleton v. New Jersey etc. Co.*, 26 N. J. Eq. 274; *State v. Bemis*, 54 Neb. 733, [64 N. W. 350]. The effect of the act of 1905 was to establish a different rate of taxation and make it applicable to different persons with respect to all succession taxes accruing thereafter, but otherwise the provisions of the previous act incorporated into the new act, relating to the payment and collection of succession taxes, remained in force and applied to taxes previously assessed, the same as if there had been no express repealing clause in the new act. The same session of the legislature amended section 1669 of the Code of Civil Procedure, so as to provide that before any decree of distribution of an estate is made the court must be satisfied that "any inheritance tax which is due and payable has been fully paid." (Stats. 1905, p. 83.) This amendment took effect May 6, 1905, and remained in force, notwithstanding the repeal of the inheritance tax law of 1893. Under its provisions, in connection with the provisions of the former act re-enacted in the Revisory Act, there can be no doubt that the court had authority to make the order appealed from.

The order is affirmed.

Angellotti, J., Sloss, J., Henshaw, J., and Lorigan, J., concurred.

Cal. 1908.

In the Matter of the Estate of ELIZABETH HEWLETT MARTIN, Deceased. JOHN Q. HEWLINGS et al., Appellants, v. STATE OF CALIFORNIA, Respondent.

END OF DOCUMENT

78 Cal.Rptr.2d 1
98 Cal. Daily Op. Serv. 6683, 98 Daily Journal D.A.R. 9211
(Cite as: 19 Cal.4th 1, 960 P.2d 1031, 78 Cal.Rptr.2d 1)

Supreme Court of California

YAMAHA CORPORATION OF AMERICA, Plaintiff and Respondent,
v.
STATE BOARD OF EQUALIZATION, Defendant and Appellant.

No. S060145.

Aug. 27, 1998.

Seller of musical instruments sought refund of use taxes assessed on musical instruments that it purchased outside state, stored within state, and ultimately gave away as promotional gifts. The Superior Court, Los Angeles County, No. BC 079 444, Daniel A. Curry, J., ordered refund for gifts to out-of-state recipients, and State Board of Equalization appealed. The Court of Appeal reversed. The Supreme Court granted review, superseding opinion of Court of Appeal. The Supreme Court, Brown, J., held that Board's interpretation of sales and use tax statutes, set out in its Business Taxes Law Guide opinion summaries, were not entitled to degree of judicial deference given to quasi- legislative rules.

Reversed and remanded.

Mosk, J., filed concurring opinion, which George, C.J., and Werdegar, J., joined.

Opinion, 61 Cal.Rptr.2d 244, vacated.

West Headnotes

[1] Administrative Law and Procedure 796
15Ak796 Most Cited Cases

The standard for judicial review of agency interpretation of law is the independent judgment of the court, giving deference to the determination of the agency appropriate to the circumstances of the agency action.

[2] Statutes 219(1)
361k219(1) Most Cited Cases

Agency interpretation of a statute does not carry the same weight, and it is not reviewed under the same standard, as a quasi-legislative regulation; disapproving *Rizzo v. Board of Trustees*, 27 Cal.App.4th 853, 32 Cal.Rptr.2d 892; *DeYoung v. City of San Diego*, 147 Cal.App.3d 11, 194 Cal.Rptr. 722; *Rivera v. City of Fresno*, 6 Cal.3d 132, 98 Cal.Rptr. 281, 490 P.2d 793.

[3] Administrative Law and Procedure 797
15Ak797 Most Cited Cases

When a court assesses the validity of quasi-legislative rules, the scope of its review is narrow; if the court is satisfied that the rule in question lay within the lawmaking authority delegated by the Legislature, and that it is reasonably necessary to implement the purpose of the statute, judicial review is at an end.

[4] Administrative Law and Procedure 416.1
15Ak416.1 Most Cited Cases

Because interpretation is an agency's legal opinion, however "expert," rather than the exercise of a delegated legislative power tomake law, it commands a commensurably lesser degree of judicial deference than quasi-legislative rule.

[5] Statutes 219(1)
361k219(1) Most Cited Cases

Whether judicial deference to an agency's interpretation is appropriate and, if so, its extent is fundamentally situational; court must consider complex factors material to the substantive legal issue before it, the particular agency offering the interpretation, and the comparative weight the factors ought in reason to command.

[6] Administrative Law and Procedure 416.1
15Ak416.1 Most Cited Cases

If an agency has adopted an interpretive rule in accordance with Administrative Procedure Act (APA) provisions, that circumstance weighs in favor of judicial deference; however, even formal interpretive rules do not command the same weight as quasi-legislative rules. 5 U.S.C.A. § 551 et seq.

[7] Taxation 1336
371k1336 Most Cited Cases

State Board of Equalization's interpretation of sales and use tax statutes, set out in its Business Taxes Law Guide opinion summaries, were entitled to some consideration by court in use tax refund case, but not degree of judicial deference given to quasi-legislative rules.

***2*4**1032** Daniel E. Lungren, Attorney General, Carol H. Rehm, Jr., David S. Chaney and Philip C. Griffin, Deputy Attorneys General, for Defendant and Appellant.

Bewley, Lassleben & Miller, Jeffrey S. Baird, Joseph A. Vinatieri and Kevin P. Duthoy, Whittier, for Plaintiff and Respondent.

Daniel Kostenbauder, Lawrence V. Brookes, Berkeley, Wm. Gregory Turner and Dean F. Andal as Amici Curiae on behalf of Plaintiff and Respondent.

BROWN, Justice.

For more than 40 years, the State Board of Equalization (Board) has made available for publication as the Business Taxes Law Guide summaries of opinions by its attorneys of the business tax effects of a wide range of transactions. Known as "annotations," the summaries are prompted by actual requests for legal opinions by the Board, its field auditors, and businesses subject to statutes within its jurisdiction. The annotations are *5 brief statements -- often only a sentence or two -- purporting to state definitively the tax consequences of specific hypothetical business transactions. [FN1] More extensive analyses, called "back-ups," are available to those who request them.

FN1. Two examples, drawn at random, illustrate the annotation form: "Beer Can Openers, furnished by breweries to retailers with beer, are not regarded as 'self consumed' by the breweries. 10/2/50." (2A State Bd. of Equalization, Bus. Taxes Law Guide, Sales & Use Tax Annots. (1998) Annot. No. 280.0160, p. 3731.) "Bookmarks Sold For $2.00 'Postage And Handling'. A taxpayer located in California offers a bookmark to customers for a $2.00 charge, designated as postage and handling. Most of the orders received for the bookmark are from out of state. [¶] Assuming that the charge for the bookmark is 50 percent or more of its cost, the taxpayer is considered to be selling the bookmarks rather than consuming them (Regulation 1670(b)). Accordingly, when a bookmark is sent to a California customer through the U.S. Mail, the amount of postage shown on the package is considered to be a nontaxable transportation charge. For example, when a bookmark is sent to a California customer, if the postage on the envelope is shown as 25 cents, then the taxable gross receipts from the transfer is $1.75. If the bookmark is mailed to a customer located outside California, tax does not apply to any of the $2.00 charge. 12/5/88." (*Id.*, Annot. No. 280.0185, pp. 3731-3732.)

FACTS

The taxpayer here, Yamaha Corporation of America (Yamaha), sells musical instruments nationwide. It purchased a quantity of these outside California without paying tax ("extax"), stored them in its resale inventory in a California warehouse, and eventually gave them away to artists, musical equipment dealers and media representatives as promotional gifts. Delivery was made by shipping the instruments via common carrier, either inside or outside California. Yamaha made similar gifts of brochures and other advertising material. Following an audit, the Board determined Yamaha had used the musical instruments and promotional materials *in* California and was thus subject to the state's use tax, an impost levied as a percentage of the property's purchase price. (See Rev. & Tax.Code, § 6008 et seq.) Yamaha paid the taxes determined by the Board to be due (about $700,000) under protest and then brought this refund suit. Although it did not contest the tax assessed on property given to California residents, Yamaha contended no tax was due on the gifts to *out-of-state* recipients.

The superior court decided Yamaha's out-of-state

gifts were excluded from California's use tax, and ordered a refund. That disposition, however, was overturned by the Court of Appeal. Casting the issue as whether Yamaha's promotional gifts had occurred in California or in the state of the donee, the Court of Appeal looked to an annotation in the Business Taxes Law Guide. According to the guide, gifts are subject to California's use tax *6 "[w]hen the donor divests itself of control over the property in this state ..." [FN2] ***3 (2A State Bd. of Equalization, Bus. Taxes Law Guide, Sales & Use Tax Annots., *supra,* Annot. No. 280.0040, p. 3731.) **1033 Adopting that annotation as dispositive, the Court of Appeal reversed the judgment of the superior court and reinstated the Board's tax assessment. We granted Yamaha's petition for review and now reverse the Court of Appeal's judgment and order the matter returned to that court for further proceedings consistent with our opinion.

FN2. The annotation on which the Board relied -- Annotation No. 280.0040 -- purports to interpret section 6009.1 of the Revenue and Taxation Code, excluding from the definition of storage and use "keeping, retaining or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state." Captioned "Advertising Material -- Gifts," the annotation provides that "Advertising or promotional material shipped or brought into the state and temporarily stored here prior to shipment outside state is subject to use tax when a gift of the material [is] made and title passes to the donee in this state. When the donor divests itself of control over the property in this state the gift is regarded as being a taxable use of the property. 10/11/63." (2A State Bd. of Equalization, Bus. Taxes Law Guide, Sales & Use Tax Annots., *supra,* Annot. No. 280.0040, p. 3731.)

DISCUSSION

I

[1] The question is what legal effect courts must give to the Board's annotations when they are relied on as supporting its position in taxpayer litigation. In the broader context of administrative law generally, the question is what standard courts apply when reviewing an agency's *interpretation* of a statute. In effect, the Court of Appeal held the annotations were entitled to the same "weight" or "deference" as "quasi- legislative" rules. [FN3] The Court of Appeal adopted the following formulation: "[A] long-standing and consistent administrative construction of a statute by an administrative agency charged with its enforcement and interpretation is entitled to great weight unless it is either 'arbitrary, capricious or without rational basis' [citations], *7 or is 'clearly erroneous or unauthorized.' [Citation.] Opinions of the administrative agency's counsel, construing the statute," the court went on to say, "are likewise entitled to consideration. [Citations.] Especially where there has been acquiescence by persons having an interest in the matter," the court added, "courts will generally not depart from such an interpretation unless it is unreasonable or clearly erroneous." As this extract from the Court of Appeal opinion indicates, the court relied on a skein of cases as supporting these several, somewhat inconsistent, propositions of administrative law.

FN3. Throughout, we use the terms "quasi-legislative" and "interpretive" in their traditional administrative law senses; i.e., as indicating both the constitutional source of a rule or regulation and the weight or judicial deference due it. (See, e.g., 1 Davis & Pierce, Administrative Law (3d ed. 1994) § 6.3, pp. 233-248.) Of course, administrative rules do not always fall neatly into one category or the other; the terms designate opposite ends of an administrative continuum, depending on the breadth of the authority delegated by the Legislature. (See *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 575-576, 38 Cal.Rptr.2d 139, 888 P.2d 1268; cf. *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 574-575, 59 Cal.Rptr.2d 186, 927 P.2d 296 [comparing the two kinds of rules and suggesting that while interpretive rules are not quasi-legislative in the traditional sense, "an agency would arguably still have to adopt these regulations in accordance with

[Administrative Procedure Act rulemaking requirements]." The issue is not strictly presented by this case, however: Government Code section 11342, subdivision (g) declares that "[r]egulation" does not include "legal rulings of counsel issued by the ... State Board of Equalization."].)

We reach a different conclusion. An agency interpretation of the meaning and legal effect of a statute is entitled to consideration and respect by the courts; however, unlike quasi-legislative regulations adopted by an agency to which the Legislature has confided the power to "make law," and which, if authorized by the enabling legislation, bind this and other courts as firmly as statutes themselves, the binding power of an agency's *interpretation* of a statute or regulation is contextual; its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation. Justice Mosk may have provided the best description when he wrote in *Western States Petroleum Assn. v. Superior Court, supra,* 9 Cal.4th 559, 38 Cal.Rptr.2d 139, 888 P.2d 1268, that " 'The appropriate degree of judicial scrutiny in any particular case is perhaps not susceptible of precise formulation, but lies somewhere along a continuum with nonreviewability at one end and independent judgment at the other.' [Citation.] Quasi-legislative administrative decisions are properly placed at that point of the continuum at which judicial review is more deferential; ministerial and informal actions do not merit such deference, and therefore lie toward the opposite end of the continuum." ***4**1034(*Id.* at pp. 575-576, 38 Cal.Rptr.2d 139, 888 P.2d 1268; see also *Bodinson Mfg. Co. v. California E. Com.* (1941) 17 Cal.2d 321, 325-326, 109 P.2d 935 [An "administrative interpretation ... will be accorded great respect by the courts and will be followed if not clearly erroneous. [Citations.] But such a tentative ... interpretation makes no pretense at finality and it is the duty of this court ... to state the true meaning of the statute finally and conclusively, even though this requires the overthrow of an earlier erroneous administrative construction. [Citations.] The ultimate interpretation of a statute is an exercise of the judicial power ... conferred upon the courts by the Constitution and, in the absence of a constitutional provision, cannot be exercised by any other body."].)

Courts must, in short, independently judge the text of the statute, taking into account and respecting the agency's interpretation of its meaning, of course, whether embodied in a formal rule or less formal representation. Where the meaning and legal effect of a statute is the issue, an agency's interpretation is one among several tools available to the court. Depending *8 on the context, it may be helpful, enlightening, even convincing. It may sometimes be of little worth. (See *Traverso v. People* ex rel. *Dept. of Transportation* (1996) 46 Cal.App.4th 1197, 1206, 54 Cal.Rptr.2d 434.) Considered alone and apart from the context and circumstances that produce them, agency interpretations are not binding or necessarily even authoritative. To quote the statement of the Law Revision Commission in a recent report, "The standard for judicial review of agency interpretation of law is the *independent judgment* of the court, giving *deference* to the determination of the agency *appropriate* to the circumstances of the agency action." (Judicial Review of Agency Action (Feb.1997) 27 Cal. Law Revision Com. Rep. (1997) p. 81, italics added.)

II

[2] Here, the Court of Appeal relied on language from its prior cases suggesting broadly that an agency interpretation of a statute carries the *same* weight -- that is, is reviewed under the same standard -- as a quasi- legislative regulation. Unlike the annotations here, however, quasi-legislative rules are the substantive product of a delegated *legislative* power conferred on the agency. The formulation on which the Court of Appeal relied is thus apt to lead a court (as it led here) to abdicate a quintessential judicial duty -- applying its independent judgment de novo to the merits of the *legal* issue before it. The fact that in this case the Court of Appeal determined Yamaha's tax liability by giving the Board's annotation a weight amounting to unquestioning acceptance only compounded the error.

We derive these conclusions from long-standing administrative law decisions of this court. Although the web making up that jurisprudence is not seamless, on the whole it is both logical and coherent. In *Culligan Water Conditioning v. State*

Bd. of Equalization (1976) 17 Cal.3d 86, 130 Cal.Rptr. 321, 550 P.2d 593 (*Culligan*), the taxpayer sued for a refund of sales and use taxes paid under protest on ion-exchange equipment used to condition water and leased to residential subscribers: Because it came from a service business rather than the rental of property, the taxpayer contended, the income was not subject to the Sales and Use Tax Law. In refund litigation, the Board relied on an affidavit of its assistant chief counsel characterizing the transactions as leases taxable under the Sales and Use Tax Law. The trial court rejected the Board's position, calling it an unwarranted extension of the words of the statute, and awarded judgment to the taxpayer. (17 Cal.3d at p. 92, 130 Cal.Rptr. 321, 550 P.2d 593.)

Justice Sullivan began his opinion for a unanimous court by asking what was "the appropriate standard of review applicable to the [use tax] assessment against" the taxpayer. (*Culligan, supra,* 17 Cal.3d at p. 92, 130 Cal.Rptr. 321, 550 P.2d 593.) The Board *9 contended its assessment was based on an "administrative classification" and could be judicially overturned only if it was "arbitrary, capricious or without rational basis." (*Ibid.*) Our opinion pointed out, however, that the basis for the Board's tax assessment "was not embodied in any formal regulation or even interpretative ruling covering the water ***5 **1035 conditioning industry as a whole." (*Ibid.*) Instead, its basis "was nothing more than the Board auditor's interpretation of two existing regulations." (*Ibid.*) "If the Board had promulgated a formal regulation determining the proper classification of receipts derived from the rental of exchange units ... and the regulation had been challenged in the [refund] action," our *Culligan* opinion went on to say, "the proper scope of reviewing such regulation *would* be one of limited judicial review as urged by the Board. [Citations.]" (*Ibid.*, italics added.)

That was not the case in *Culligan,* however. Instead of adopting a formal regulation, the Board and its staff had considered the facts of the taxpayer's particular transactions, interpreted the statutes and regulations they deemed applicable, and "arrived at certain conclusions as to plaintiff's tax liability and assessed the tax accordingly." (17 Cal.3d at p. 92, 130 Cal.Rptr. 321, 550 P.2d 593.) Far from being "the equivalent of a regulation or ruling of general application," the Board's argument was "merely its litigating position in this particular matter." (*Id.* at p. 93, 130 Cal.Rptr. 321, 550 P.2d 593.) In an important footnote to its opinion, the *Culligan* court disapproved language in several Court of Appeal decisions "indicating that the proper scope of review of such litigating positions of the Board (announced either in tax bulletins or merely as the result of an individual audit) is to determine whether the Board's assessment was arbitrary, capricious or had no reasonable or rational basis." (*Id.* at p. 93, fn. 4, 130 Cal.Rptr. 321, 550 P.2d 593.)

Although the Court of Appeal in this case cited *Culligan, supra,* 17 Cal.3d 86, 130 Cal.Rptr. 321, 550 P.2d 593, it regarded *American Hospital Supply Corp. v. State Bd. of Equalization* (1985) 169 Cal.App.3d 1088, 215 Cal.Rptr. 744 (*American Hospital*) as the decisive precedent. The question there was whether disposable paper menus, used for patients' meals in hospitals, were subject to the sales tax. In concluding they were, the Court of Appeal relied on a ruling of Board counsel interpreting a quasi-legislative regulation of the Board. "Interpretation of an administrative regulation," the court wrote, "like [the] interpretation of a statute, is a question of law which rests with the courts. However, the agency's own interpretation of its regulation is entitled to great weight." (*Id.* at p. 1092, 215 Cal.Rptr. 744.) The Board's interpretation could be overturned, the opinion went on to state, only if it was " 'arbitrary, capricious or without rational basis.' " (*Ibid.*)

The *American Hospital* opinion also rejected the taxpayer's contention that because the rule at issue was only an interpretation and not a quasi-legislative rule, it was not entitled to deference. *10 (*American Hospital, supra,* 169 Cal.App.3d at p. 1092, 215 Cal.Rptr. 744.) Instead, the court read *Culligan* as standing for the *opposite* proposition. Because we had said the rule at issue there did not cover an entire industry, the Court of Appeal reasoned *Culligan* had held in effect that it was nothing more than a " 'litigating position' " and could be ignored. (119 Cal.App.3d at p. 1093, 215 Cal.Rptr. 744.) On that basis, *American Hospital* concluded that because the Board's position on the taxability of paper menus *was* embodied in a "formal regulation" *and* covered the entire hospital industry, it was entitled to same deference as a quasi-legislative rule: "[It] must prevail because it

is neither 'arbitrary, capricious or without rational basis' (*Culligan Water Conditioning v. State Bd. of Equalization, supra,* 17 Cal.3d 86, 92, 130 Cal.Rptr. 321, 550 P.2d 593) nor is it 'clearly erroneous or unauthorized' (*Rivera v. City of Fresno* [(1971)] 6 Cal.3d 132, 140, 98 Cal.Rptr. 281, 490 P.2d 793)." (*Ibid.*)

We think the Court of Appeal in *American Hospital, supra,* 169 Cal.App.3d 1088, 215 Cal.Rptr. 744, and the Court of Appeal in this case by relying on it, failed to distinguish between two classes of rules -- quasi- legislative and interpretive -- that, because of their differing legal sources, command significantly different degrees of deference by the courts. Moreover, *American Hospital* misread our opinion in *Culligan* when it identified the feature that distinguishes one kind of rule from the other. Although the Court of Appeal here did not rely on other prior cases as much as on *American Hospital,* it cited several that appear to perpetuate the same ***6 **1036 confusion. (See *Rizzo v. Board of Trustees* (1994) 27 Cal.App.4th 853, 861, 32 Cal.Rptr.2d 892; *DeYoung v. City of San Diego* (1983) 147 Cal.App.3d 11, 18, 194 Cal.Rptr. 722; *Rivera v. City of Fresno* (1971) 6 Cal.3d 132, 140, 98 Cal.Rptr. 281, 490 P.2d 793.)

[3] It is a "black letter" proposition that there are two categories of administrative rules and that the distinction between them derives from their different sources and ultimately from the constitutional doctrine of the separation of powers. One kind -- quasi-legislative rules -- represents an authentic form of substantive lawmaking: Within its jurisdiction, the agency has been delegated the Legislature's lawmaking power. (See, e.g., 1 Davis & Pierce, Administrative Law, *supra,* § 6.3, at pp. 233-248; 1 Cooper, State Administrative Law (1965) Rule Making: Procedures, pp. 173-176; Bonfield, StateAdministrative Rulemaking (1986) Interpretive Rules, § 6.9.1, pp. 279-283; 9 Witkin, Cal. Procedure (4th ed. 1997) Administrative Proceedings, § 116, p. 1160 [collecting cases].) Because agencies granted such substantive rulemaking power are truly "making law," their quasi-legislative rules have the dignity of statutes. When a court assesses the validity of such rules, the scope of its review is narrow. If satisfied that the rule in question lay within the lawmaking authority delegated by the Legislature, and that it *11 is reasonably necessary to implement the purpose of the statute, judicial review is at an end.

We summarized this characteristic of quasi-legislative rules in *Wallace Berrie & Co. v. State Bd. of Equalization* (1985) 40 Cal.3d 60, 65, 219 Cal.Rptr. 142, 707 P.2d 204 (*Wallace Berrie*): " '[I]n reviewing the legality of a regulation adopted pursuant to a delegation of legislative power, the judicial function is limited to determining whether the regulation (1) is "within the scope of the authority conferred" [citation] and (2) is "reasonably necessary to effectuate the purpose of the statute" [citation].' [Citation.] 'These issues do not present a matter for the independent judgment of an appellate tribunal; rather, both come to this court freighted with [a] strong presumption of regularity....' [Citation.] Our inquiry necessarily is confined to the question whether the classification is 'arbitrary, capricious or [without] reasonable or rational basis.' (*Culligan, supra,* 17 Cal.3d at p. 93, fn. 4, 130 Cal.Rptr. 321, 550 P.2d 593 [citations].)" [FN4]

> FN4. In one respect, our opinion in *Wallace Berrie* may overstate the level of deference -- even quasi-legislative rules are reviewed independently for consistency with controlling law. A court does not, in other words, defer to an agency's view when deciding whether a regulation lies within the scope of the authority delegated by the Legislature. The court, not the agency, has "final responsibility for the interpretation of the law" under which the regulation was issued. (*Whitcomb Hotel, Inc. v. Cal. Emp. Com.* (1944) 24 Cal.2d 753, 757, 151 P.2d 233; see cases cited, *post,* at p. 7 of 78 Cal.Rptr.2d, at p. 1037 of 960 P.2d; *Environmental Protection Information Center v. Department of Forestry & Fire Protection* (1996) 43 Cal.App.4th 1011, 1022, 50 Cal.Rptr.2d 892 [Standard of review of challenges to "fundamental legitimacy" of quasi-legislative regulation is " 'respectful nondeference.' "].)

[4] It is the other class of administrative rules, those *interpreting* a statute, that is at issue in this case. Unlike quasi-legislative rules, an agency's

interpretation does not implicate the exercise of a delegated lawmaking power; instead, it represents the agency's view of the statute's legal meaning and effect, questions lying within the constitutional domain of the courts. But because the agency will often be interpreting a statute within its administrative jurisdiction, it may possess special familiarity with satellite legal and regulatory issues. It is this "expertise," expressed as an interpretation (whether in a regulation or less formally, as in the case of the Board's tax annotations), that is the source of the presumptive value of the agency's views. An important corollary of agency interpretations, however, is their diminished power to bind. Because an interpretation is an agency's *legal opinion*, however "expert," rather than the exercise of a delegated legislative power to make law, it commands a commensurably lesser degree of judicial deference. (*Bodinson Mfg. Co. v. Cal. Emp. Com., supra*, 17 Cal.2d at pp. 325-326, 109 P.2d 935.)

In *International Business Machines v. State Bd. of Equalization* (1980) 26 Cal.3d 923, 163 Cal.Rptr. 782, 609 P.2d 1, we contrasted **1037 ***7 the narrow *12 standard under which quasi-legislative rules are reviewed -- " limited," we wrote, "to a determination whether the agency's action is arbitrary, capricious, lacking in evidentiary support, or contrary to procedures provided by law" (*id.* at p. 931, fn. 7, 163 Cal.Rptr. 782, 609 P.2d 1) -- with the broader standard courts apply to interpretations. The quasi-legislative standard of review "is *inapplicable* when the agency is not exercising a discretionary rule-making power, but merely *construing* a controlling statute. The appropriate mode of review in such a case is one in which the judiciary, although taking ultimate responsibility for the construction of the statute, accords great weight and respect to the administrative construction. [Citation.]" (*Ibid.*, italics added; see also *California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 11, 270 Cal.Rptr. 796, 793 P.2d 2 ["courts are the ultimate arbiters of the construction of a statute"]; Dyna-Med, Inc. v. Fair Employment & Housing Com. *(1987) 43 Cal.3d 1379, 1389, 241 Cal.Rptr. 67, 743 P.2d 1323 ["The final meaning of a statute ... rests with the courts."];* Morris v. Williams *(1967) 67 Cal.2d 733, 748, 63 Cal.Rptr. 689, 433 P.2d 697 [" 'final responsibility for the interpretation of the law rests with the courts.' "].)*

[5] Whether judicial deference to an agency's interpretation is appropriate and, if so, its extent -- the "weight" it should be given -- is thus fundamentally *situational*. A court assessing the value of an interpretation must consider complex factors material to the substantive legal issue before it, the particular agency offering the interpretation, and the comparative weight the factors ought in reason to command. Professor Michael Asimow, an administrative law adviser to the California Law Revision Commission, has identified two broad categories of factors relevant to a court's assessment of the weight due an agency's interpretation: those "indicating that the agency has a comparative interpretive advantage over the courts," and those "indicating that the interpretation in question is probably correct." (Cal. Law Revision Com., Tent. Recommendation, Judicial Review of Agency Action (Aug.1995) p. 11 (Tentative Recommendation); see also Asimow, *The Scope of Judicial Review of Decisions of California Administrative Agencies* (1995) 42 UCLA L.Rev. 1157, 1192-1209.)

[6] In the first category are factors that "assume the agency has expertise and technical knowledge, especially where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion. A court is more likely to defer to an agency's interpretation of its own regulation than to its interpretation of a statute, since the agency is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another." (Tentative Recommendation, *supra*, at p. 11.) The second group of *13 factors in the Asimow classification -- those suggesting the agency's interpretation is likely to be correct -- includes indications of careful consideration by senior agency officials ("an interpretation of a statute contained in a regulation adopted after public notice and comment is more deserving of deference than [one] contained in an advice letter prepared by a single staff member" (Tentative Recommendation, *supra*, at p. 11)), evidence that the agency "has consistently maintained the interpretation in question, especially if [it] is long-standing" (*ibid.*) ("[a] vacillating position ... is entitled to no deference" (*ibid.*)), and indications that the agency's interpretation was contemporaneous with legislative enactment of the statute being interpreted. If an agency has adopted

an interpretive rule in accordance with Administrative Procedure Act provisions -- which include procedures (e.g., notice to the public of the proposed rule and opportunity for public comment) that enhance the accuracy and reliability of the resulting administrative "product" -- that circumstance weighs in favor of judicial deference. However, even formal interpretive rules do not command the same weight as quasi-legislative rules. Because " 'the ultimate resolution of ... legal questions rests with the courts' " (*Culligan, supra,* 17 Cal.3d at p. 93, 130 Cal.Rptr. 321, 550 P.2d 593), judges play a greater role when reviewing the persuasive value of interpretive rules than they do in determining the validity of quasi-legislative rules.

***8 **1038 A valuable judicial account of the process by which courts reckon the weight of agency interpretations was provided by Justice Robert Jackson's opinion in *Skidmore v. Swift & Co.* (1944) 323 U.S. 134, 65 S.Ct. 161, 89 L.Ed. 124 (*Skidmore*), a case arising under the federal Fair Labor Standards Act. The question for the court was whether private firefighters' " waiting time" was countable as "working time" under the act and thus compensable. (323 U.S. at p. 136, 65 S.Ct. 161.) "Congress," the *sKidmore* opinion observed, "did not utilize the services of an administrative agency to find facts and to determine in the first instance whether particular cases fall within or without the Act." (*Id.* at p. 137, 65 S.Ct. 161.) "Instead, it put this responsibility on the courts. [Citation.] But it did create the office of Administrator, impose upon him a variety of duties, endow him with powers to inform himself of conditions in industries and employments subject to the Act, and put on him the duties of bringing injunction actions to restrain violations. Pursuit of his duties has accumulated a considerable experience in the problems of ascertaining [the issue in suit] and a knowledge of the customs prevailing in reference to their solution.... He has set forth his views of the application of the Act under different circumstances in an interpretative bulletin and in informal rulings. They provide a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it. [Citation.]" (*Id.* at pp. 137-138, 65 S.Ct. 161.)

*14 No statute prescribed the deference federal courts should give the administrator's interpretive bulletins and informal rulings, and they were "not reached as a result of ... adversary proceedings." (*Skidmore, supra,* 323 U.S. at p. 139, 65 S.Ct. 161.) Given those features, Justice Jackson concluded, the administrator's rulings "do not constitute an interpretation of the Act or a standard for judging factual situations which *binds* a ... court's processes, as an authoritative pronouncement of a higher court might do." (*Ibid.*, italics added.) Still, the court held, the fact that "the Administrator's policies and standards are not reached by trial in adversary form does not mean that they are not entitled to respect." (*Id.* at p. 140, 65 S.Ct. 161.) "We consider that the rulings, interpretations and opinions of the Administrator under this Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance." (*Ibid.*)

[7] The parallels between the statutory powers and administrative practice of the Board in interpreting the Sales and Use Tax Law, and those of the federal agency described in *Skidmore,* are extensive. As with Congress, our Legislature has not conferred adjudicatory powers on the Board as the means by which sales and use tax liabilities are determined; instead, the validity of those assessments is settled in tax refund litigation like this case. (Rev. & Tax.Code, § 6933.) Like the federal administrator in *Skidmore,* the Board has not adopted a formal regulation under its quasi-legislative rulemaking powers purporting to interpret the statute at issue here. As in *Skidmore,* however, the Board and its staff have accumulated a substantial "body of experience and informed judgment" in the administration of the business tax law "to which the courts and litigants may properly resort for guidance." (323 U.S. at p. 140, 65 S.Ct. 161.) Some of that experience and informed judgment takes the form of the annotations published in the Business Taxes Law Guide.

The opinion in the *Skidmore* case and Professor Asimow's account for the Law Revision Commission -- together spanning a half-century of judicial and scholarly comment on the characteristics and role of administrative interpretations -- accurately describe their value and the criteria by which courts judge their weight. The deference due an agency interpretation -- including the Board's annotations at issue here -- turns on a legally informed, commonsense

assessment of their contextual merit. "The weight of such a judgment in a particular case," to borrow again from Justice Jackson's opinion in *Skidmore*, "will depend upon *the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors* ***1039*** ****9*, *which give it power to persuade, if lacking power* **15 to control.* " (*Skidmore, supra,* 323 U.S. at p. 140, 65 S.Ct. 161, italics added.)

As we read the brief filed by the Attorney General, the Board does not contend for any greater judicial weight for its annotations. Its brief on the merits states that "Yamaha is correct that the annotations are not regulations, and they are not binding upon taxpayers, the Board itself, or the Court. Nevertheless, the annotations are digests of opinions written by the legal staff of the Board which are evidentiary of administrative interpretations made by the Board in the normal course of its administration of the Sales and Use Tax Law.... [T]he annotations have substantial precedential effect within the agency. [¶] The interpretation represented in [the] annotations is certainly entitled to some consideration by the Court."

We agree.

CONCLUSION

In deciding this case, the Court of Appeal gave greater weight to the Board's annotation than it warranted. Although the standard used by the Court of Appeal was not the correct one and prejudiced the taxpayer, regard for the structure of appellate decisionmaking suggests the case should be returned to the Court of Appeal. That court can then consider the merits of the use tax issue and the value of the Board's interpretation in light of the conclusions drawn here. To the extent language in *Rizzo v. Board of Trustees, supra,* 27 Cal.App.4th at page 861, 32 Cal.Rptr.2d 892, *DeYoung v. City of San Diego, supra,* 147 Cal.App.3d at page 18, 194 Cal.Rptr. 722, and *Rivera v. City of Fresno, supra,* 6 Cal.3d at page 140, 98 Cal.Rptr. 281, 490 P.2d 793, is inconsistent with the foregoing views, it is disapproved. We express no opinion on the merits of the underlying question of Yamaha's use tax liability.

DISPOSITION

The judgment of the Court of Appeal is reversed and the cause is remanded to that court for further proceedings consistent with this opinion.

GEORGE, C.J., and KENNARD, BAXTER and CHIN, JJ., concur.

MOSK, Justice, concurring.

I concur in the judgment of the majority that the Court of Appeal's formulation of the standard of review for tax annotations, the summaries of tax opinions of the State Board of Equalization's (Board) legal counsel published in the Business Taxes Law Guide, was not quite correct. Specifically the Court of Appeal erred in suggesting that it would defer to *16 the Board's or its legal counsel's rule unless that rule is "arbitrary and capricious." The majority do not purport to change the well-established, if not always consistently articulated, body of law pertaining to judicial review of administrative rulings, but merely attempt to clarify that law. I write separately to further clarify the relevant legal principles and their application to the present case.

The appropriate starting point of a discussion of judicial review of administrative regulations is an analysis of quasi-legislative regulations, those regulations formally adopted by an agency pursuant to the California Administrative Procedures Act (APA) and binding on the agency. "The proper scope of a court's review is determined by the *task* before it." (*Woods v. Superior Court* (1981) 28 Cal.3d 668, 679, 170 Cal.Rptr. 484, 620 P.2d 1032, italics added.) In the case of quasi-legislative regulations, the court has essentially two tasks. The first duty is "to determine whether the [agency] exercised [its] quasi-legislative authority within the bounds of the statutory mandate." (*Morris v. Williams* (1967) 67 Cal.2d 733, 748, 63 Cal.Rptr. 689, 433 P.2d 697 (*Morris*).) As the *Morris* court made clear, this is a matter for the independent judgment of the court. "While the construction of a statute by officials charged with its administration, including their interpretation of the authority invested in them to implement and carry out its

provisions, is entitled to *great weight*, nevertheless 'Whatever the force of administrative construction ... *final responsibility for the interpretation of the law rests with the courts.*' [Citation.] Administrative regulations***10 **1040 that alter or amend the statute or enlarge or impair its scope are void and courts not only may, but it is their obligation to strike down such regulations. [Citations.]" (*Ibid.*, italics added.) This duty derives directly from statute. "Under Government Code [[FN1]] section 11373 [now § 11342.1], '[e]ach regulation adopted [by a state agency], to be effective, must be within the scope of authority conferred....' Whenever a state agency is authorized by statute 'to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, *no regulation adopted is valid or effective unless consistent and not in conflict with the statute....* ' ([§ 11342.2].)" (*Morris, supra,* 67 Cal.2d at p. 748, 63 Cal.Rptr. 689, 433 P.2d 697, fn. omitted, italics added by *Morris* court.)

FN1. All further statutory references are to the Government Code unless otherwise stated.

The court's second task arises once it has completed the first. "If we conclude that the [agency] was empowered to adopt the regulations, we must also determine whether the regulations are 'reasonably necessary to effectuate thepurpose of the statute.' [(§ 11342.2).] In making such a determination, the court will not 'superimpose its own policy judgment upon the *17 agency in the absence of an arbitrary and capricious decision.' [Citations.]" (*Morris, supra,* 67 Cal.2d at pp. 748-749, 63 Cal.Rptr. 689, 433 P.2d 697.)

In *California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 11, 270 Cal.Rptr. 796, 793 P.2d 2 (*Rank*) we further clarified the two tasks and two distinct standards of review for courts scrutinizing agency regulations. We stated: "As we said in *Pitts v. Perluss* (1962) 58 Cal.2d 824[, 833, 27 Cal.Rptr. 19, 377 P.2d 83]; '[a]s to quasi-legislative acts of administrative agencies, "judicial review is limited to an examination of the proceedings before the officer to determine whether his action has been arbitrary, capricious, or entirely lacking in evidentiary support, or whether he has failed to follow the procedure and give the notices required by law." ' [Citations.] When, however, a regulation is challenged as inconsistent with the terms or intent of the authorizing statute, the standard of review is different, because the courts are the ultimate arbiters of the construction of a statute. Thus, [the *Morris* court] in finding that the challenged regulations contravened legislative intent, rejected the agency's claim that the only issue for review was whether the regulations were arbitrary and capricious." (*Ibid.*, fn. omitted.) The *Rank* court then proceeded to reiterate the *Morris* formulation that " '[w]hile the construction of a statute by officials charged with its administration ... is entitled to great weight, ... final responsibility for the interpretation of the law rests with the courts.' " (*Ibid.*) [FN2] (We will henceforth refer to this standard as the "independent judgment/great weight standard.")

FN2. Certain of our own cases have confused the standards of review in this two-pronged test. For example, in *Wallace Berrie & Co. v. State Bd. of Equalization* (1985) 40 Cal.3d 60, 65, 219 Cal.Rptr. 142, 707 P.2d 204, after stating the above two-pronged test, declared that neither prong " 'present[s] a matter for the independent judgment of an appellate tribunal; rather, both come to this court freighted with [a] strong presumption of regularity....' [Citation.] Our inquiry necessarily is confined to the question whether the classification is ' arbitrary, capricious or [without] reasonable or rational basis.' [Citation.]". As the discussion of *Rank* and *Morris* above makes clear, the first prong of the inquiry -- whether the regulation is "within the scope of the authority conferred" -- is *not* limited to the "arbitrary and capricious" standard of review,but employs the independent judgment/great weight standard. (*Rank, supra,* 51 Cal.3d at p. 11, 270 Cal.Rptr. 796, 793 P.2d 2; *Morris, supra,* 67 Cal.2d at pp. 748-749, 63 Cal.Rptr. 689, 433 P.2d 697.) This confusion is in part responsible for the misstatements of the Court of Appeal in the present case.

There is an important qualification to the independent judgment/great weight standard articulated above, when a court finds that the Legislature has *delegated* the task of interpreting or elaborating on a statute to an administrative agency. A court may find that the Legislature has intended to delegate this interpretive or gap-filling power when it employs open-ended statutory language that an agency is authorized to apply or "when an issue of interpretation is heavily freighted with policy choices which the agency is empowered to make." (Asimow, *The Scope of Judicial Review of Decisions of *18 California Administrative Agencies* (1995) ***11**104142 UCLA L.Rev. 1157, 1198-1199 (Asimow).) For example, in *Moore v. California State Bd. of Accountancy* (1992) 2 Cal.4th 999, 9 Cal.Rptr.2d 358, 831 P.2d 798 (*Moore*), we reviewed a regulation by the Board of Accountancy, the agency statutorily chartered to regulate the accounting profession in this state. The regulation provided that those unlicensed by that board could not use the title "accountant," interpreting a statute, Business and Professions Code section 5058, that forbids use of titles "likely to be confused with" the titles of "certified public accountant" and "public accountant." (2 Cal.4th at p. 1011, 9 Cal.Rptr.2d 358, 831 P.2d 798.) As we stated, "the Legislature delegated to the Board the authority to determine whether a title or designation not identified in the statute is likely to confuse or mislead the public." (*Id.* at pp. 1013-1014, 9 Cal.Rptr.2d 358, 831 P.2d 798.)

Thus, the agency's interpretation of a statute may be subject to the most deferential "arbitrary and capricious" standard of review when the agency is expressly or impliedly delegated interpretive authority. Such delegation may often be implied when there are broadly worded statutes combined with an authorization of agency rulemaking power. But when the agency is called upon to enforce a detailed statutory scheme, discretion is as a rule correspondingly narrower. In other words, a court must always make an independent determination whether the agency regulation is "within the scope of the authority conferred," and that determination includes an inquiry into the extent to which the Legislature intended to delegate discretion to the agency to construe or elaborate on the authorizing statute.

The above schema applies to so-called "interpretive" regulations as well as quasi-legislative regulations. As the majority observe, "administrative rules do not always fall neatly into one category or the other...." (Maj. opn., *ante*, at p. 3, fn. 3 of 78 Cal.Rptr.2d, at p. 1033, fn. 3 of 960 P.2d.) Indeed, regulations subject to the formal procedural requirements of the APA include those that "interpret" the law enforced or administered by a government agency, as well as those that "implement" or "make specific" such law. (§ 11342, subd. (b).) As we recently stated: "A written statement of policy that an agency intends to apply generally, that is unrelated to a specific case, and that predicts how the agency will decide future cases is essentially *legislative* in nature even if it merely *interprets* applicable law." (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 574-575, 59 Cal.Rptr.2d 186, 927 P.2d 296, italics added.) [FN3] Moreover, all regulations are "interpretive" to some extent, because all *19 regulations implicitly or explicitly interpret "the authority invested in them to implement and carry out [statutory] provisions...." (*Morris, supra*, 67 Cal.2d at p. 748, 63 Cal.Rptr. 689, 433 P.2d 697.)

FN3. I note that in federal law, by contrast, the term "interpretive rule" is given a particular significance and legal status. According to statute, "substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency" are required to be published in the Federal Register. (5 U.S.C. § 552(a)(1)(D).) But such "interpretive rules," and "general statements of policy" are explicitly exempt from the notice and hearing provisions of the federal APA. (5 U.S.C. § 553(b)(3)(A).) No such distinction exists in California law.

Of course, some regulations may be properly designated "interpretive" inasmuch as they have no purpose other than to interpret statutes. (See, e.g., *International Business Machines v. State Bd. of Equalization* (1980) 26 Cal.3d 923, 163 Cal.Rptr. 782, 609 P.2d 1.) In the case of such regulations, courts will be engaged only in the first of the two

tasks discussed above, i.e., ensuring that the regulation is within the scope of the statutory authority conferred, employing the independent judgment/great weight test. (See *id.* at p. 931, fn. 7, 163 Cal.Rptr. 782, 609 P.2d 1.)

In sum, when reviewing a quasi-legislative regulation, courts consider whether the regulation is within the scope of the authority conferred, essentially a question of the validity of an agency's statutory interpretation, guided by the independent judgment/great weight standard. (*Rank, supra,* 51 Cal.3d at p. 11, 270 Cal.Rptr. 796, 793 P.2d 2.) This is in contrast to the second aspect of the inquiry, whether a regulation is "reasonably necessary**1042 ***12 to effectuate the statutory purpose," wherein courts "will not intervene in the absence of an arbitrary or capricious decision." (*Ibid.*, citing *Morris, supra,* 67 Cal.2d at p. 749, 63 Cal.Rptr. 689, 433 P.2d 697.) Courts may also employ the "arbitrary and capricious" standard in reviewing whether the agency's construction of a statute is correct if the court determines that the particular statutory scheme in question explicitly or implicitly delegates this interpretive or "gap-filling" authority to an administrative agency. (See *Moore v. California State Bd. of Accountancy, supra,* 2 Cal.4th at pp. 1013-1014, 9 Cal.Rptr.2d 358, 831 P.2d 798; Asimow, *supra,* 42 UCLA L.Rev. at p. 1198.)

What standard of review should be employed for administrative rulings that were not formally adopted under the APA? Such regulations fall generally into two categories. The first is the class of regulations that *should* have been formally adopted under the APA, but were not. In such cases, the law is clear that in order to effectuate the policies behind the APA courts are to give *no* weight to these interpretive regulations. (*Tidewater Marine Western, Inc. v. Bradshaw, supra,* 14 Cal.4th at p. 576, 59 Cal.Rptr.2d 186, 927 P.2d 296; *Armistead v. State Personnel Board* (1978) 22 Cal.3d 198, 204-205, 149 Cal.Rptr. 1, 583 P.2d 744.) To hold otherwise would help to perpetuate the problem of avoidance by administrative agencies of " 'the mandatory requirements of the [APA] of public notice, opportunity to be heard by the public, filing with the Secretary of State, and publication in the [California Code of Regulations].' " *20 (*Armistead, supra,* 22 Cal.3d at p. 205, 149 Cal.Rptr. 1, 583 P.2d 744.) For these reasons, and quite apart from any expertise the agency may possess in interpreting and administering the statute, courts in effect ignore the agency's illegal regulation.

In the second category are those regulations that are not subject to the APA because they are expressly or implicitly exempted from or outside the scope of APA requirements. For such rulings, the standard of judicial review of agency interpretations of statutes is basically the same as for those rules adopted under the APA, i.e., the independent judgment/great weight standard. (See, e.g., *Wilkinson v. Workers' Comp. Appeals Bd.* (1977) 19 Cal.3d 491, 501, 138 Cal.Rptr. 696, 564 P.2d 848 [applying essentially this standard to a statutory interpretation arising within the context of the Workers' Compensation Appeals Board's decisional law]; see also Asimow, *supra,* 42 UCLA L.Rev. at pp. 1200-1201; Judicial Review of Agency Action (Feb.1997) 27 Cal. Law Revision Com. Rep. (1997) pp. 81-82 (Judicial Review of Agency Action).)

The Board counsel's legal ruling at issue in this case is an example of express exemption from the APA. Section 11342, subdivision (g), specifies that the term "regulation" for purposes of the APA does not include "legal rulings of counsel issued by the Franchise Tax Board or State Board of Equalization...." It is therefore evident that our decisions pertaining to regulations that fail to be approved according to required APA procedures are inapposite. It also appears evident that these rulings, as agency interpretations of statutory law, are also to be reviewed under the independent judgment/great weight standard.

But, as the majority point out, the precise weight to be accorded an agency interpretation varies depending on a number of factors. Professor Asimow states that deference is especially appropriate not only when an administrative agency has particular expertise, but also by virtue of its specialization in administering a statute, which "gives [that agency] an intimate knowledge of the problems dealt with in the statute and the various administrative consequences arising from particular interpretations." (Asimow, *supra,* 42 UCLA L.Rev. at p. 1196.) Moreover, deference is more appropriate when, as in the present case, the agency is interpreting "the statute [it] enforces" rather than "some other statute, the common law, the

[C]onstitution, or prior judicial precedents." (*Ibid.*)

Another important factor, as the majority recognize, is whether an administrative construction is consistent and of long standing. (Maj. opn., *ante*, at p. 7 of 78 Cal.Rptr.2d, at p. 1037 of 960 P.2d) This factor is particularly important for resolution of the present case because the tax annotation with which the case is principally concerned, *21 Business ***13 **1043 Taxes Law Guide Annotation No. 280.0040, was first published in 1963, and *Yamaha Corp. of America* does not contest that it has represented the Board's position on the tax question at issue at least since that time. (See now 2A State Bd. of Equalization, Bus. Taxes Law Guide, Sales & Use Annots. (1998) Annot. No. 280.0040, p. 3731 (hereafter Annotation No. 280.0040).)

As the Court of Appeal has stated: "Long-standing, consistent administrative construction of a statute by those charged with its administration, particularly where interested parties have acquiesced in the interpretation, is entitled to great weight and should not be disturbed unless clearly erroneous." (*Rizzo v. Board of Trustees* (1994) 27 Cal.App.4th 853, 861, 32 Cal.Rptr.2d 892). This principle has been affirmed on numerous occasions by this court and the Courts of Appeal. (See, e.g., *DeYoung v. City of San Diego* (1983) 147 Cal.App.3d 11, 18, 194 Cal.Rptr. 722; *Nelson v. Dean* (1946) 27 Cal.2d 873, 880-881, 168 P.2d 16; *Whitcomb Hotel, Inc. v. Cal. Emp. Com.* (1944) 24 Cal.2d 753, 757, 151 P.2d 233; *Thornton v. Carlson* (1992) 4 Cal.App.4th 1249, 1256-1257, 6 Cal.Rptr.2d 375; *Lute v. Governing Board* (1988) 202 Cal.App.3d 1177, 1183, 249 Cal.Rptr. 161; *Napa Valley Educators' Assn. v. Napa Valley Unified School Dist.* (1987) 194 Cal.App.3d 243, 252, 239 Cal.Rptr. 395; *Horn v. Swoap* (1974) 41 Cal.App.3d 375, 382, 116 Cal.Rptr. 113.) Moreover, this principle applies to administrative practices embodied in staff attorney opinions and other expressions short of formal, quasi-legislative regulations. (See, e.g., *DeYoung, supra*, 147 Cal.App.3d 11, 19-21, 194 Cal.Rptr. 722 [long-standing interpretation of city charter provision embodied in city attorney's opinions]; *Napa Valley Educators' Assn., supra*, 194 Cal.App.3d at pp. 251-252, 239 Cal.Rptr. 395 [evidence in the record of the case, including a declaration by official with the State Department of Education, shows long-standing practice of following a certain interpretation of an Education Code provision].)

Two reasons have been advanced for this principle. First, "When an administrative interpretation is of long standing and has remained uniform, it is likely that numerous transactions have been entered into in reliance thereon, and it could be invalidated only at the cost of major readjustments and extensive litigation." (*Whitcomb Hotel, Inc. v. Cal. Emp. Com., supra*, 24 Cal.2d at p. 757, 151 P.2d 233; see also *Nelson v. Dean, supra*, 27 Cal.2d at p. 881, 168 P.2d 16; *Rizzo v. Board of Trustees, supra*, 27 Cal.App.4th at p. 862, 32 Cal.Rptr.2d 892.)

Second, as we stated in *Moore, supra*, 2 Cal.4th at pages 1017-1018, 9 Cal.Rptr.2d 358, 831 P.2d 798, "a presumption that the Legislature is aware of an administrative construction of a statute should be applied if the agency's interpretation of the statutory provisions is of such longstanding duration that the Legislature may be *22 presumed to know of it." As the Court of Appeal has further articulated: " '[L]awmakers are presumed to be aware of long-standing administrative practice and, thus, the reenactment of a provision, or the failure to substantially modify a provision, is a strong indication the administrative practice was consistent with underlying legislative intent.' " (*Rizzo v. Board of Trustees, supra*, 27 Cal.App.4th at p. 862, 32 Cal.Rptr.2d 892; see also *Thornton v. Carlson, supra*, 4 Cal.App.4th at p. 1257, 6 Cal.Rptr.2d 375; *Lute v. Governing Board, supra*, 202 Cal.App.3d at p. 1183, 249 Cal.Rptr. 161; *Napa Valley Educators' Assn. v. Napa Valley Unified School Dist., supra*, 194 Cal.App.3d at p. 252, 239 Cal.Rptr. 395; *Horn v. Swoap, supra*, 41 Cal.App.3d at p. 382, 116 Cal.Rptr. 113.) I note that in the present case, the statute under consideration, Revenue and Taxation Code section 6009.1, has been amended twice since the issuance of Annotation No. 280.0040. (Stats.1965, ch. 1188, § 1, p. 3004; Stats.1980, ch. 546, § 1, p. 1503.)

To state the matter in other terms, courts often recognize the propriety of assigning great weight to administrative interpretations of law either by reference to an explicit or implicit delegation of power by the Legislature to an administrative agency (see *Moore, supra*, 2 Cal.4th at pp. 1013-1014, 9 Cal.Rptr.2d 358, 831 P.2d 798;

Asimow, *supra*, 42 UCLA L.Rev. at pp. 1198-1199), or by noting the agency's specialization and expertise in interpreting the statutes it is ***14 **1044 charged with administering (see *Physicians & Surgeons Laboratories, Inc. v. Department of Health Services* (1992) 6 Cal.App.4th 968, 982, 8 Cal.Rptr.2d 565; Asimow, *supra*, 42 UCLA L.Rev. at pp. 1195-1196). But there is a third reason for paying special heed to an administrative interpretation: the reality that the administrative agency -- by virtue of the necessity of performing its administrative functions -- creates a body of de facto law in the interstices of statutory law, which is relied on by the business community and the general public to order their affairs and, after a sufficient passage of time, is presumptively accepted by the Legislature. In the present case, this third rationale for according great weight to an administrative interpretation is particularly applicable. Thus, judicial deference in this case is owed not so much to the tax annotation per se but to a long-standing practice of enforcement and interpretation by Board staff of which the annotation is evidence.

There are also particularly sound reasons why the principle of giving especially greater weight to long-standing administrative practice should apply when, as in this case, that practice is embodied in a published ruling of the Board's legal counsel. These rulings have a special legal status. As noted, they have been specifically exempted from the APA by section 11342, subdivision (g). The purpose of this exemption was stated by the Franchise Tax Board staff in its enrolled bill report to the Governor immediately prior the enactment of the 1983 amendment containing the exemption, and its statement could be equally well applied to the Board of *23 Equalization. "Department counsel issues a large number of legal rulings in several forms which address specific problems of taxpayers. While these opinions address specific problems, *they are intended to have general application to all taxpayers similarly situated.* This bill provides that such rulings are not regulations, and accordingly, not subject to the [Office of Administrative Law (OAL)] review process. This statutory determination will permit the department to continue to provide a valuable service to taxpayers. If rulings were deemed to be regulations, the service would have to be discontinued because of the administrative burdens created by the OAL review process." (Franchise Tax Bd. staff, Enrolled Bill Rep., Assem. Bill No. 227 (1983-1984 Reg. Sess.) Sept. 16, 1983, p. 3, italics added.)

Thus, the passage of the 1983 amendment to section 11342 was evidently designed for the benefit of taxpayers, so that they would continue to have information about the effective legal positions of the two tax boards. The complexity of tax law and its application to the manifold factual situations of individual taxpayers appears to far outpace an agency's capacity to promulgate and amend formal regulations. Given the importance of certainty in tax law, the Board has long engaged in the practice of issuing legal opinions to individual taxpayers. (See 1 Cal. Taxes (Cont., Ed., Bar Supp.1996) § 2.152, p. 347.) The Legislature recognized such practice, and recognized the propriety of taxpayer reliance on such rulings, in Revenue and Tax Code section 6596. That section provides that if a person's failure to make a timely payment or return "is due to the person's reasonable reliance on written advice from the [B]oard," that person would be relieved of certain payment obligations. The authorization in section 11342 to publish such individual rulings without following APA requirements is a further legislative means of facilitating business planning and increasing taxpayer certainty about tax law. Publication of this information allows taxpayers subject to the sales and use tax to structure their affairs accordingly, and, if they perceive the need, lobby the Board or the Legislature to overturn these legal rulings. As the Attorney General states in his brief, such rulings, while not binding on the agency, "have substantial precedential effect within the agency." There is accordingly no reason to decline to extend to such legal rulings, insofar as they embody the Board's long-standing interpretations of the sales and use tax statutes, the especially great weight accorded to other representations of long-standing administrative practice. [FN4]

FN4. Yamaha and amicus curiae claim that tax annotations are frequently inconsistent, and that the Board legal staff has been lax in purging the Business Taxes Law Guide of outdated annotations. Obviously, to extent that an old annotation does *not* represent the Board's long- standing,

consistent, interpretation, it does not merit the same consideration. (See *Hudgins v. Neiman Marcus Group, Inc.* (1995) 34 Cal.App.4th 1109, 1125, 41 Cal.Rptr.2d 46.) In the present case, Yamaha does not contend that Annotation No. 280.0040 is inconsistent with other annotations, or with the Board's actual practice, since it was issued.

***15 **1045 Tax annotations representing the Board's long-standing position may usefully be contrasted to positions the Board might adopt in the context of *24 litigation. In *Culligan Water Conditioning v. State Bd. of Equalization* (1976) 17 Cal.3d 86, 130 Cal.Rptr. 321, 550 P.2d 593, we found that such litigating positions were not entitled to as great a level of deference as administrative rulings that were "embodied in formal regulation[s] or even interpretive ruling[s] covering the ... industry as a whole...." (*Id.* at p. 92, 130 Cal.Rptr. 321, 550 P.2d 593). [FN5] The tax annotation at issue in this case, although originally addressing an individual taxpayer's query, was published and has represented the Board's categorical position regarding taxation of gifts originating from a California source. The annotation, therefore, being both an interpretive ruling of a general nature, and one of long standing, is deserving of significantly greater weight than if the Board had adopted its position only as part of the present litigation. [FN6]

FN5. I note that some of the *Culligan* court's language may be open to misinterpretation. The Board in that case contended that the proper standard of review was whether its position was "arbitrary, capricious or without rational basis." (17 Cal.3d at p. 92, 130 Cal.Rptr. 321, 550 P.2d 593.) The court disagreed, holding that " '[t]he interpretation of a regulation, like the interpretation of the statute, is, of course, a question of law [citations], and while an administrative agency's interpretation of its own regulation obviously deserves great weight [citations], the ultimate resolution of such legal questions rests with courts.' " (*Id.* at p. 93, 130 Cal.Rptr. 321, 550 P.2d 593.) In expressing its disagreement with the proposition that the Board's litigating position deserves the highest level of deference, the *Culligan* court differentiated such positions from "formal regulation" of a general nature, which, the court agreed, would be overturned only if arbitrary and capricious. (*Id.* at p. 92, 130 Cal.Rptr. 321, 550 P.2d 593.) Perhaps because the *Culligan* court was focused on making a distinction between regulations of a general nature and litigating positions, it did not articulate the two-pronged judicial inquiry into the validity of quasi-legislative regulations as discussed above, nor did it specify that the arbitrary and capricious standard applied only to the *second* prong.

Nonetheless, the *Culligan* court was correct in holding that statutory interpretations contained in formal regulations merit more deference, all other things being equal, than an agency's litigating positions.

FN6. Moreover, although the *Culligan* court referred to "litigating positions of the Board (announced either in tax bulletins or merely as the result of an individual audit)" (*Culligan Water Conditioning v. State Bd. of Equalization, supra*, 17 Cal.3d at p. 93, fn. 4, 130 Cal.Rptr. 321, 550 P.2d 593), it was not implying that all material contained in tax bulletins were "litigating positions." Indeed the *Culligan* court cited *Henry's Restaurants of Pomona, Inc. v. State Bd. of Equalization* (1973) 30 Cal.App.3d 1009, 106 Cal.Rptr. 867, as an example of a case typifying the limited judicial review appropriate for regulations of a general nature. (*Culligan, supra*, at p. 92, 130 Cal.Rptr. 321, 550 P.2d 593.) The court in *Henry's Restaurants* considered the Board's interpretation of a sales tax question issued in the form of a General Sales Tax Bulletin. (30 Cal.App.3d at p. 1014, 106 Cal.Rptr. 867.) The citation to *Henry's Restaurants* shows that the *Culligan* court's reference to "litigating positions of the Board ... announced ... in tax bulletins" was not to legal rulings of a general nature that might be contained in tax bulletins.

It may be argued that regulations formally adopted in compliance with the APA should intrinsically be assigned greater weight than tax annotations, because the former are promulgated only after a notice and comment period, whereas the latter are devised by the Board's legal staff without public input. *25 In the abstract, that argument is not without merit. But even if the statutory interpretations contained in tax annotations are not, *ab initio*, as reliable or worthy of deference as formally adopted regulations, the well-established California case law quoted above demonstrates that such reliability may be earned subsequently. Tax annotations that represent the Board's administrative practices may, if they withstand the test of time, merit a weight that initially may not have been intrinsically warranted. Or in other words, while formal APA adoption is one factor in favor of giving greater weight to an agency construction of a statute, the fact that a rule is of long- standing and the statute it interprets has been reenacted are other such factors.

In sum, as the Attorney General correctly sets forth in his brief, the appropriate standard **1046 of review for Annotation No. 280. 0040 ***16 can be stated as follows: (1) the court should exercise its independent judgment to determine whether the Board's legal counsel correctly construed the statute; (2) the Board's construction of the statute is nonetheless entitled to "great weight"; (3) when, as here, the Board is construing a statute it is charged with administering and that statutory interpretation is long-standing and has been acquiesced in by persons interested in the matter, and by the Legislature, it is particularly appropriate to give these interpretations great weight. (*Rizzo v. Board of Trustees, supra,* 27 Cal.App.4th at p. 861, 32 Cal.Rptr.2d 892.) [FN7]

FN7. The majority quote at length from (*Skidmore v. Swift & Co.* (1944) 323 U.S. 134, 65 S.Ct. 161) to describe the proper standard of judicial review of administrative rulings. I note that the United States Supreme Court has at least partly abandoned *Skidmore* 's open-ended formulation in favor of a more bright line one. (See *Chevron v. Natural Resources Defense Council* (1984) 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694.) In any case, I agree with the majority that many of the factors discussed in Justice Jackson's opinion in *Skidmore* are appropriate considerations under the governing California decisions, and that the discussion in *Skidmore* may be a useful guide to the extent it is consistent with the independent judgment/great weight test subsequently developed under California law.

The Court of Appeal in this case, although it stated the standard of review nearly correctly, reflected some of the confusion found in our case law when it suggested that it would defer to the Board's annotation unless it was "arbitrary, capricious or without rational basis." It is therefore appropriate to remand to the Court of Appeal for reconsideration in light of the proper standard of review.

GEORGE, C.J., and WERDEGAR, J., concur.

78 Cal.Rptr.2d 1, 19 Cal.4th 1, 960 P.2d 1031, 98 Cal. Daily Op. Serv. 6683, 98 Daily Journal D.A.R. 9211

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2003 WL 403380
--- Cal.Rptr.2d ---, 2003 Daily Journal D.A.R. 2011
(Publication page references are not available for this document.)

H

Court of Appeal, First District, Division 2, California.

CALIFORNIA ADVOCATES FOR NURSING HOME REFORM et al., Plaintiffs and Appellants,
v.
Diana M. BONTA, as Director, etc., et al., Defendants and Respondents.

No. A097107.

Feb. 24, 2003.

Not-for-profit corporation advocating for individuals eligible for benefits under federal Medicaid program and their families, and corporation's executive director, brought action against Department of Health Services (DHS), its Director, and other Department officials, alleging Department's estate recovery internal guidelines and policies for Medicaid program were regulations that were not properly promulgated under Administrative Procedure Act (APA). The Superior Court, San Francisco County, No. 315107, David A. Garcia, J., granted summary judgment for defendants. Plaintiffs appealed. On rehearing, the Court of Appeal, Kline, P.J., held that: (1) internal directives and informal memoranda regarding recovery of Medicaid benefits from deceased recipients' annuities, disability exemptions from such recovery, and recovery of in-home health services payments from health care providers, were "regulations" that were subject to implementation requirements of APA, and (2) genuine issues of material fact precluded summary judgment as to claims that directives and memoranda regarding recovery of benefits from life estates, and regarding lien agreements, were "regulations."

Reversed and remanded.

West Headnotes

[1] Statutes ⇨**219(9.1)**
361k219(9.1) Most Cited Cases

Evidence Code provision presuming that official duty has been regularly performed did not require court to give substantial deference to Department of Health Services' (DHS) determination that its rulemaking fully complied with the Administrative Procedure Act (APA). West's Ann.Cal.Gov.Code § 11340 et seq.; West's Ann.Cal.Evid.Code § 664.

[2] Evidence ⇨**87**
157k87 Most Cited Cases

The effect of the rebuttable presumption created by the Evidence Code, that official duty has been regularly performed, is merely to impose upon the party against whom the presumption operates the burden of proof as to the nonexistence of the presumed fact. West's Ann.Cal.Evid.Code § 664.

[3] Statutes ⇨**219(9.1)**
361k219(9.1) Most Cited Cases

Department of Health Services' (DHS) determination that its rulemaking fully complied with the Administrative Procedure Act (APA) did not involve substantive policy decisions in a matter as to which Department had greater expertise than the court, and thus, the court was not required to give substantial deference to Department's determination. West's Ann.Cal.Gov.Code § 11340 et seq.

[4] Administrative Law and Procedure ⇨**4.1**
15Ak4.1 Most Cited Cases

The Administrative Procedure Act (APA) was designed in part to prevent the use by administrative agencies of "underground" regulations, and it is the courts, not administrative agencies, which enforce that prohibition. West's Ann.Cal.Gov.Code § 11340 et seq.

[5] Administrative Law and Procedure ⇨**382.1**
15Ak382.1 Most Cited Cases

A "regulation" subject to the Administrative Procedure Act (APA) has two principal identifying characteristics: first, the agency must intend its rule to apply generally rather than in a specific case, and second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency's procedure. West's Ann.Cal.Gov.Code § 11342.600.

[6] Administrative Law and Procedure ⇨**382.1**
15Ak382.1 Most Cited Cases

The rule need not apply universally, to be a regulation that is subject to the Administrative Procedure Act (APA); it need only apply generally, by declaring how a certain class of cases will be decided. West's Ann.Cal.Gov.Code § 11342.600.

[7] Administrative Law and Procedure ⚿4.1
15Ak4.1 Most Cited Cases

One purpose of the Administrative Procedure Act (APA) is to ensure that those persons or entities whom a regulation will affect have a voice in its creation, as well as notice of the law's requirements so that they can conform their conduct accordingly. West's Ann.Cal.Gov.Code § 11340 et seq.

[8] Health ⚿491
198Hk491 Most Cited Cases

Department of Health Services' (DHS) internal directives and informal memoranda regarding recovery of Medicaid benefits from deceased recipients' annuities, disability exemptions from such recovery, and recovery of in-home health services payments from health care providers, were "regulations" that were subject to the implementation requirements of the Administrative Procedure Act (APA); the directives and memoranda applied generally and interpreted and made certain the nature of the estate subject to recovery under federal and state Medicaid laws, even if such directives and memoranda were unnecessary and even if Department's policy was to decline to enforce the directives and memoranda. Social Security Act, §§ 1614(a)(3)(A, B), 1903, 1917(b)(1, 2), (b)(4)(B), as amended, 42 U.S.C.A. § § 1382c(a)(3)(A, E), 1396b, 1396p(b)(1, 2), (b)(4)(B); 20 C.F.R. §§ 416.901,416.1015; West's Ann.Cal.Gov.Code §§ 11340.5(a), 11342.600, 11346(a); West's Ann.Cal.Welf. & Inst.Code § 14009.5(a), (b)(2)(C); 22 CCR § 50960, subd. b, para. 1.

[9] Administrative Law and Procedure ⚿706
15Ak706 Most Cited Cases

The unreviewability of a discretionary agency decision to forgo enforcement of a statute it administers in a particular case does not insulate from review an agency failure to promulgate regulations in the first instance where required to do so by the Administrative Procedure Act (APA), which is not a statute that the agency administers. West's Ann.Cal.Gov.Code § 11340 et seq.

[10] Evidence ⚿48
157k48 Most Cited Cases

In appropriate circumstances, judicial notice could be taken of Department of Health Services' (DHS) "All County Letter," providing counties with current information regarding Department's estate-recovery program relating to Medicaid benefits; the letter was an official act of an executive department that was not reasonably subject to dispute and was capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. West's Ann.Cal.Evid.Code §§ 452(c, h), 459(a).

[11] Appeal and Error ⚿863
30k863 Most Cited Cases

On an appeal from the granting of summary judgment, the appellate court will consider only those facts that were before the trial court, and will disregard any new factual allegations on appeal; thus, facts not presented below cannot, on appeal, create a triable issue which would preclude summary judgment.

[12] Evidence ⚿48
157k48 Most Cited Cases

Court of Appeal would not take judicial notice of Department of Health Services' (DHS) "All County Letter," providing counties with current information regarding Department's estate-recovery program relating to Medicaid benefits, where the letter had not been before the trial court when the trial court granted summary judgment for DHS, in action by not-for-profit corporation advocating for individuals eligible for benefits under federal Medicaid program and their families, alleging Department's estate recovery internal guidelines and policies for Medicaid program were regulations that were not properly promulgated under Administrative Procedure Act (APA). West's Ann.Cal.Evid.Code § § 452(c, h), 459(a); West's Ann.Cal.Gov.Code § 11342.600.

[13] Administrative Law and Procedure ⚿382.1
15Ak382.1 Most Cited Cases

Whether the adoption of regulations constitutes quasi-legislative action that is subject to the Administrative Procedure Act (APA) does not depend upon the nature of the policy embodied in the regulations. West's Ann.Cal.Gov.Code § 11346(a).

[14] Judgment ⇐181(15.1)
228k181(15.1) Most Cited Cases

Genuine issue of material fact as to whether Department of Health Services (DHS) had a policy regarding recovery of Medicaid benefits from life estates which was inconsistent with state Medicaid law precluded summary judgment for Department, in action alleging that Department's internal directives and informal memoranda were "regulations" that were subject to the implementation requirements of Administrative Procedure Act (APA). Social Security Act, §§ 1903, 1917(b)(4)(A, B), as amended, 42 U.S.C.A. § § 1396b, 1396p(b)(4)(A, B); 20 C.F.R. §§ 416.901, 416.1015; West's Ann.Cal.Gov.Code §§ 11340.5(a) , 11342.600, 11346(a); West's Ann.Cal.Welf. & Inst.Code § 14009.5(a); 22 CCR § 50960, subd. b, para. 1.

[15] Judgment ⇐181(15.1)
228k181(15.1) Most Cited Cases

Genuine issue of material fact as to whether Department of Health Services (DHS) usually used lien agreements to defeat applications for hardship waivers from claims to recover Medicaid benefits from a deceased recipient's estate precluded summary judgment for Department, in action alleging that Department's internal directives and informal memoranda were "regulations" that were subject to the implementation requirements of Administrative Procedure Act (APA). 42 U.S.C.A. § § 1396(b), 1396p(b); 20 C.F.R. §§ 416.901, 416.1015; West's Ann.Cal.Gov.Code §§ 11340.5(a) , 11342.600, 11346(a); West's Ann.Cal.Welf. & Inst.Code § 14009.5(a), (c)(1); 22 CCR §§ 50960, subd. b, para. 1, 50963, subd. a.
Amitai Schwartz, Emeryville, for Appellants.

Bill Lockyer, Attorney General Charlton G. Holland III, Senior Assistant Attorney General James M. Humes, Deputy Attorney General, for Respondent.

KLINE, P.J.

Appellants allege that written and unwritten policies, procedures and guidelines of the Department of Health Services interpreting federal and state statutes relating to the Medicaid [FN1] program, which the department administers, constitute regulations within the meaning of the Administrative Procedure Act (Gov.Code, § 11340 et seq.) (APA) and are therefore void because they were not promulgated in accordance with the APA. The trial court disagreed and granted summary judgment for the department. We agree with appellants that the department failed to dispositively demonstrate the absence of a triable issue of material fact or that appellants' claim lacks legal merit. Accordingly, we shall reverse the judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

This litigation was commenced by California Advocates for Nursing Home Reform (CANHR), a California not-for-profit corporation which advocates on behalf of individuals eligible for benefits under the federal Medicaid program and their families, and Patricia McGinnis, the executive director of CANHR (collectively, appellants), against Diana M. Bonta, the Director of the Department of Health Services, as well as other department officials, all of whom are sued in their official capacities, as well as the department itself (collectively, DHS or the department).

The issues appellants have raised all relate to an aspect of the Medicaid program known as "estate recovery," which is later described. Appellants' central claim is that the "skeletal regulations" relating to this subject which DHS properly promulgated pursuant to the APA (set forth in §§ 50960-50965 of tit. 22 of the Cal.Code Regs.) do not address or include DHS' *current* policies, choices and practices regarding the subject. According to appellants, the policies, choices and practices DHS actually employs "exist instead in written and unwritten procedures, rules, guidelines, even in e-mail messages from the Department's estate recovery managers. They have not been noticed to the public. They have not been published in the California Code of Regulations. They have not been submitted to the OAL [Office of Administrative Law] for approval. They are house

rules--underground regulations upon which defendants rely in demanding repayment of thousands of dollars from the modest estates of deceased Medi-Cal recipients."

The complaint, filed on September 15, 2000, alleges that respondents' "underground guidelines and criteria" violate not just the APA but also provisions of the Welfare and Institutions Code relating to estate recovery because they conflict with published regulations on that subject which were validly enacted. The complaint sought declaratory and injunctive relief, restitution, and a peremptory writ of mandate pursuant to Code of Civil Procedure section 1085.

On July 13, 2001, the parties filed competing motions for summary judgment. Two months later, on September 17, the court denied appellants' motion and granted that of respondents. On that basis, the court entered judgment in favor of the department on November 9, 2001. This timely appeal followed.

II. DISCUSSION

A. *Standard of Review.*

In order to prevail, a defendant who has filed a motion for summary judgment must " 'show[ ] that one or more elements of the cause of action ... cannot be established by the plaintiff. [Citation.] In other words, all that the defendant need do is to show that the plaintiff cannot establish at least one element of the cause of action--for example, that the defendant cannot prove element X. Although he remains free to do so, the defendant need not himself conclusively negate any such element--for example, himself prove not X." (*Aguilar v. Atlantic Richfield* (2001) 25 Cal.4th 826, 854, 107 Cal.Rptr.2d 841, 24 P.3d 493.) Once the moving defendant has met its burden, the burden shifts to the plaintiff to show that a triable issue of fact exists as to the cause of action or the defense thereto. (Code Civ. Proc., § 437c, subd. (o)(2); *id.* at p. 849, 107 Cal.Rptr.2d 841, 24 P.3d 493.) On appeal, this court exercises its independent judgment in determining whether there are triable issues of material fact and whether the moving party is entitled to judgment as a matter of law. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334-335, 100 Cal.Rptr.2d 352, 8 P.3d 1089.)

As will be seen, the trial court did not grant summary judgment for DHS solely on the ground that there is no triable issue as to any material fact; indeed, it implicitly acknowledged the truth of many of appellants' factual assertions. Summary judgment was granted in large part on the ground that certain internal policy directives which DHS indisputably issued were not "regulations" within the meaning of the APA because they were "unnecessary." The trial court therefore determined not only that there was no material issue of fact to be tried, but also that appellants' action had no merit on the undisputed facts, a purely legal issue. (See *Burke Concrete Accessories, Inc. v. Superior Court* (1970) 8 Cal.App.3d 773, 775, 87 Cal.Rptr. 619.)

[1][2][3] DHS suggests that in assessing the adequacy of its rulemaking we are obliged to defer to its determination. Relying on Evidence Code section 664 ("It is presumed that official duty has been regularly performed") and *Western Oil & Gas Ass'n. v. Air Resources Board* (1984) 37 Cal.3d 502, 509, 208 Cal.Rptr. 850, 691 P.2d 606 ("[a] reviewing court will not substitute its policy judgment for the agency's in the absence of an arbitrary decision"), DHS maintains that principles of separation of powers and respect for agency expertise require us to extend "substantial deference" to its determination that its rulemaking fully complies with the APA. We disagree. As appellants correctly point out, the effect of the rebuttable presumption created by section 664 is merely "to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact." (*Gee v. California State Personnel Bd.* (1970) 5 Cal.App.3d 713, 718, 85 Cal.Rptr. 762.) DHS's reliance on *Western Oil & Gas Ass'n. v. Air Resources Board, supra,* is unjustified because that case related to an agency's substantive policy decisions in its area of expertise (air quality standards), not to whether the agency's rulemaking process complied with the APA, a matter as to which the agency has no greater expertise than the courts.

[4] The APA was designed in part to prevent the use by administrative agencies of "underground" regulations (*Kings Rehabilitation Center, Inc. v. Premo* (1999) 69 Cal.App.4th 215, 217, 81 Cal.Rptr.2d 406), and it is the courts, not administrative agencies, which enforce that prohibition. "[A]gencies are normally not

empowered to determine, in an authoritative way, the decision-making criteria that relevant statutes require them to consider when they formulate and adopt rules. As a result, courts must review wholly de novo the propriety of the decision-making criteria utilized by agencies when they make rules. That is, in almost every instance involving the judicial review of a rule, courts are entitled to substitute their judgments for those of the agencies on this question of law. They need not defer to any extent to the judgment of the agencies on such matters. The same is true with respect to compliance by agencies with applicable procedural requirements. Agencies are not normally delegated power to determine authoritatively whether they complied with generally applicable rule-making procedures, ... As a result, courts may usually determine the lawfulness of agencies' compliance with those rule-making procedures entirely de novo, simply substituting their judgment on that question for that of the agencies." (Bonfield, *State Administrative Rule Making* (1986) § 9.2.12, at p. 582.)

B. *Pertinent Provisions of the Administrative Procedure Act.*

The APA provides that "[n]o state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in [Government Code] Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State...." (Gov.Code, § 11340.5, subd. (a).) [FN2]

[5][6] "Regulation" is defined in the APA as "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure...." (Gov.Code, § 11342.600.) "A regulation subject to the APA thus has two principal identifying characteristics. (See *Union of American Physicians & Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 497, [272 Cal.Rptr. 886] ....) First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. (*Roth v. Department of Veterans Affairs* (1980) 110 Cal.App.3d 622, 630, [167 Cal.Rptr. 552]....) Second, the rule must 'implement, interpret, or make specific the law enforced or administered by [the agency], or ... govern [the agency's] procedure.' (Gov.Code, § 11342, subd. (g).)" (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571, 59 Cal.Rptr.2d 186, 927 P.2d 296.)

If a rule constitutes a "regulation" within the meaning of the APA (other than an "emergency regulation," which may not remain in effect more than 120 days) [FN3] it may not be adopted, amended, or repealed except in conformity with "basic minimum procedural requirements" (Gov.Code, § 11346, subd. (a)) that are exacting. The agency must give the public notice of its proposed regulatory action (*id.*, §§ 11346.4, 11346.5); issue a complete text of the proposed regulation with a statement of the reasons for it (*id.*, § 11346.2, subds. (a), (b)); give interested parties an opportunity to comment on the proposed regulation (*id.*, § 11346.8); respond in writing to public comments (*id.*, §§ 11346.8, subd. (a), 11346.9); and forward a file of all materials on which the agency relied in the regulatory process to the Office of Administrative Law (*id.*, § 11347.3, subd. (b)), which reviews the regulation for consistency with the law, clarity, and necessity. (*Id.*, §§ 11349.1, 11349.3.) Any regulation or order of repeal that substantially fails to comply with these requirements may be judicially declared invalid. (*Id.*, § 11350.)

[7] "One purpose of the APA is to ensure that those persons or entities whom a regulation will affect have a voice in its creation (*Armistead v. State Personnel Board* (1978) 22 Cal.3d 198, 204-205, [149 Cal.Rptr. 1, 583 P.2d 744] ...), as well as notice of the law's requirements so that they can conform their conduct accordingly (*Ligon v. State Personnel Board* (1981) 123 Cal.App.3d 583, 588, [176 Cal.Rptr. 717] ...). The Legislature wisely perceived that the party subject to regulation is often in the best position, and has the greatest incentive, to inform the agency about possible unintended consequences of a proposed regulation. Moreover, public participation in the regulatory process directs the attention of agency policymakers

to the public they serve, thus providing some security against bureaucratic tyranny. (See *San Diego Nursery Co. v. Agricultural Labor Relations Bd.* (1979) 100 Cal.App.3d 128, 142- 143, [160 Cal.Rptr. 822]....)" (*Tidewater Marine Western, Inc. v. Bradshaw, supra,* 14 Cal.4th at p. 569, 59 Cal.Rptr.2d 186, 927 P.2d 296.)

The written and unwritten DHS rules which, according to appellants, are required by the APA to be, but were not promulgated in the manner mandated by that act, all relate to federal and state statutes pertaining to recovery by the government of the cost of Medicaid benefits from the estates of recipients who owned valuable residential property that was exempt from consideration at the time they were deemed eligible to receive such benefits.

C. *Overview of the Estate Recovery Statutes.*

The Medicaid program, established in 1965 as title XIX of the Social Security Act, "is designed to provide medical assistance to persons whose income and resources are insufficient to meet the costs of necessary care and services. See *Schweiker v. Hogan,* 457 U.S. 569, 571, 102 S.Ct. 2597, 73 L.Ed.2d 227 (1982). The Federal Government shares the costs of Medicaid with States that elect to participate in the program. In return, participating States are to comply with requirements imposed by the Act and by the Secretary of Health and Human Services. See 42 U.S.C. § 1396a (1982 ed. and Supp. II); *Schweiker v. Gray Panthers,* 453 U.S. 34, 36-37, [101 S.Ct. 2633, 69 L.Ed.2d 460] (1981)." (*Atkins v. Rivera* (1985) 477 U.S. 154, 156-157, 106 S.Ct. 2456, 91 L.Ed.2d 131.) Persons qualify for Medicaid benefits if they are aged, blind, disabled or the parent of a minor child, and their income and resources are insufficient to meet the costs of necessary care and services for the child, as measured by specified statutory criteria. (42 U.S.C. § 1396a; see also *Atkins v. Rivera, supra,* 477 U.S. at p. 156, 106 S.Ct. 2456.) However, because an applicant's principal residence is excluded as a countable resource in determining eligibility (see 42 U.S.C. § 1382b, subd. (a)(1)), some persons who possess valuable assets are allowed to receive benefits. [FN4] Congress justified this incongruity by authorizing "estate recovery," that is, the recovery of all or a portion of the benefits paid from the estate of such a beneficiary after his or her death.

Prior to 1993, states were permitted, but not required, to establish estate recovery programs. The mandatory estate recovery provision was enacted by Congress as part of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93). Its purpose was "to counterbalance rocketing Medicaid expenditures and overall budget and deficit reductions. [Citation.] Congress sought a way to stymie the growth in state Medicaid expenditures without depriving eligible recipients of much-needed care. [Citation.] Thus, although states could allow Medicaid recipients to retain their homes during their lifetime, Congress began requiring states to recoup benefits from the estates of certain deceased Medicaid recipients as a condition of receiving Medicaid funds. [Citations.]" (*West Virginia ex rel. McGraw v. D.H.H.S., supra,* 132 F.Supp.2d 437, 440.) Specifically, OBRA '93 required each state to include in its state plan a provision for making recoveries from the estates of specified classes of Medicaid recipients. (42 U.S.C. § 1396p(b)(1).) States that fail to do so risk losing all or part of their Medicaid funding. (42 U.S.C. § 1396c.) OBRA '93 does not forcibly expose citizens to estate recovery. Persons subject to estate recovery receive notice of the estate recovery requirement before they decide whether to accept or reject Medicaid benefits. A home is safeguarded from recovery if needed for the support of a recipient's spouse or dependent child, and recovery may be waived in other situations in which undue hardship can be shown. (*West Virginia ex rel. McGraw v. D.H.H.S., supra,* 132 F.Supp.2d at p. 441; 42 U.S.C. § 1396p(b)(3).)

California participates in the Medicaid program through its California Medical Assistance Program, codified as the Medi-Cal Act (Welf. & Inst.Code, § 14000.4) and set forth in sections 14000 through 14198.3 of the Welfare and Institutions Code. Complying with the federal estate recovery requirement, the Medi Cal Act provides that, except in specified circumstances, DHS shall claim against the estate of a deceased Medi-Cal beneficiary "or against any recipient of the property of that decedent by distribution or survival an amount equal to the payments for the health care services received or the value of the property received by any recipient from the decedent by distribution or survival, whichever is less." (Welf. & Inst.Code, § 14009.5, subd. (a).) DHS may waive all or part of such a claim if it determines enforcement thereof

"would result in substantial hardship to other dependents, heirs, or survivors of the individual against whose estate the claim exists." (*Id.*, § 14009.5, subd. (c)(1).)

Appellants acknowledge that DHS--more specifically, the Estate Recovery Unit of the Third Party Liability Branch of DHS, known as the ERU--has promulgated regulations implementing the federal and state statutes just described (see Cal.Code Regs., tit. 22, §§ 50960-50965), but maintain that these "skeletal" regulations merely provide a general definition of the "estate" that is subject to recovery, describe the required notice that must be given, set forth some of the criteria for "hardship waivers" and provide for administrative hearings when a hardship waiver is requested. However, according to appellants, DHS seeks estate recovery not only from probate estates, joint tenancies, tenancies in common, survivorship and living trusts, but also from assets held or conveyed through life estates, annuities, post-death liens and "other arrangements." Recovery against such assets is permitted by the Medicaid Act, which provides that "the term 'estate,' with respect to a deceased individual ... may include, at the option of the State (and shall include, in the case of an individual to whom [42 U.S.C. § 1396p(b)](1)(c)(i) applies), any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement." (42 U.S.C. § 1396p(b)(4)(B).)

D. *The Trial Court Ruling.*

The claims set forth in the complaint fall into three categories: (1) that the "skeletal regulations" DHS has properly promulgated do not define the types of life estates it seeks to recover or the circumstances, if any, under which annuities and post-death liens are subject to recovery, or the nature of the "other arrangement[s]," if any, from which it may also seek recovery (see Cal.Code Regs., tit. 22, § 50960, subd. (b)(1)); (2) that DHS utilizes informal memoranda known as Estate Recovery Unit Policies, or ERUPs, pertaining to claims against life estates (see 42 U.S.C. § 1396p(b)(4)(B)), and creating exemptions from estate recovery, such as those applicable to certain disabled persons (see 42 U.S.C. §§ 1382c, 1396p(b)(2)), and such ERUPs effectively implement, interpret, and make specific the recovery provisions of the Medicaid Act; and (3) that DHS's determination of requests for hardship waivers are based on written and unwritten policies and practices "that create and impose additional and burdensome standards which interpret and exceed standards in published regulations regarding applications for hardship waivers."

The trial court rejected all of these claims and concluded that DHS "does not use underground regulations in administering its estate recovery program." The order denying appellants' motion for summary judgment and granting that of DHS, which was prepared by and entirely adopted the views of DHS, found that (1) DHS does not enforce claims against "other arrangements," including annuities and life insurance policies, and "regulatory elaboration" of the scope of the "estate" that is subject to recovery is therefore unnecessary; (2) exemptions from estate recovery, such as those applicable to disabled persons, are specified by federal statutes and regulations (citing, as examples, 42 U.S.C. § 1382c(a)(3)(B); 20 C.F.R. §§ 416.901, 416.1015 (2001)) so that additional state regulations on this subject are also unnecessary; (3) DHS decisions to enforce claims against certain types of life estate arrangements and not against others are based "on legal distinctions as to what qualifies as part of the Medi-Cal recipient's estate as defined by law" which are not amenable to regulatory interpretation; (4) DHS regulations regarding hardship waivers are already comprehensive; and (5) regulations regarding liens and the collection of interest are unnecessary because DHS does not unilaterally legislate or impose liens or collect interest, but does so only when a debtor who desires to postpone payment of a claim voluntarily agrees to the lien or payment of interest, and DHS's practice in this regard does not apply generally.

We shall conclude that these findings are either based on disputed facts or legally unjustified. Consequently, they do not support the trial court's determination that the internal guidelines at issue are not "regulations" within the meaning of the APA, and they cannot support the grant of summary judgment.

E. *DHS's Informal Internal Guidelines are Policies Constituting Regulations Within the Meaning of the APA.*

1. *Policies as to Whether Annuities and Life Estates are Within the Scope of the Estate Subject to Recovery.*

As earlier noted, the Medicaid Act gives the states the option to recover against "assets conveyed to a survivor, heir, or assign of the deceased individual [recipient] through joint tenancy, tenancy in common, survivorship, life estate, living trust, or *other arrangement.*" (42 U.S.C. § 1396p(b)(4)(B), italics added.) California has exercised this option. The state Medi-Cal Act provides that, except in specified situations (see Welf. & Inst.Code, § 14009.5, subds (b)(c)), DHS "shall claim against the estate of the decedent, or against any recipient of the property of that decedent by distribution or survival an amount equal to the payments for the health care services received or the value of the property received by any recipient from the decedent by distribution or survival, whichever is less." (Welf. & Inst.Code, § 14009.5, subd.(a).) The Medi-Cal Act does not use the phrase "other arrangement," but it is employed in a properly promulgated DHS regulation defining the "estate" subject to recovery under the Medicaid and Medi-Cal Acts. Title 22 California Code of Regulations section 50960, subdivision (b) (hereinafter Section 50960), provides that "[f]or individuals who die on or after October 1, 1993, and for payments made on or after October 1, 1993, 'estate' is defined as all real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including assets conveyed to a dependent, survivor, heir or assignee of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement." [FN5] (§ 50960, subd. (b)(1).) The primary authority DHS cites for this regulation is the Medicaid Act; specifically, 42 U.S.C. section 1396(b). However, although the term "other arrangement" is utilized in the Medicaid Act and a DHS regulation which implements the Medicaid Act, neither contain any definition.

Appellants claim that Section 50960 inadequately defines the scope of the estate against which DHS seeks recovery. Specifically, they contend that this regulation does not disclose DHS policies and procedures regarding two types of estate assets, annuities and life estates, which policies and procedures are set forth instead in "underground" regulations not promulgated in accordance with the APA.

DHS argues that additional regulations are unnecessary because Section 50960 makes it clear that whatever form estate assets may take, recovery will be sought only against those "in which the individual had legal title or interest at the time of death" (§ 50960, subd. (b)) and "DHS only enforces claims against life estates in which the Medi-Cal recipient had a legal interest at the time of death." DHS maintains, in effect, that the portion of the regulation defining "estate" as "all real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest)" is in and of itself sufficient, and the remainder ("including assets conveyed to a dependent, survivor, heir or assignee of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement") may be seen as surplusage as it merely provides a nonexclusive list of examples of assets in which the individual may have had legal title or interest at the time of death. We reject this view.

As will be seen, DHS's view of the sufficiency and clarity of its regulation defining the scope of the "estate" subject to recovery is untenable. A plethora of internal directives and informal memoranda provide important information pertaining to recovery policies and procedures not set forth in that regulation or in the estate recovery statutes. Uncontradicted evidence submitted by appellants shows that these policies apply generally and interpret and make certain the nature of the "estate" subject to recovery under the Medicaid Act, and are therefore "regulations" subject to the APA. For this reason, *and regardless whether such "regulations" can be deemed "necessary,"* DHS has failed to negate a necessary element of appellants' case or demonstrate that there is no material issue of fact to be tried.

DHS's plangent claim that its policy on annuities (and other policies that are also at issue) are "unnecessary"--which is perhaps the central theme of its position in this case--is entirely beside the

point. Appellants have never argued, and need not show, that the DHS policies it claims must be subjected to rulemaking under the APA are "regulations" because they are necessary, because the APA does not exempt regulations that are unnecessary. It is true that the APA is inapplicable to a regulation that "embodies the only legally tenable interpretation of a provision of law" (Gov.Code, § 11340.9, subd. (f)), but DHS has never relied upon or even cited that statute or made that argument; nor, as will be seen, could such an argument succeed.

Annuities

[8] Pamela McBroom, formerly chief of the Estate Recovery Unit, testified at deposition that she felt DHS estate recovery policies were unclear in several respects and needed to be "clarified," though she was not sure whether "my bosses necessarily agree with me." In her view, annuities could constitute "other arrangements" recoverable under the Medicaid Act, but she acknowledged that the factors that made annuities and life estates recoverable were not set forth in any DHS regulation.

Stan Rosenstein, Assistant Deputy Director of DHS, who was also deposed, testified that he possessed authority to decide whether an annuity could be subject to recovery as an "other arrangement" within the meaning of the Medicaid Act. Rosenstein indicated that DHS had treated annuities as recoverable in the past but that, at an unidentified point in time, "I made the decision to stop the collection of annuities and to refund the money we had collected on annuities and gave instructions to staff not to collect again on annuities again until I approved it." Rosenstein stated that his policy decision not to seek recovery against annuities was not published, that he did not know whether it was "written down anywhere," but he disseminated the decision to his staff by way of e-mail. An internal e-mail to staff from Jerry D. Stanger, Chief of the Payment Systems Division of DHS, dated July 10, 2000 states: "Stan [Rosenstein] doesn't want to do anything [that] will open[ ] up collections on Annuities even though HCFA [Health Care Financing Administration, the federal agency responsible for oversight of state Medicaid programs] is putting in the permissive language in the State Medicaid Manual. We will not do anything on this but you may want to start tracking trends in the use of annuities. My guess is that if the dollar volume gets large enough, executive staff may want to re-consider."

In support of its motion for summary judgment, DHS offered the declaration of Vivian R. Auble, Acting Chief of the Third Party Liability Branch of DHS, which includes the Estate Recovery Unit. She stated that in 1998 DHS asked the HCFA whether it had authority under the Medicaid Act to enforce claims against annuities as an "other arrangement." HCFA replied that DHS had such authority, but that if it decided to seek recovery against this type of asset it would have to amend the state plan HCFA that had earlier approved. However, Ms. Auble testified, instead of amending the state plan, "DHS determined simply to cease enforcing claims against annuities as an other arrangement. At the same time, it decided to refund recoveries that had been collected from such annuities. Those refunds have been made." Ms. Auble confirmed that the decision to cease enforcing claims against annuities as other arrangements, and to provide refunds, which was made by Stan Rosenstein, "represents the formal policy of the DHS."

[9] DHS does not deny that its policy decision to exempt annuities from recovery, though generally applicable, is not disclosed in any properly promulgated regulation. It claims this policy need not be disclosed by way of regulation because pertinent federal cases "have concluded that an agency's decision to forego enforcing a regulation is discretionary and presumed immune from judicial review." This principle has no application to this case, however. The unreviewability of a discretionary agency decision to forgo enforcement of a statute it administers in a particular case does not insulate from review an agency failure to promulgate regulations in the first instance where required to do so by the APA, which is not a statute that the agency administers.

Heckler v. Chaney (1985) 470 U.S. 821, 105 S.Ct. 1649, 84 L.Ed.2d 714, upon which DHS relies, involved a situation very different from that presented here. *Heckler* was an action by prison inmates to compel the Food and Drug Administration (FDA) to take enforcement action under the Food, Drug, and Cosmetic Act [FN6] with respect to drugs used for lethal injections to

carry out the death penalty. Denying relief, the Supreme Court held that the federal APA creates a presumption of unreviewability of discretionary agency decisions not to institute enforcement actions in specific cases (5 U.S.C. § 701(a)(2)), [FN7] and that the presumption had not been overcome by the plaintiffs in that case. Significantly, *Heckler* was an action to enforce a statute relating to a matter (drugs appropriate for a particular use) about which the agency possessed expertise and discretion entitled to judicial deference. The present action does not similarly seek to compel DHS to enforce an estate recovery policy in a particular case, but alleges instead that a generally applicable estate recovery policy constitutes a regulation within the meaning of the APA, and must therefore comply with the rulemaking requirements of that act. *Heckler* does not in any way suggest that the FDA has expertise regarding application of the federal APA to which courts must defer.

[10][11][12] DHS concedes that appellants "may have had an argument that the DHS was relying on underground regulations years ago when it was enforcing claims against annuities," but claims they can no longer make this argument "because it is uncontested that the DHS ceased the practice...." [FN8] In support of the proposition that rulemaking requirements become inapplicable "[w]hen an agency stops engaging in conduct for which a regulation was arguably required," DHS relies upon *Robinson v. Washington* (D.C.Dist.1968) 302 F.Supp. 842. *Robinson* was a class action for declaratory and injunctive relief in connection with the administration by the District of Columbia Department of Welfare of the Aid to Families with Dependent Children Act (AFDC). A handbook promulgated by the Department of Welfare declared ineligible for assistance any mother of dependent minor children who was maintaining a continuing relationship with a man who, under the regulations, might be considered a "substitute parent." The plaintiffs were notified that AFDC payments to them and their children were terminated for failure to meet eligibility requirements under the "substitute parent" rule set forth in the handbook. The court found that the "substitute parent" rule was a "regulation," but was never adopted in the manner required by law. However, during the pendency of the suit the United States Supreme Court ruled in *King v. Smith* (1968) 392 U.S. 309, 88 S.Ct. 2128, 20 L.Ed.2d 1118 that a similar "substitute parent" rule promulgated by the State of Alabama was inconsistent with the Federal Social Security Act, and the District of Columbia Department of Welfare ceased using the "substitute parent" rule in determining AFDC eligibility. The Department of Welfare not only waived the repayment of sums due by reason of violations of the rule but authorized corrective payments retroactively to the date a claimant was incorrectly denied AFDC payments, as had been authorized by the United States Department of Health and Welfare. In light of the foregoing, the court declared that, although the "substitute parent" rule was a "regulation" that was invalidly promulgated, "it is not necessary or appropriate to grant extraordinary injunctive relief against the District of Columbia Department of Welfare as to activities no longer being pursued." (*Robinson v. Washington*, supra, 302 F.Supp. at p. 844.) The difference between the *Robinson* case and this one is that the "substitute parent" rule would have been invalid *even if it had been promulgated properly*, because it was fundamentally inconsistent with the Social Security Act. According to the undisputed testimony of Vivian Auble, the federal and state estate recovery statutes grant DHS discretion to either exempt annuities from estate recovery or to seek recovery against such assets. Nothing in *Robinson v. Washington, supra*, or any other case of which we are aware, suggests that a policy interpreting or implementing a statute is exempt from otherwise applicable rulemaking requirements simply because the policy is to decline to impose an exaction that could validly be imposed.

[13] DHS's argument that its exemption of annuities from recovery does not "implement, interpret, or make specific" the estate recovery laws it administers, and is therefore not a "regulation" within the meaning of the APA, because the policy is merely "a resolution not to enforce a regulation," is specious. The APA states it is "applicable to the exercise of any quasi-legislative power conferred by a statute." (Gov.Code, § 11346, subd. (a).) Quasi-legislative powers consist in the authority to make rules and regulations having the force of law. They are essentially legislative in character but are not within the legislative power or function as constitutionally defined. DHS has been delegated the authority to make rules and regulations that have the force of law relating to the recoverability of

annuities (and other assets) and acknowledges it has exercised that authority by exempting annuities from recovery. Such a policy must be promulgated in accordance with the APA. Whether the adoption of regulations constitutes quasi-legislative action does not depend upon the nature of the policy embodied in the regulations. (See, *Carmel Valley Fire Protection Dist. v. State of California* (2001) 25 Cal.4th 287, 299, 105 Cal.Rptr.2d 636, 20 P.3d 533; *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 196, 105 Cal.Rptr.2d 214, 19 P.3d 567.) DHS's argument that "refraining from taking action is not legislation" and therefore not quasi-legislation, and, as a result, not "regulation," is based on a dictionary definition of "legislation" as "the action of making or giving *positive* law in written form...." (Garner, A Dictionary of Modern Legal Usage (2d ed.1995), DHS's italics) The obvious error in this argument is the false assumption that a hypothetical statute exempting an asset from the imposition of an exactment could fairly be characterized as "refraining from taking action." Such a measure would represent legislative action and constitute positive law. Similarly, the discretionary administrative adoption of a generally applicable rule having the same result, which implements and makes specific a law administered by the agency, constitutes "the exercise of a quasi-legislative power conferred by statute" within the meaning of the APA.

DHS's related argument that annuities "plainly fall within the category of an 'other arrangement' under the existing regulation, [but] DHS's discretionary choice to forego enforcing claims against them does not interpret the regulation otherwise" is simply absurd. A policy decision to exempt a particular asset from estate recovery is as interpretative of the regulation granting the agency the discretionary authority to do so as a decision not to exempt that asset. The indulgent nature of the discretionary decision to exempt does not constitute a refusal to enforce the regulation, but a decision to enforce it in a particular way.

The trial court's conclusion that DHS's policy not to enforce claims against annuities as an "other arrangement" does not constitute a "regulation" within the meaning of the APA because "regulatory elaboration is unnecessary regarding ... activities in which the DHS does not engage," is erroneous as a matter of law and does not support the grant of summary judgment.

Life Estates

[14] Whether DHS has a policy regarding life estates which, like that relating to annuities, is also inconsistent with or goes beyond that set forth in Section 50960, so that an additional regulation must be promulgated, presents a more complex question.

Unlike annuities, which are not explicitly mentioned either in the federal and state estate recovery statutes or in Section 50960, but may be treated as "other arrangements" recoverable under the Medicaid Act and Section 50960, life estates are specifically included in the definition of estate assets made recoverable by the Medicaid Act at the option of the states. Under the Medicaid Act, the "estate" subject to recovery "shall include all real and personal property and other assets included within the individual's estate, as defined for purposes of State probate law; and [with a specified exception] ... may include, at the option of the State ... any other real and personal property and other assets in which the individual had any legal title or interest at the death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through [a] ... life estate..." (42 U.S.C. § 1396p(b)(4)(A),(B).)

DHS has never claimed life estates are necessarily included within an individual's estate under California's probate law. Its position is that whether a particular life estate is recoverable turns on whether the Medi-Cal beneficiary had legal title or interest in the asset at the time of death, a principle clear in the federal statute and not in need of state regulatory embellishment.

The only reference to life estates in DHS's published estate recovery regulations does little more than reiterate the federal statutory language quoted above, which was added to the Medicaid Act in 1993: "For individuals who die on or after October 1, 1993, and for payments made on or after October 1, 1993, 'estate' is defined as all real and personal property and other assets in which the individual had any legal title or interest at the time of death ... including assets conveyed to a dependent, survivor, heir or assignee of the deceased individual through [a] ... life estate ...." (§

50960, subd. (b)(1).)

DHS maintains that the clarity of this statement eliminates the need for any further regulatory explanation. According to the department, when it enforces a claim against a Medi-Cal recipient's reversionary interest in an asset "it is not enforcing a claim against a life estate, but is rather enforcing a claim against an asset included in the Medi-Cal recipient's estate," and "[t]here is nothing untoward about enforcing a claim against such an asset and additional regulations are unnecessary to authorize it."

The argument that the statutory language is, in effect, self-explanatory (which is another way of saying that an interpretive regulation is "unnecessary") ignores not just the extraordinary complexity that may attend the determination whether an individual's interest in a life estate falls within the "estate" subject to recovery under the Medicaid Act (see, e.g., *Belshe v. Hope, supra,* 33 Cal.App.4th 161, 38 Cal.Rptr.2d 917), but the thrust of appellants' claim. Appellants do not argue that the substance of DHS's allegedly underground policy regarding life estates is improper; they argue only that DHS has such a policy, and that it goes beyond that described in its published regulation and amounts to an additional "regulation" within the meaning of the APA. Appellants point, for example, to ERUP No. 004-96 (rev.Apr.9, 1999), entitled "Life Estates," which states that DHS "has made the decision to not pursue collections against certain life estates (at this time), however, we still want to review the life estate documents [because] ... [i]f our Medi-Cal beneficiary did have an ownership interest in the real property, at the time of their [*sic*] death, and willed or otherwise left the property to another party (or parties) reserving the right to a life estate for another individual (or individuals), then we may have a right to claim against the real property." The ERUP provides the following example: "if our Medi-Cal client was a man, who wanted to leave his home to his children, but set up a life estate so that his sister could live in the home for the remainder of her life, we would handle this case as any normal collection case. Our ultimate collection, however, may not occur until after the death of the life tenant." The ERUP states that, after copies of life estate documents are received and forwarded for review to a "collection representative," or "rep," "[t]he rep will make the determination as to whether or not our decedent was the recipient of the life estate (in which case we would not assert a claim, at this time) or if our decedent owned property in which he/she granted a life estate to someone else, upon his/her death (in which case we may have a right to claim). In addition, if the decedent grants themselves [*sic*] a life estate, but also retains the right to revoke, encumber, sell, collect rents, etc., the Department is pursuing our claim."

Although ERUP 004-96 questionably suggests DHS could pursue a claim against a life estate a Medi-Cal beneficiary received from another, its precise meaning is impossible to confidently discern from its confusing text. Indeed, the ERUP explicitly acknowledges it may be incomprehensible. The last sentence advises DHS staff to which it was circulated that "[i]f this is still confusing to you, please let your supervisor know, so that any necessary changes can be made to clarify this issue."

The record does not disclose that any members of the Estate Recovery Unit ever sought clarification, but it does disclose the meaning attributed to ERUP 004- 96 by the DHS personnel to whom it was directed. Cenia Rice, a senior member of the Estate Recovery Unit, testified at deposition that she received this ERUP in the form of an e-mail, that it represents current DHS policy regarding life estates, and that she understood it to mean "[t]hat we have the right to collect against life estates but we weren't doing it at the time." Ms. Rice stated that when she received information that a deceased Medi Cal recipient "had some involvement with a life estate," she reviewed any relevant document provided and, if it showed that "the decedent owned a life estate, then I would pursue any other assets that the [decedent] may have other than the life estate."

The lack of clarity in DHS's informal enforcement policies pertaining to estate recovery, which permits DHS employees to conclude that life estates are generally not recoverable--because, as stated in ERUP 004-96, DHS "has made the decision to not pursue collections against certain life estates (at this time)"--has been criticized by the HCFA. In 1999, the HCFA conducted a review and issued a report making clear the impropriety of DHS's dependence upon policies and procedures set forth only in informal internal memoranda: "Given the impact that estate recovery has on the public at large, the

current use of ERUPs is inappropriate. To be consistent with ... the [Medicaid] Act, it is important that the process be open to the public. Including estate recovery policy in the State's standard rule-making process will allow for public comment, force greater clarity of the policies, and expand the public's awareness of a program which may someday determine the rightful ownership of their property." The HCFA report specifically adverted to ERUP 004-96. Noting its ambiguities ("The document states that the Department will not pursue collections against certain life estates, but then goes on to suggest that it might in the future, and that under certain conditions it might collect against life estates at this time"), the HCFA pointed out that the type of rulemaking process mandated by the APA would have resulted in a much clearer statement of DHS policy.

In response to the HCFA, DHS stated that it had developed ERUPs "as standardized inner-office operational instructions to ER [estate recovery] staff to ensure consistency of tasks and procedures," and that they were merely "intended as a temporary e-mail method to instruct staff until formal operations could be finalized." DHS agreed that it would review existing ERUPs "for accuracy" and that "[i]n the future we will ensure that ERUPs strictly advise staff on ER operational procedures and do not express ER program policy." The HCFA was unwilling to accept this response to its "recommendation," which it said "will remain open until the State promulgates estate recovery policy that has (or is having) a direct impact on the public via its regulatory process; a process which is open to the public and susceptible to review and comment."

The evidence that, on the authority of ERUP No. 004-96, DHS employees generally do not seek estate recovery against life estates, conflicts with DHS's assertion that this ERUP is not subject to the APA because it "relates only to the internal management of the state agency." (Gov.Code, § 11340.9, subd. (d).) Nor is the APA inapplicable because the ERUP "embodies the only legally tenable interpretation of a provision of law." (Gov.Code, § 11340.9, subd. (f).)

The trial court's finding, as a matter of undisputed fact, that DHS claims for recovery against certain types of life estate arrangements but not against others "are not based on underground regulations," but merely "on legal distinctions as to what qualifies as part of the Medi-Cal recipient's estate as defined by law," is factually contradicted by record evidence. Accordingly, the grant of summary judgment on that ground was erroneous.

2. *Policies as to Whether Disabled Persons are Exempt from Estate Recovery.*

DHS claimed, and the trial court agreed, that because exemptions from recovery, such as those applicable to disabled persons, are specified by comprehensive federal statutes and regulations that are fully informative, "additional state regulations [on this subject] are unnecessary." This judicial determination is confusing because, as we have said, the question presented is not whether state regulations are "necessary" but whether, as appellants claim, DHS has generally applicable policies interpreting and implementing the federal statutes and regulations relating to disability exemptions, and that such policies amount to "regulations" within the meaning of the APA though they were not promulgated in accordance with the APA.

As material, the Medicaid Act provides that recovery may be sought against the estate of a deceased Medi-Cal beneficiary "only after the death of the individual's surviving spouse, if any, and only at a time ... when he has no surviving child who is under age 21, or ... is blind or disabled as defined in section 1382c of this title...." (42 U.S.C. § 1396p(b)(2).) Section 1382c of title 42 of the U.S.Code, which is part of the federal Social Security Act, provides in pertinent part that an adult "shall be considered to be disabled ... if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." (42 U.S.C. § 1382c(a)(3)(A).) The Medicaid Act provides, finally, that "[t]he Commissioner of Social Security shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity." (42 U.S.C. § 1382c(a)(3)(B).) The federal disability exemption is incorporated into the state Medi-Cal Act, which

states that DHS may not claim recovery where there is "[a] surviving child who is blind or permanently and totally disabled, within the meaning of Section 1614 of the federal Social Security Act (42 U.S.C.A. Sec. 1382c)." (Welf. & Inst.Code, § 14009.5, subd. (b)(2)(C).) These laws do not prevent the state from seeking any recovery from such estates, but only the "proportionate share" of the estate left to the person entitled to a disability exemption. (*Dalzin v. Belshe* (N.D.Cal.1998) 993 F.Supp. 732.)

Assistant Deputy Director Rosenstein testified that after a 1999 HCFA report criticizing the "criteria and methodology" DHS used in making disability determinations, DHS decided to cease making disability evaluations and to transfer this responsibility to the California Department of Social Services (DSS) under contract. Members of the Estate Recovery Unit testified that an applicant for an exemption from recovery is at present considered disabled if he or she has been deemed disabled for purposes of the federal Supplemental Security Income Program (SSI), or the person is not receiving SSI but has been determined by the DSS to be disabled under federal standards. DHS advised the trial court that it began referring disability claims for which there were noSSI determinations to DSS in 2001 under an interagency agreement and "has no plans to reinstitute its prior practice of making its own determination of a person's disability for purposes of the disability exemption."

DHS's argument that it has no responsibility to promulgate regulations relating to the process for determining disability does not rest on its transfer of decision-making responsibility to DSS. Indeed, the interagency agreement between DHS and DSS makes it clear that ultimate responsibility remains with DHS. The chief purpose of the agreement was to impose on DSS the responsibility to "[r]eview proposed changes in [disability evaluation] policies and procedures and [to] implement those *adopted by DHS.*" (Italics added.) The agreement explicitly acknowledges that "DHS is responsible for ensuring compliance with Federal and State regulations/statutes" relating to estate recovery and that, in "[r]eceiv[ing] and process[ing] referrals of pending disability claims," DSS must "[a]bide by and implement, *as directed by DHS*, all federal and state statutes, regulations, program policies, and court directives concerning the disability evaluation process and related services." (Italics added.) Significantly, the agreement also explicitly acknowledges that after obtaining "input" and "recommendations" from DSS, DHS must "adopt regulations, policies, and procedures as needed (related to the disability evaluation function) which are consistent with [federal] standards."

DHS now repudiates this responsibility, claiming it is "unnecessary" for it to adopt "regulations, policies and procedures" relating to the "disability evaluation function" due to the alleged adequacy of the federal law and regulations on the subject. According to DHS, the regulations are "clear and obligatory, and the DHS has ensured that these standards are being applied." Because DHS believed the comprehensive federal rules on disability determinations require no interpretation and cannot be made any more specific than they already are, the regulations it promulgated pursuant to the APA have little to say on the subject. The sole reference to disability in the published regulations is the conclusionary statement that DHS may not make a claim for recovery "where there is a surviving child who is blind, or disabled, within the meaning of Section 1614 of the Federal Social Security Act (42 USC Section 1382c)," (Cal.Code Regs., tit. 22., § 50961, subd. (d).), which simply tracks identical language in the state Medi-Cal Act. (Welf. & Inst.Code, § 14009.5, subd. (b)(2)(C).)

The trial court's agreement with DHS that "additional state regulations [relating to disability determinations] are unnecessary," implies the finding that, as DHS claims, the disability provisions of the Medicaid Act and the federal regulations are not in need of interpretation and are self- executing. We disagree, but consider the issue beside the point. As will be seen, DHS has a generally applicable policy interpreting and implementing the federal statute and regulations, and for purposes of deciding whether it constitutes a regulation within the meaning of the APA it is irrelevant whether they are necessary.

The federal regulations relating to disability determinations under the Medicaid Act, which are extraordinarily lengthy and complex, [FN9] describe in detail the disability criteria and methodology applicable to disability determinations made by SSA at the federal level, which state

2003 WL 403380
--- Cal.Rptr.2d ---, 2003 Daily Journal D.A.R. 2011
(Publication page references are not available for this document.)

agencies making such determinations must also employ. However, the policies appellants are concerned about are not those defining the evidence that may be considered in evaluating disability claims--the federal regulations expansively state that "[e]vidence is *anything* you or anyone else submits to us or that we obtain *that relates to your claim* " (20 C.F.R. § 416.912(b), italics added) [FN10]-- but a policy indicating that DHS employs a specific evidentiary test that decisively determines whether a claimant meets the standard of disability set forth in the Medicaid Act. DHS identifies no federal regulation, and we are not aware of one, providing this information.

When asked whether, at the present time, there was "any way for someone to know in advance what they need to submit to the Department with respect to a claim of disability," Pamela McBroom, who worked in the Estate Recovery Unit, answered "no." However, while DHS has never properly promulgated rules informing applicants of the nature of the evidence that will conclusively support an application for a disability exemption, and the agency to which the application should be directed, DHS has always had policies regarding these matters, though they have changed from time to time.

Prior to 1999 DHS required applicants for disability exemption only to present either a document from the SSA or a county welfare agency, or a physician's letter, stating he or she was totally and permanently disabled and unable to obtain substantial gainful employment, and DHS itself made the disability determination. [FN11] However, an e-mail circulated on November 22, 1999, to members of the Estate Recovery Unit directed that "we can no longer accept just a doctor's note" as dispositive evidence of disability. The policy changed again when, in 2001, DHS transferred the responsibility to evaluate and decide disability claims to DSS. With respect to the evidence considered sufficient to support a disability claim at the present time, DHS claims that "[n]ow, if an applicant for an exemption has been deemed disabled under the SSI program or by [DSS] (and has thus met the standard under [42 U.S.C.] § 1382c), the determination is considered conclusive evidence of a disability."

The foregoing guidelines are or were generally applicable policies interpreting and implementing the federal statutes and regulations relating to disability exemptions, and therefore should have been the subject of rulemaking under the APA. If they had been promulgated and revised in the manner prescribed by the APA, DHS's guidelines would doubtless have been more precise and complete. For example, a policy stating that the *granting* of a disability claim under the SSI program or by DSS is "conclusive" evidence that the claimant is disabled for purposes of estate recovery suggests that the *denial* of such a claim under the SSI program or by DSS may not be conclusive, and could be overruled by DHS. If so, applicants whose claims were so denied will want to know the nature of any specific evidence that must be presented in order to obtain DHS reversal of an adverse disability determination. The policy is also silent as to whether DHS (or DSS under the interagency agreement) accepts the "responsibilities" imposed by the federal regulations on disability decision-makers, including the responsibility to make "every reasonable effort" to help applicants obtain medical records. (See 20 C.F.R. § 416.912(d)(1), discussed *ante* at fn. 10.)

In any event, whether a policy constitutes a "regulation" within the meaning of the APA does not turn on whether it is as informative as it might be; it is enough that it interprets and implements a statute and is generally applicable. Because DHS has a generally applicable policy as to the evidence that decisively supports a disability claim under the estate recovery provisions of the Medicaid Act, the questionable finding of the trial court that state regulations relating to this issue are "unnecessary" is legally irrelevant and does not support the grant of summary judgment.

3. *Policies Regarding the Use of Voluntary Liens and the Allowance of Hardship Waivers.*

[15] Where the estate of a deceased Medi-Cal beneficiary contains no liquid assets, or the liquid assets are not adequate to satisfy a recovery claim, DHS accepts a lien on the property until the property is sold or escrow funding is available. DHS has no written policy pertaining to this practice, but the deposition testimony of members of the Estate Recovery Unit shows that they follow guidelines set forth in ERUP No. 001-99, entitled "Voluntary Liens," which circulates internally via

e-mail. By its own terms, this ERUP is intended "to clarify [DHS] policy, regarding the voluntary lien process, when the debtor(s) or agent for the debtor(s) has made a request that the Department allow a repayment plan secured by a voluntary lien." Pursuant to ERUP 001-99, DHS will consider acceptance of a lien only after three failed attempts by the debtor to obtain funding from a private lending institution. "Upon receiving three valid denials from financial institutions, the CR [collection representative] must request that the debtor(s) complete a financial statement. Once the documentation has been received, the CR must review the financial statement to determine if it would be in the best interest of [DHS] to accept a voluntary lien." Once DHS has determined to accept a voluntary lien as security for payment of the debt, "the CR must enter into negotiations with the debtor(s) to establish an acceptable monthly payment arrangement. Consideration should be given to the amount of the indebtedness, interest accrual, and the financial situation of the debtor(s)." After a lien is successfully negotiated and its terms approved by the collection supervisor, the CR prepares appropriate lien documents insuring that interest accrues "at a rate consistent with the Revenue and Taxation Code."

Members of the Estate Recovery Unit testified that there are situations in which interest is not charged or is deferred. There is "no written policy or practice or guideline" specifying that interest must be charged and the rate thereof, or permitting relief from the interest requirement. However, there are some unwritten "general practices" regarding these matters, several of which were disputed. Cenia Rice and Pamela McBroom both indicated that the interest DHS charged and the rate thereof were dictated by Probate Code section 9203, subdivision (b) which states that a "public entity's claim against distributees [of an estate against which the public entity has a claim] includes interest at a rate equal to that specified in Section 19521 of the Revenue and Taxation Code, from the date of distribution or the date of filing of the claim by the public entity, whichever is later...." [FN12] Rice and McBroom testified, however, that although DHS ordinarily informs a person against whom it has a claim who has agreed to a voluntary lien that "[i]nterest starts on the date of distribution or the date of our claim, whichever is later," and charges interest at the rate by the Probate Code, DHS has a practice of not imposing interest during the processing of a hardship exception sought by that person. The relationship between the use of voluntary liens and the granting of hardship exceptionswas a subject of dispute in the trial court.

The Medicaid Act requires state agencies such as DHS to establish procedures under which it shall waive estate recovery claims if recovery "would work an undue hardship as determined on the basis of criteria established by the Secretary [of Health and Human Services]." (42 U.S.C. § 1396p(b)(s).) The Medi-Cal Act similarly requires DHS to waive its claim where enforcement "would result in substantial hardship to other dependents, heirs, or survivors of the individual against whose estate the claim exists." (Welf & Inst.Code, § 14009.5, subd. (c)(1).) The DHS regulation establishing undue hardship criteria is set forth in section 50963 of title 22 of the California Code of Regulations. Subdivision (a) states that DHS "shall waive its claim, in whole or in part, if an applicant can demonstrate through submission of a written application or, if applicable, at an estate hearing, that enforcement of the Department's claim would result in an undue hardship to the applicant." Six nonexclusive factors that may be considered in determining hardship are set forth in the regulation. Among those listed are situations in which the applicant would be eligible for public assistance if he or she were not allowed to keep the proceeds of a Medi-Cal beneficiary's estate, or if keeping the proceeds would enable the applicant to discontinue public assistance. A hardship would also result when the estate property is part of a business, including a farm or ranch, and recovery of medical assistance expenditures would result in the applicants losing their sole means of livelihood, or where aged, blind or disabled individuals living in the decedent's home for at least a year "would have difficulty obtaining financing (such as a home equity loan) to repay the State," or where the applicant transferred the property to the decedent for no consideration, or where the applicant needed equity in real property "to make the property habitable, or to acquire the necessities of life, such as food, clothing, shelter or medical care." (Cal.Code Regs., tit. 22, § 50963, subd. (a)(1)-(6).) "An undue hardship does not exist when the decedent or applicant created the hardship by using estate planning methods to divert or shelter assets in order to avoid estate recovery." (*Id.*, § 50963, subd.

(b).)

Appellants claim DHS commonly uses lien offers to defeat hardship claims, and that these written and unwritten policies and practices impose additional and burdensome standards which interpret and exceed those set forth in the published regulation just described. As counsel for appellant stated below, "what DHS is doing is saying, 'we don't need to give you a hardship waiver because guess what, we can just assert a lien on your house.' " DHS strenuously denies it engages in such a practice, but the record contains evidence to the contrary.

For example, appellants introduced into evidence a DHS decision dated May 16, 2000, denying Lillie Wilson a hardship waiver of her share ($6647) of a claim against the estate of her deceased mother. DHS determined that the value of the decedent's estate, which consisted of a share in a home Ms. Wilson and her mother held in joint tenancy and in which they lived, was $19,950, and that this amount was sufficient to satisfy the adjusted claim against the estate. Ms. Wilson and her husband, who cared for the decedent in the home for many years, had a total monthly income of $1429 from social security, and Ms. Wilson's expenses exceeded her income by approximately $260 per month. Her total assets, which consisted of a savings account and two motor vehicles,were valued at $3000. Her husband's entire social security income and a portion of hers was devoted to the care of the husband's son, Ms. Wilsons's stepson, who was emotionally disturbed. Because she was using savings to meet expenses exceeding her income, Ms. Wilson took the position that she qualified for a hardship waiver under a provision of the DHS regulation allowing a waiver "[w]hen equity in the real property is needed by the applicant to make the property habitable, or to acquire the necessities of life, such as food, clothing, shelter or medical care." (Cal.Code Regs., tit. 22, § 50963, subd. (a)(6).) DHS denied Ms. Wilson's request for a hardship waiver in part because "many of her expenses relate to support of her husband and to her stepson," not herself, and because the value of her interest in the property ($19,950) exceeded the claim ($6647), so sale of the house would "still leave a residual for Ms. Wilson." However, the order denying her hardship claim indicates that the major reason was Ms. Wilson's rejection of DHS's "willingness to work with [her] to arrange a lien and/or payments on the claim." For this reason DHS concluded that Ms. Wilson had failed to demonstrate that she needed her equity in the property "to acquire the necessities of life, such as food, clothing, shelter or medical care." (Cal.Code Regs., tit. 22, § 50963, subd. (a)(6).)

Appellants' contention that DHS has a general practice of using the refusal to voluntarily agree to a lien as an improper basis upon which to deny requests for hardship waivers [FN13] is also supported by internal DHS e-mails, transcriptions of which were received in evidence, acknowledging that, "USUALLY, an agreement to accept a lien defeats the applicant's argument that they have a hardship...." (Emphasis in original.) DHS's apparent practice of delaying hardship determinations until after an applicant had decided whether to agree to a post-death lien, was also remarked upon by the HCFA, which indicated a concern that the practice induced lien agreements that were not genuinely voluntary. The 1999 HCFA report recommended that DHS "comply with its requirement to respond to hardship waiver applications within 90 days," and "render a decision on the hardship waiver request prior to the presentation of a post-death lien." DHS responded that it would "consider the recommendation," but the record does not show it has acceded in any way.

Viewing the evidence in the light most favorable to appellants, as we must, we cannot agree with the trial court that "DHS's practices regarding liens and the collection of interest do not constitute an underground regulation and are not regulatory." DHS failed to produce undisputed evidence that it does not "usually" employ lien agreements to defeat applications for hardship waivers, as the record suggests. Because the evidence whether DHS has such a policy--which, if it did, would constitute a "regulation" within the meaning of the APA--is disputed, the grant of summary judgment on the ground DHS has no such policy was erroneous.

4. *Policies on Recovery of In-Home Health Services Payments.*

As previously described, the estate recovery statutes require DHS to claim against the estate of a deceased Medi-Cal beneficiary "or against any recipient of the property of that decedent by distribution or survival an amount equal to the

payments for the health care services received or the value of the property received by any recipient from the decedent by distribution or survival, whichever is less." (Welf. & Inst.Code, § 14009.5, subd. (a); see also 42 U.S.C. § 1396p(b)(1) ["the State shall seek adjustment or recovery of any medical assistance correctly paid on behalf of an individual ..."].) The health care services received by a deceased Medi-Cal beneficiary may include in-home supportive services (IHSS) provided by a family member or other persons paid to provide such services. The evidence shows that while DHS sought recovery of the federal share of such personal care payments in the past, its current practice is to exclude the value of such payments from the recovery sought. The text of a "chain e-mail" received in evidence disclosed that Assistant Deputy Director Rosenstein made the decision "to cease including IHSS services on our estate recovery claims for anyone who died 9/1/00 or after." Rosenstein made this decision after he was told by the HCFA that DHS "had no federal obligation to make that collection." Rosenstein understood that the California estate recovery statute gave DHS "permissive authority" to seek reimbursement for the federal share of IHSS payments. He testified that "[w]e were only recovering the federal share because we thought it was a federal requirement. Once the federal government said you have no obligation to collect our share of the payment, we ceased collecting it." However, although DHS does not seek recovery of IHSS payments in cases in which the Medi-Cal beneficiary died after September 1, 2000, it has not applied this policy retroactively, and after that date continued efforts to recover payments for IHSS received by Medi-Cal beneficiaries who died prior to September 1, 2000. An e-mail dated October 11, 2000, to Rosenstein from a supervisor in the Estate Recovery Unit, stated that "'[w]e have at your direction implemented the policy to exclude IHSS Personal Care costs from the ER claim as of 9/1/00, however, have not announced it publicly. Staff are reporting an increasing number of calls on this, we could buy some good will by announcing this policy change publicly." Rosenstein testified that DHS never provided public notification of policies regarding the recoverability of IHSS payments.

The trial court agreed with DHS's claim that its policies relating to the recoverability of IHSS payments are not "underground" regulations and do not violate the APA, stating that "undisputed facts reveal that the DHS does not enforce claims for In Home Supportive Services. There are no underground regulations, and regulatory elaboration is unnecessary regarding these activities in which the DHS does not engage." This judicial statement reveals a fundamental misconception of the regulatory responsibility of an administrative agency.

The California estate recovery statute provides that DHS "*shall* claim against the estate of the decedent, or against any recipient of the property of that decedent by distribution or survival an amount equal to the payments for the health care *services received or the value of the property received by any recipient from the decedent by distribution or survival, whichever is less.* " (Welf. & Inst.Code, § 14009.5, subd. (a).) DHS interprets this statute as granting it "permissive" authority to seek recovery of payments to family members or others who provided in-home services to a deceased Medi-Cal beneficiary, and that DHS implements the state statute by exercising its discretion to forgo recovery of such payments. Assistant Deputy Director Rosenstein testified that the federal government does not "obligate" DHS to seek recovery of the "federal share" of IHSS payments, but he did not say, and we are provided no reason to believe, that DHS is legally prohibited by any federal law or regulation from seeking recovery of the "federal share," or that the federal government has any policy as to the recoverability by DHS of the "state share" of such payments. We are not called upon to decide whether, as DHS claims, it is permitted but not required to seek recovery of IHSS payments, for the argument concedes the Department has discretion to seek or to forego recovery.

DHS's claim that the exercise of this policy discretion would constitute a regulation subject to the APA only if it resulted in a decision to seek recovery of IHSS payments, but not if it resulted in a decision to forgo recovery of such payments, is based on the same false argument it uses to avoid application of the APA to its policy regarding the recoverability of annuities. As applied to IHSS payments, respondents' argument is that "the decision not to enforce claims ... fails to amount to an underground regulation because it does not apply generally [as required under *Tidewater Marine Western, Inc. v. Bradshaw, supra,* 14 Cal.4th at p.

571, 59 Cal.Rptr.2d 186, 927 P.2d 296]. Rather than being generally applicable, it is generally *inapplicable* [,][and] regulations are not required to govern activity that is not occurring." (Original italics.) This dubious "logic" does not support the grant of summary judgment. As earlier explained, a discretionary policy decision not to enforce a type of claim an administrative agency has the authority to enforce is as generally applicable as a decision to enforce such a claim, and interprets and implements the law the agency administers.

III. DISPOSITION

Appellants have produced considerable evidence showing that the departmental policies and practices at issue in this case were intended by DHS to apply generally, not simply in a specific case, and that they implement, interpret and make specific estate recovery provisions of the federal Medicaid Act and state Medi-Cal Act, which DHS administers. Because DHS has not conclusively negated appellants' claim that the policies and practices described in this opinion are not "regulations" within the meaning of the APA, and has failed to demonstrate that there are no material issues of fact that require the process of trial, the trial court erred in granting summary judgment in favor of DHS.

Accordingly, the judgment is reversed and the matter remanded to the trial court for further proceedings consistent with this opinion. Appellants are awarded their costs on appeal.

We concur: LAMBDEN and RUVOLO, JJ.

FN1. 42 U.S.C. section 1396 et seq. (hereinafter Medicaid).

FN2. The statutes that authorize the director of DHS to adopt such regulations, orders, or standards of general application, also mandate that this be done only in accordance with the APA. (Welf. & Inst.Code, §§ 10725, 14124.5.)

FN3. See Government Code section 11346.1.

FN4. "The Supplemental Security Income ('SSI') program excludes an individual's principal residence from consideration as a countable resource. See 42 U.S.C. § 1382b(a)(1). SSI rules generally govern Medicaid eligibility of the aged, blind and disabled. Thus, this exclusion also applies to Medicaid.See 42 U.S.C. §§ 1396a(a)(10)(A)(i)(II), 1396a(a)(10)(A)(ii)(V) and 1396a(a)(10)(A)(ii)(III); 20 C.F.R. § 416.1212." (*West Virginia ex rel. McGraw v. D.H.H.S.* (S.D.W.Va.2001) 132 F.Supp.2d 437, 440, fn. 2, affd. by *West Virginia ex rel. McGraw v. D.H.H.S.* 289 F.3d 281.)

FN5. For individuals who died prior to October 1, 1993, "estate" is defined "according to the common law," and "includes property which passes from a decedent to his or her heirs by way of a revocable inter vivos trust." (§ 50960, subd. (b)(2). See also, *Belshe v. Hope* (12995) 33 Cal.App.4th 161, 38 Cal.Rptr.2d 917.)

FN6. 21 U.S.C. section 301 et seq.

FN7. 5 U.S.C. section 701(a) provides that the chapter of the federal APA on judicial review At oral argument, DHS conceded that it recently resumed its former practice of enforcing "applies, according to the provisions thereof, except to the extent that--(1) statutes preclude judicial review; or (2) *agency action is committed to agency discretion by law.*" (Italics added.) DHS does not identify any counterpart provision of the California APA.

FN8. On July 23, 2002, after this appeal was fully briefed, appellants filed a request that we take judicial notice of a so-called "All County Letter" (ACL) sent by DHS to county welfare directors and other local officials on June 18, 2002 (also after this appeal became fully briefed), the purpose

of which was to "provide counties with current information regarding [DHS's] ER [estate recovery] Program." The ACL defines new estate recovery policies relating to the recoverability of in- home supportive services (IHSS), the imposition of voluntary liens, death liens, disability exemptions, and hardship waivers, matters that are discussed later in this opinion, and also states that "[r]egulations are being drafted to specify what 'other arrangement' includes, *which, at a minimum, will include annuities.*" (Italics added.)

The ACL is an official act of an executive department that is not reasonably subject to dispute and is capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy, and notice could therefore be taken under Evidence Code section 452, subdivisions (c)(h) and section 459, subdivision (a). Moreover, although DHS initially opposed the motion asking us to take judicial notice of the ACL, its counsel withdrew that opposition at oral argument.

We remain cognizant, however, that on an appeal from the granting of summary judgment, "[t]he appellate court will consider only those facts that were before the trial court, and will disregard any new factual allegations on appeal." Facts not presented below cannot create a "triable issue" on appeal. (*Havstad v. Fidelity National Title Ins. Co.* (1997) 58 Cal.App.4th 654, 661, 68 Cal.Rptr.2d 487; *Sacks v. FSR Brokerage, Inc.* (1992) 7 Cal.App.4th 950, 962, 9 Cal.Rptr.2d 306.) As stated in *Uriarte v. United States Pipe & Foundry Co.* (1996) 51 Cal.App.4th 780 at p. 791, 59 Cal.Rptr.2d 332, "[w]hether summary judgment is appropriate in light of a significant new factual development in any case is an issue that should first be presented to the trial court and not to an appellate court." Because the ACL was not before the trial court, we decline to take judicial notice, as requested, and the ACL and is in no measure a basis of our reversal of summary judgment.

FN9. The federal regulations are set forth in chapter III, part 416, subparts I and J, of title 20 of the Code of Federal Regulations, which consist of 193 separate sections (§§ 416.901-416.1094) comprising 114 pages in the Federal Register.

FN10. Accordingly, the range of acceptable types of evidence the disability decision-maker may consider is extremely broad. It "includes, but is not limited to: (1) Objective medical evidence, that is medical signs and laboratory findings ...; (2) Other evidence from medical sources, such as medical history, opinions, and statements about treatment you have received; (3) Statements you or others make about your impairment(s), your restrictions, your daily activities, your efforts to work, or any other relevant statements you make to medical sources during the course of examination or treatment, or to us during interviews, on applications, in letters, and in testimony in our administrative proceedings; (4) Information from other sources, as described in § 416.913(d) [which includes, inter alia, nurse-practitioners, chiropractors, audiologists, school teachers, developmental center workers, daycare center workers, social welfare agency personnel, spouses, parents, and other care-givers, siblings and other relatives, friends, neighbors and clergy.]; (5) Decisions by any governmental or nongovernmental agency about whether you are disabled or blind; and (6) At the administrative law judge and Appeals Council levels, findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, and opinions expressed by medical experts we consult based on their review of the evidence in your case record." (*Ibid.*)

Another federal regulation defines the "responsibility" of the disability decision-maker as follows: "Before we make a determination that you are not disabled, we will develop your complete medical history for at least the 12 months

preceding the month in which you file your application unless there is a reason to believe that development of an earlier period is necessary or unless you say that your disability began less than 12 months before you filed your application. We will make every reasonable effort to help you get medical reports from your own medical sources when you give us permission to request the reports. [¶] *Every reasonable effort* means that we will make an initial request for evidence from your medical source and, at any time between 10 and 20 calendar days after the initial request, if the evidence has not been received, we will make one follow-up request to obtain the medical evidence necessary to make a determination." (*Id.*, § 416.912(d)(1).) This regulation absolves the disability decision-maker of the responsibility to seek additional evidence or clarification from a medical source only "when we know from past experience that the source either cannot or will not provide the necessary findings." (*Id.*, § 916.912(e)(2).) The regulation provides, finally, that "[i]f the information we need is not readily available from the records of your medical treatment source, or we are unable to seek clarification from your medical source, we will ask you to attend one or more consultative examinations at our expense." (*Id.*, § 416.912(f).)

FN11. DHS's pre-1999 policy regarding the evidence needed to sustain a disability claim was set forth in ERUP No. 008-96, which issued in 1996, was revised in 1999, and is apparently no longer followed. It states that a document provided by SSA or a county department of social services will satisfactorily establish disability only if it explicitly states that the disability is "permanent and total," and that the claimant is "unable to engage in any substantial gainful activity." The ERUP goes on to state that if documentation provided by SSA or a county social services department is insufficient, but the DHS employee assigned the case "*feels* " that the disability claim may nonetheless be valid, the employee "*may* " contact the claimant's physician "to seek clarification or further evidence of disability." It is not clear from ERUP No. 008-96 whether DHS considered the many acceptable types of evidence of disability described in the federal regulations.

FN12. At the hearing on the motions for summary judgment, the deputy attorney general representing DHS claimed that the interest rate charged was always that "agreed upon" by the parties to the lien agreement. He emphasized that "[b]oth the lien itself and the interest that accrues is agreed upon by the debtor and the DHS. Not one lien is ever imposed by the DHS involuntarily. Not one." DHS has provided no evidence, however, that it ever entered into a voluntary lien agreement imposing interest at a rate other than that mandated by the Probate Code. Resting on the deposition testimony of DHS employees, appellants maintain that DHS has an unwritten policy regarding interest and the rate thereof which implements the Probate Code, making it specific, which amounts to a "regulation" within the meaning of the APA, but which has not been promulgated in accordance with that Act.

FN13. The claim that this practice violates federal and state law making hardship exemptions mandatory when hardship is demonstrated, as more specifically alleged in the second claim for relief set forth in the complaint, is appellants' only claim of substantive impropriety unrelated to the APA.

2003 WL 403380, --- Cal.Rptr.2d ----, 2003 Daily Journal D.A.R. 2011

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128 Cal.Rptr. 183
91 L.R.R.M. (BNA) 2657, 78 Lab.Cas. P 53,800
(Cite as: 16 Cal.3d 392, 546 P.2d 687, 128 Cal.Rptr. 183)

Supreme Court of California, In Bank.

AGRICULTURAL LABOR RELATIONS BOARD et al., Petitioners,
v.
The SUPERIOR COURT OF TULARE COUNTY et al., Respondents;
PANDOL & SONS et al., Real Parties in Interest.

S.F. 23349.

March 4, 1976.
As Modified March 31, 1976.

State Agricultural Labor Relations Board petitioned for writ of mandate to compel Superior Courts of Tulare and Fresno Counties to vacate orders enjoining enforcement of administrative regulation which permits qualified access to agricultural property by farm labor organizers. The Supreme Court, Mosk, J., held that regulation is not unconstitutional on theory it deprives growers of property rights without due process of law and constitutes a taking of those rights without just compensation; that it is not constitutionally required that the determination of employee inaccessibility be made on a case-by-case basis rather than by a rule of general application; that provision of Agricultural Labor Relations Act that the A L R B shall follow applicable precedents of the National Labor Relations Act was not violated by adoption of the regulation even though it is the practice of the N L R B to decide questions of employee inaccessibility on a case-by-case basis; and that the access regulation prevails over the general trespass statute and is not invalid by reason of asserted conflict with the statute.

Writ issued.

Clark, J., filed dissenting opinion in which McComb and Richardson, JJ., concurred.

West Headnotes

[1] Injunction ⇐85(1)
212k85(1) Most Cited Cases

A **regulation adopted** by a **state administrative agency pursuant** to a **delegation** of **rule-making authority** by the **legislature** has the **force** and **effect** of a **statute** for purpose of statutory provisions prohibiting the granting of injunctive relief to prevent the execution of a public **statute** by officers of the law for the public benefit. West's Ann.Code Civ.Proc. § 526, subd. 2, par. 4; West's Ann.Civ.Code, § 3423, subd. 4.

[2] Injunction ⇐85(2)
212k85(2) Most Cited Cases

Rule prohibiting an injunction to prevent the execution of a public statute by officers of the law for the public benefit does not operate when the statute which is stayed is unconstitutional or otherwise invalid.

[3] Injunction ⇐85(2)
212k85(2) Most Cited Cases

[3] Mandamus ⇐53
250k53 Most Cited Cases

In view of validity of regulation of state Agricultural Labor Relations Board permitting qualified access to agricultural property by farm labor organizers, superior courts lacked jurisdiction to enjoin enforcement of the regulation and mandamus was proper to vacate the injunctive orders. West's Ann.Labor Code, § 1140 et seq.; West's Ann.Code Civ.Proc. § 526, subd. 2, par. 4; West's Ann.Civ.Code, § 3423, subd. 4.

[4] Mandamus ⇐3(3)
250k3(3) Most Cited Cases

When a court's discretion can legally be exercised in only one way, mandate will lie to compel that exercise if there is no adequate remedy at law.

[5] Courts ⇐207.4(2)
106k207.4(2) Most Cited Cases

Issues with respect to validity of regulation of the state Agricultural Labor Relations Board permitting qualified access to agricultural property by farm labor organizers were of great public importance, and superior court would exercise its original jurisdiction to grant remedy of mandamus to vacate superior court orders enjoining enforcement of the

regulation. West's Ann.Labor Code, § 1140 et seq.; West's Ann.Const. art. 6, § 10.

[6] Constitutional Law ⚖87
92k87 Most Cited Cases

All private property is held subject to the power of the government to regulate its use for the public welfare. U.S.C.A.Const. Amends. 1, 5, 14; West's Ann.Const. art. 1, §§ 1, 7(a), 19.

[7] Labor Relations ⚖86.1
232Ak86.1 Most Cited Cases
(Formerly 232Ak86)

Employers' property rights must give way whenever in irreconcilable conflict with employees' right to have effective access to information assisting them in their goal of self-organization. U.S.C.A.Const. Amends. 1, 5, 14; West's Ann.Const. art. 1, §§ 1, 7(a), 19.

[8] Constitutional Law ⚖87
92k87 Most Cited Cases

Provisions of the California Constitution guarantee no greater rights to California property owners than do their federal counterparts. West's Ann.Const. art. 1, §§ 1, 7(a), 19.

[9] Labor Relations ⚖513
232Ak513 Most Cited Cases

Regulation of state Agricultural Labor Relations Board permitting qualified access to agricultural property by farm labor organizers is not a deprivation of "fundamental personal liberties" but a limited economic regulation of the use of real property imposed for the public welfare, and it is not constitutionally required that determination of employee accessibility be made on a case-by-case basis rather than by a rule of general application. West's Ann.Labor Code, § 1140 et seq.; West's Ann.Const. art. 1, §§ 1, 7(a), 19.

[10] Constitutional Law ⚖275(6)
92k275(6) Most Cited Cases
(Formerly 92k275(5))

Regulation of state Agricultural Labor Relations Board permitting qualified access to agricultural property by farm labor organizers satisfies the due process clause if it has a reasonable relation to a proper public purpose and is neither arbitrary nor discriminatory. West's Ann.Labor Code, § 1140 et seq.

[11] Constitutional Law ⚖275(6)
92k275(6) Most Cited Cases
(Formerly 92k275(5))

Regulation of state Agricultural Labor Relations Board permitting qualified access to agricultural property by farm labor organizers has reasonable relation to a valid public goal and is neither arbitrary nor discriminatory within meaning of due process standards. West's Ann.Labor Code, § 1140 et seq.

[12] Labor Relations ⚖513
232Ak513 Most Cited Cases

Fact that there will be individual instances in which access to agricultural property by farm labor organizers might be unnecessary in order to effectively communicate with workers did not render unconstitutional the decision of the state Agricultural Labor Relations Board to proceed by way of rule in permitting qualified access to agricultural property by labor organizers rather than to proceed on a case-by-case basis. West's Ann.Labor Code, § 1140 et seq.

[13] Constitutional Law ⚖87
92k87 Most Cited Cases

General economic regulations affecting property rights are not constitutionally invalid merely because they may be inappropriate in the case of a few individual property owners.

[14] Administrative Law and Procedure ⚖797
15Ak797 Most Cited Cases

In determining legality of an administrative regulation, court's test is not to inquire into its wisdom; the judicial function is limited to determining whether the regulation is within the scope of authority conferred and is reasonably necessary to effectuate the purposes of the statute. West's Ann.Gov.Code, §§ 11373, 11374.

[15] Labor Relations ⚖513
232Ak513 Most Cited Cases

State Agricultural Labor Relations Board regulation permitting qualified access to agricultural property by farm labor organizers did not conflict with provision of the Agricultural Labor Relations Board Act that the ALRB shall follow applicable precedent of the National Labor Relations Act even though it was the practice of the NLRB to decide questions of employee inaccessibility on a case-by-case basis rather than by general rule. National Labor Relations Act, § 7 as amended 29 U.S.C.A. § 157; West's Ann.Labor Code, §§ 1148, 1152.

[16] Labor Relations ⇐513
232Ak513 Most Cited Cases

The state Agricultural Labor Relations Board could reasonably have concluded, from language of the ALRB directing board to follow the "precedents" of the National Labor Relations Act, that the legislature did not intend the board to be bound by any particular rule of practice adopted by the federal agency and that the legislature intended the board to select and follow only those federal precedents which are relevant to the particular problem of labor relations on the California agricultural scene. West's Ann.Labor Code, § 1148 ; National Labor Relations Act, § 7 as amended 29 U.S.C.A. § 157.

[17] Administrative Law and Procedure⇐ 122.1
15Ak122.1 Most Cited Cases
(Formerly 15Ak122)

In discharging its delegated responsibilities, the choice between proceeding by general rule or by ad hoc adjudication lies primarily in the informed discretion of the administrative agency.

[18] Labor Relations ⇐513
232Ak513 Most Cited Cases

Decision of the Agricultural Labor Relations Board to create a limited right of access to agricultural property by farm labor organizers by means of a detailed and specific regulation did not conflict with any intent of the legislature inferable from its enactment of sections directing the board to follow applicable precedents of the National Labor Relations Act and declaring that the right of farm workers to organize and to bargain collectively is identical to that rendered by the National Labor Relations Act. National Labor Relations Act, § 7 as amended 29 U.S.C.A. § 157; West's Ann.Labor Code, § 1152.

[19] Labor Relations ⇐513
232Ak513 Most Cited Cases

Regulation of state Agricultural Labor Relations Board permitting qualified access to agricultural property by farm labor organizers did not violate section of the ALRA directing the board to follow applicable precedents of the NLRA by reason of board's failure to limit access to nonworking areas. National Labor Relations Act, § 7 as amended 29 U.S.C.A. § 157; West's Ann.Labor Code, § 1152.

[20] Labor Relations ⇐86.1
232Ak86.1 Most Cited Cases
(Formerly 232Ak86)

Fact that proposed farm labor bill expressly permitting access by farm labor organizers to employers' property was not enacted into law, while the bill which finally became the ALRA was silent on the point, did not reveal the legislative intent that no such access be permitted inasmuch as the ALRA contained a provision incorporating by reference the NLRA precedents. West's Ann.Labor Code, § 1148.

[21] Constitutional Law ⇐62(11)
92k62(11) Most Cited Cases

Regulation of **state** Agricultural Labor Relations Board permitting qualified access to agricultural property by farm labor organizers did not amount to a "fundamental policy determination," that determination having been made by the **legislature** when it granted agricultural workers the rights of self- organization and collective bargaining, and **regulation** did not violate rule that an unconstitutional **delegation** of power occurs when **legislature** confers upon an **administrative agency** the **authority** to make fundamental policy determinations. West's Ann.Labor Code, § 1140 et seq.

[22] Administrative Law and Procedure ⇐797
15Ak797 Most Cited Cases

The motivation of the **administrative agency** is not relevant in determining validity of **regulations**

alleged to violate an act of the legislature.

[23] Statutes ⇐223.4
361k223.4 Most Cited Cases

When a special and a general statute are in conflict, the former controls. National Labor Relations Act, § 7 as amended 29 U.S.C.A. § 157; West's Ann.Labor Code, §§ 1144, 1148, 1152, 1166.3(b).

[24] Administrative Law and Procedure⇐ 390.1
15Ak390.1 Most Cited Cases
(Formerly 15Ak390)

In cases of conflict a regulation validly adopted pursuant to a delegation of authority under a special statute prevails over the terms of a general statute. National Labor Relations Act, § 7 as amended 29 U.S.C.A. § 157; West's Ann.Labor Code, §§ 1144, 1148, 1152, 1166.3(b).

[25] Labor Relations ⇐513
232Ak513 Most Cited Cases

Regulation of state Agricultural Labor Relations Board permitting qualified access to agricultural property by farm labor organizers prevails over the general trespass statute and is not invalid on theory of conflict with the general criminal trespass statute. West's Ann.Pen.Code, § 602.
***397 ***186 **690** Walter L. Kintz, Jerrold C. Schaefer, Byron S. Georgiou, Salinas, Ruth Friedman, Woodland Hills, Ronald Greenberg, Maurice Jourdane, Ellen Lake, San Francisco, Alberto Saldamando, Pacoima, and Gustin L. Reichbach, San Francisco, for petitioners.

Dennis M. Perluss, Sacramento, Mark D. Rosenbaum, Beverly Hills, Fred Okrand, Daniel C. Lavery, Jill Jakes and Mary Ellen Gale, Los Angeles, as amici curiae on behalf of petitioners.

No appearance for respondents.

Seyfarth, Shaw, Fairweather & Geraldson, Joseph Herman, Michael J. Machan, Los Angeles, Thomas, Snell, Jamison, Russell, Williamson & Asperger, Jay V. Jory, Fresno, Littler, Mendelson & Fastiff, J. Richard Thesing, George J. ***398** Tichy, II, Jordan L. Bloom, Nancy L. Ober and Gary P. Scholick, San Francisco, for real parties in interest.

Jay W. Powell, Dist. Atty., Tulare, as amicus curiae.

MOSK, Justice.

The state Agricultural Labor Relations Board (ALRB) petitions for an original writ of mandate to compel respondent Superior Courts of Tulare and Fresno Counties to vacate various orders enjoining enforcement of an administrative regulation which permits qualified access to agricultural property by farm labor organizers. We have concluded that the regulation is valid and the board is entitled to the relief requested.

On August 28, 1975, the Agricultural Labor Relations Act (ALRA) (Lab.Code, s 1140 et seq.) went into effect. The preamble to the act recites in part that 'In enacting this legislation the people of the State of California seek to ensure peace in the agricultural fields by guaranteeing justice *****187 **691** for all agricultural workers and stability in labor relations. ( ) This enactment is intended to bring certainty and a sense of fair play to a presently unstable and potentially volatile condition in the state.' (Stats.1975, Third Ex.Sess., ch. 1, s 1, No. 3 West's Cal.Legis.Service, p. 304.)

To achieve this goal, the act declares the right of agricultural employees to organize themselves into unions and to engage in collective bargaining, free from intimidation by either employers or union representatives. Thus new section 1140.2 of the Labor Code states 'the policy of the State of California' to be 'to encourage and protect the right of agricultural employees to full freedom of association, self-organization, and designation of representatives of their own choosing, to negotiate the terms and conditions of their employment, and to be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. For this purpose this part ***399** (i.e., the ALRA) is adopted to provide for collective-bargaining rights for agricultural employees.' [FN1]

FN1. Section 1152 reaffirms that

> 'Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities .. ..' The quoted language is identical to that of section 7 of the National Labor Relations Act (NLRA). (Now 29 U.S.C. s 157.)

Remaining provisions of the act implement this legislative intent in two principal ways. First, chapter 4 characterizes a variety of acts by employers or unions as unfair labor practices. In particular, it is declared to be an unfair labor practice for employers to interfere in any way with the goal of self-organization by farm workers, to favor any union over another, to discriminate against any worker for asserting his rights under the statute, or to refuse to bargain in good faith with the certified representative union. (Lab.Code, s 1153.) [FN2]

> FN2. The provisions of section 1153 are closely modeled on those of section 8 of the NLRA. (Now 29 U.S.C. s 158.)

Secondly, chapter 5 sets forth elaborate provisions for elections by secret ballot to determine the representative union for collective bargaining purposes. 'Recognizing that agriculture is a seasonal occupation for a majority of agricultural employees' (s 1156.4), the act authorizes such elections only during peak harvest seasons. An election will be held when a union obtains the signatures of the majority of the workers on a ranch; if a second union obtains the signatures of 20 percent of the same work force, it will also be placed on the ballot. The ballots are printed in English, Spanish, and any other language requested. Once authorized, an election is quickly held: within 48 hours in case of a strike, and within 7 days in other cases. Within five days thereafter any person may challenge the propriety of the election or its results. (s 1156.3.)

Article 1 of chapter 2 creates the ALRB and prescribes its method of operation. Article 2 vests the board with broad investigatory powers, and makes it a criminal offense to interfere in the performance of the board's duties. Numerous provisions throughout the remainder of the act grant the board specific powers and responsibilities of administration, particularly in conducting and certifying elections and in investigating and preventing unfair labor practices. On the latter subject chapter 6 begins by declaring (s 1160) that 'The board is empowered . . . to prevent any person from engaging in any unfair labor practice' defined in the act, and succeeding sections authorize the board to use a variety of methods ***400** to achieve that end: administrative complaint (s 1160.2) cease and desist order (s 1160.3), temporary restraining ****692 ***188** order (s 1160.4), injunctive relief (s 1160.6), and enforcement orders from both the superior courts and the Courts of Appeal s 1160.8).

In addition to its adjudicatory and executive powers, the board is vested with express legislative authority: section 1144 delegates to the board the power to make, amend, and repeal 'such rules and regulations as may be necessary to carry out the provisions' of the ALRA.

The board promptly adopted emergency regulations for the operation of the act. (Cal.Admin.Code, tit. 8, pt. II, s 20100 et seq.) Among those provisions is the regulation here in issue, which grants a qualified right of access to growers' premises by farm labor organizers. (Cal.Admin.Code, tit. 8, pt. II, ch. 9, ss 20900--20901, pp. 1051--1053.) [FN3] Under the terms of the regulation the right of access is specifically limited in purpose, in time and place, and in the number of organizers permitted to participate; and conduct is forbidden, other than speech, which is 'disruptive of the employer's property or agricultural operations, including injury to crops or machinery.' [FN4]

> FN3. The regulation took effect on August 29, 1975. An emergency regulation automatically expires 120 days after its effective date unless the agency certifies during that period that it has complied with certain requirements of notice and hearing. (Gov.Code, s 11422.1.) The ALRB so

certified on December 2, 1975, and the regulation will therefore remain in effect until such time as it may be amended or repealed.

FN4. The relevant portions of the regulation read as follows:
'5. Accordingly, the Board will consider the rights of employees under Labor Code Sec. 1152 (fn. 1, Ante) to include the right of access by union organizers to the premises of an agricultural employer for the purpose of organizing, subject to the following limitations:
'a. Organizers may enter the property of an employer for a total period of 60 minutes before the start of work and 60 minutes after the completion of work to meet and talk with employees in areas in which employees congregate before and after working.
'b. In addition, organizers may enter the employer's property for a total period of one hour during the working day for the purpose of meeting and talking with employees during their lunch period, at such location or locations as the employees eat theirlunch. If there is an established lunch break, the one-hour period shall include such lunch break. If there is no established lunch break, the one-hour period may be at any time during the working day.
'c. Access shall be limited to two organizers for each work crew on the property, provided that if there are more than 30 workers in a crew, there may be one additional organizer for every 15 additional workers.
'd. Upon request, organizers shall identify themselves by name and labor organization to the employer or his agent. Organizers shall also wear a badge or other designation of affiliation.
'e. The right of access shall not include conduct disruptive of the employer's property or agricultural operations, including injury to crops or machinery. Speech by itself shall not be considered disruptive conduct. Disruptive conduct by particular organizers shall not be grounds for expelling organizers not engaged in such conduct, nor for preventing future access.
'f. Pending further **regulation** by the Board, this **regulation** shall not apply after the results of an election held **pursuant** to this act have been certified.'

***401** Two groups of growers, real parties in interest herein, filed actions in the Fresno and Tulare Superior Courts attacking the validity of the **regulation** and seeking to prevent its enforcement. The Fresno Superior Court held a hearing on the matter and on the same day issued a peremptory writ of mandate ordering the board to vacate the **regulation**, together with a declaratory judgment that the **regulation** is invalid on both constitutional and statutory grounds. At the same time the Tulare Superior Court issued a temporary restraining order prohibiting the board from enforcing the **regulation** , and set a hearing on an order to show cause why an injunction to that **effect** should not be issued. Upon application and appropriate showing by the board, we stayed the **effect** of the respective superior court rulings pending final determination of this proceeding for writ of mandate.

*****189 **693** I

[1][2][3] The remedy is proper. The challenged rulings of respondent courts are primarily injunctive in **effect**. The codes, embodying a settled principle of equity jurisprudence, prohibit the granting of injunctive relief 'To prevent the execution of a public **statute** by officers of the law for the public benefit.' (Code Civ.Proc., s 526, 2nd subd. 4; Civ.Code, s 3423, subd. Fourth.) That rule is here applicable, inasmuch as a **regulation adopted** by a **state administrative agency pursuant** to a **delegation** of **rulemaking authority** by the **Legislature** has the **force** and **effect** of a **statute**. (Zumwalt v. Trustees of Cal. State Colleges (1973) 33 Cal.App.3d 665, 675, 109 Cal.Rptr. 344; Alta-Dena Dairy v. County of San Diego (1969) 271 Cal.App.2d 66, 75, 76 Cal.Rptr. 510; Rigley v. Board of Retirement (1968) 260 Cal.App.2d 445, 450, 67 Cal.Rptr. 185, and cases cited.) It is true the rule prohibiting such an injunction does not operate when the statute which is stayed is unconstitutional or otherwise invalid. (Conover v. Hall (1974) 11 Cal.3d 842, 850, 114 Cal.Rptr. 642, 523 P.2d 682.)

As will appear, however, we have concluded that the access regulation is valid. Under the codes, therefore, respondent courts had no jurisdiction except to deny the real parties' request to enjoin enforcement of the regulation. (City of Los Angeles v. Superior Court (1959) 51 Cal.2d 423, 430, 333 P.2d 745, and cases cited.)

[4][5] When a court's discretion can legally be exercised in only one way, mandate will lie to compel that exercise if there is no adequate *402 remedy at law. (Babb v. Superior Court (1970) 3 Cal.3d 841, 851, 92 Cal.Rptr. 179, 479 P.2d 379.) The absence of an adequate remedy at law was determined herein when we issued the alternative writ. (Ibid.) Accordingly, mandate is an appropriate remedy to compel respondent courts to vacate their orders invalidating and enjoining enforcement of the access regulation. (People v. Superior Court (1967) 248 Cal.App.2d 276, 282, 56 Cal.Rptr. 393.) And we exercise our original jurisdiction to grant that remedy (Cal.Const., art. VI, s 10) because we find that in the circumstances of this case "the issues presented are of great public importance and must be resolved promptly." (Clean Air Constituency v. California State Air Resources Bd. (1974) 11 Cal.3d 801, 808, 114 Cal.Rptr. 577, 580, 523 P.2d 617, 620; quoting from County of Sacramento v. Hickman (1967) 66 Cal.2d 841, 845, 59 Cal.Rptr. 609, 428 P.2d 593.

II

We begin with the constitutional issues. The real parties in interest contend that the access regulation is unconstitutional because it assertedly deprives them of property rights without due process of law and constitutes a taking of those rights without just compensation. (Cal.Const., art. I, ss 1, 7, subd. (a), and 19; U.S.Const., 5th and 14th Amends.) As will appear, however, the constitutional challenge comes many years too late.

The real parties principally rely on Lloyd Corp. v. Tanner (1972), 407 U.S. 551, 92 S.Ct. 2219, 33 L.Ed.2d 131, and Diamond v. Bland (1974) 11 Cal.3d 331, 113 Cal.Rptr. 468, 521 P.2d 460, but the decisions are not in point. In each a divided court held that the constitutional guarantee of free speech was not violated by the refusal of a shopping center to permit its property to be used for distribution of antiwar handbills (Lloyd) or solicitation of signatures on an initiative petition (Diamond). The matter at bar, by contrast, is not primarily a First Amendment case. At issue here is not an exercise of freedom of speech on a topic of general concern in a convenient public forum; rather, the interest asserted is the right of workers employed on the premises in question to have effective access to information assisting them to organize into representative units pursuant to a specific governmental policy of encouraging collective bargaining.The inapplicability of the Lloyd-Diamond rule to labor disputes is noted on the face of each opinion (Lloyd, 407 U.S. at pp. 560--561, 92 S.Ct. 2219; Diamond, 11 Cal.3d at p. 334, fn. ***190 **694 3, 113 Cal.Rptr. 468, 521 P.2d 460), and has been elsewhere emphasized by both the United States Supreme Court (Central Hardware Co. v. NLRB (1972) 407 U.S. 539, 545, 92 S.Ct. 2238, 33 L.Ed.2d 122), and this *403court (United Farm Workers of America v. Superior Court (1975) 14 Cal.3d 902, 911, 122 Cal.Rptr. 877, 537 P.2d 1237).

[6] The governmental policy in favor of collective bargaining, as the above-quoted preamble to the ALRA makes clear, is designed to benefit the public as a whole. It should scarcely be necessary, as we enter the last quarter of the 20th century, to reaffirm the principle that all private property is held subject to the power of the government to regulate its use for the public welfare. We do not minimize the importance of the constitutional guarantees attaching to private ownership of property; but as long as 50 years ago it was already "thoroughly established in this country that the rights preserved to the individual by these constitutional provisions are held in subordination to the rights of society. Although one owns property, he may not do with it as he pleases, any more than he may act in accordance with his personal desires. As the interest of society justifies restraints upon individual conduct, so also does it justify restraints upon the use to which property may be devoted. It was not intended by these constitutional provisions to so far protect the individual in the use of his property as to enable him to use it to the detriment of society. By thus protecting individual rights, society did not part with the power to protect itself or to promote its general well-being. Where the interest of the individual conflicts with the interest of society, such individual interest is subordinated to the general welfare. . . . (I) ncidental damages to property

resulting from governmental activities, or laws passed in the promotion of the public welfare, are not considered a taking of the property for which compensation must be made." (Miller v. Board of Public Works (1925) 195 Cal. 477, 488, 234 P. 381, 385; quoting from Carter v. Harper (1923) 182 Wis. 148, 153, 196 N.W. 451.) This is living law today. (H.F.H, Ltd. v. Superior Court (1975) 15 Cal.3d 508, 515, 125 Cal.Rptr. 365 , 542 P.2d 237.) And no different rights are conferred by the corresponding provisions of the federal Constitution. (See, e.g., Nebbia v. New York (1934) 291 U.S. 502, 523--527, 54 S.Ct. 505, 78 L.Ed. 940.)

Nor should we need to recall the corollary of the foregoing principle, to wit, that governmental power is not static but dynamic: it is not 'confined within the narrow circumscription of precedents, resting upon past conditions which do not cover and control present day conditions obviously calling for revised regulations to promote the health, safety, morals, or general welfare of the public,' but rather is 'capable of expansion to meet existing conditions of modern life, and thereby keep ***404** pace with the social, economic, moral, and intellectual evolution of the human race.' (Miller v. Board of Public Works, supra, 195 Cal. at pp. 484, 485, 234 P. at p. 383.) Early restraints on the unfettered use of private property--e.g., the doctrines of easement and nuisance--were few in number and narrow in scope. But modern social legislation has added many others--e.g., building codes, zoning restrictions, land use planning, and urban redevelopment--which are far more pervasive in their effect on the rights of property owners. Thus an eminent authority on the law of property lists no less than 20 ways in which private property is today subject to governmental regulation (Powell, The Relationship Between Property Rights and Civil Rights (1963) 15 Hastings L.J. 135, 148--149), and concludes that 'the history of the law of private ownership has witnessed simultaneously a playing-down of absolute rights and a playing-up of social concern as to the use of property. . . . Property rights have been redefined in response to a swelling demand that ownership be responsible and responsive to the needs of the social whole. Property rights *****191 **695** cannot be used as a shibboleth to cloak conduct which adversely affects the health, the safety, the morals, or the welfare of others.' (Id. at pp. 149--150.)

The efforts for social justice documented in that history have precipitated many conflicts. In most the reasonable needs of the community as a whole have eventually prevailed. But in the general retreat of recalcitrant forces, a strange rearguard action has been fought by those property owners who are also employers of labor: 'Though subject to reasonable use in other areas of the law, curiously the concept of property rights has become a rallying cry in the field of labor law. The traditional notion would seem to be that the concept suffices as an absolute defense against those who would engage in union activity. That notion--like so many others held as doctrine by past generations--may well be under increasing attack.' (Gould, Union Organizational Rights and the Concept of 'Quasi-Public' Property (1965) 49 Minn.L.Rev. 505, 509.)

The issue joined here is new to the California courts, but our federal brethren have often considered it in the industrial labor context. [FN5] 'In Republic Aviation v. NLRB ((1945) 324 U.S. 793, ***40565** S.Ct. 982, 89 L.Ed. 1372), the Supreme Court set forth the ground rules concerning union activity on company property.' (Gould, The Question of Union Activity on Company Property (1964) 18 Vand.L.Rev. 73, 75.) The case dealt with organizational activities conducted on the employer's premises by union spokesmen who were also employees of the company. The high court ratified the position of the NLRB that absent extraordinary circumstances it is an unfair labor practice for the employer to prohibit such activities during nonworking hours. The court quoted with approval the following language of the decision of the board: 'As the Circuit Court of Appeals for the Second Circuit has held, 'It is not every interference with property rights that is within the Fifth Amendment . . .. Inconvenience or even some dislocation of property rights, may be necessary in order to safeguard the right to collective bargaining.' (National Labor R. Board v. Cities Service Oil Co. (2d Cir. 1941) 122 F.2d 149, 152.) The Board has frequently applied this principle in decisions involving varying sets of circumstances, where it has held that the employer's right to control his property does not permit him to deny access to his property to persons whose presence is necessary there to enable the employees effectively to exercise their right to self-organization and collective bargaining, . . .' (Id. at p. 802, fn. 8, 65 S.Ct. at p. 987.) [FN6]

FN5. In other settings our courts have looked to federal decisions interpreting provisions of the NLRA similar to state law. E.g., Los Angeles Met. Transit Authority v. Brotherhood of Railroad Trainmen (1960) 54 Cal.2d 684, 687--689, 8 Cal.Rptr. 1, 355 P.2d 905; Petri Cleaners, Inc. v. Automotive Employees, etc., Local No. 88 (1960) 53 Cal.2d 455, 459--460, 2 Cal.Rptr. 470, 349 P.2d 76; International Assn. of Fire Fighters v. County of Merced (1962) 204 Cal.App.2d 387, 392, 22 Cal.Rptr. 270.)

FN6. The reasoning in support of this conclusion was given in the court's quotation from an earlier NLRB decision in point (Peyton Packing Company (1943) 49 N.L.R.B. 828, 843--844), which said in part that 'time outside working hours, whether before or after work, or during luncheon or rest periods, in an employee's time to use as he wishes without unreasonable restraint, although the employee is on company property. It is therefore not within the province of an employer to promulgate and enforce a rule prohibiting union solicitation by an employee outside of working hours, although on company property. Such a rule must be presumed to be an unreasonable impediment to self-organization and therefore discriminatory in the absence of evidence that special circumstances make the rule necessary in order to maintain production or discipline.' (324 U.S. at pp. 803--804, fn. 10, 65 S.Ct. at p. 988.)

The second landmark case on this topic is National Labor Relations Board v. Babcock & Wilcox Co. (1956), 351 U.S. 105, 76 S.Ct. 679, 100 L.Ed. 975. In contrast to Republic Aviation, the union organizers excluded from the employers' premises in the three consolidated cases decided in ***192 **696** Babcock & Wilcox were not employees of the companies in question. The NLRB found that in the circumstances shown it was unreasonably difficult for the organizers to make contact with the employees off company property, and concluded that in denying the organizers permission to distribute union literature on company parking lots the employers had unlawfully interfered with the right of the employees to self-organization under the *406 NLRA. The Supreme Court ruled that the board erred in failing to draw a distinction between employee and nonemployee organizers: access to company property by the latter can be denied, said the court, 'if reasonable efforts by the union through other available channels of communication will enable it to reach the employees with its message . . ..' (Id. at p. 112, 76 S.Ct. at p. 684.) [FN7]

FN7. A second condition imposed by the court--i.e., prohibiting discrimination against the union 'by allowing other distribution'--is not involved in the case at bar.
The court concluded that on the record of each of the three cases before it the evidence did not support the board's finding of employee inaccessibility, and therefore declined to decree enforcement.

[7] By declaring the foregoing standard the court necessarily rejected any claim that 'property rights' of employers are paramount to their employees' right to have effective access to information assisting them in their goal of self-organization: 'The right of self-organization depends in some measure on the ability of employees to learn the advantages of self-organization from others.' (Id. at p. 113, 76 S.Ct. at p. 685.) Rather, employers' property rights must give way whenever the two interests are found to be in irreconcilable conflict: 'Organization rights are granted to workers by the same authority, the National Government, that preserves property rights. Accommodation between the two must be obtained with as little destruction of one as is consistent with the maintenance of the other. . . . But when the inaccessibility of employees makes ineffective the reasonable attempts by nonemployees to communicate with them through the usual channels, the right to exclude from property has been required to yield to the extent needed to permit communication of information on the right to organize.' (Id. at p. 112, 76 S.Ct. at p. 684.) (Accord, Central Hardware Co. v. NLRB (1972) supra, 407 U.S. 539, 542--545, 92 S.Ct. 2238, 33 L.Ed.2d 122.)

Examples of the application of this rule appear in a variety of contexts. In Republic Aviation the court in dictum distinguished the case before it from those involving 'a mining or lumber camp where the employees pass their rest as well as their work time on the employer's premises, so that union organization must proceed upon the employer's premises or be seriously handicapped. (Fn. omitted.) (324 U.S. at p. 799, 65 S.Ct. at p. 986; see also National Labor Relations Board v. Stowe Spinning Co. (1949) 336 U.S. 226, 232, fn. 10, 69 S.Ct. 541, 93 L.Ed. 638.)

Shortly thereafter such a case arose. In National Labor Rel. Bd. v. Lake Superior Lumber Corp. (6th Cir. 1948), 167 F.2d 147, the employer ***407** operated a number of lumbering camps on its timber tract. Each was isolated from any town, and was largely self-sufficient. The employees lived on the camp premises in bunkhouses; although given Sundays off, they usually remained in the camps. In these circumstances the NLRB ruled it was an unfair labor practice for the employer to bar nonemployee union organizers from entering the bunkhouses to talk with the men during nonworking hours. Enforcing the order of access, the Sixth Circuit Court of Appeals relied on the above-quoted dictum in Republic Aviation and held that 'In view of the limited free time available to the employees and the practical difficulties involved in contacting them after the evening meal in any place other than in the bunkhouses, union organization would as a practical matter be seriously handicapped by *****193 **697** restricting such activities to the recreation hall.' (Id. at p. 152.) (Accord, Alaska Barite Company (1972) 197 N.L.R.B. 1023 (mining camp on private island).)

Nor is the right of access limited to remote lumber or mining camps; it may attach in the case of a ship anchored in a busy port. Thus in National Labor R. Board v. Cities Service Oil Co. (2d Cir. 1941), supra, 122 F.2d 149, the employer operated ocean-going oil tankers which entered United States ports to discharge their cargo. A maritime union was refused passes to board the ships while in port for the purpose of negotiating grievances of the seamen. The NLRB ruled this practice violated the seamen's rights to self-organization and collective bargaining under section 7 of the NLRA. The Second Circuit Court of Appeals agreed, reasoning that 'The result of refusing passes is undoubtedly to prevent the most effective sort of collective action by the employees. Ships, and particularly these oil tankers, which ordinarily remain in port for a day only, afford less opportunity for investigation of labor conditions than do factories where the employees go home every afternoon and have the evenings at their disposal. There is no cessation of work at the end of each day for seamen on a tanker. A large number of them are on watch, others are loading or discharging cargo; their hours for work and shore leave are different and, in the short time the vessel is in port, it is impossible for Union representatives to assemble the unlicensed personnel either on shore or on shipboard to discuss grievances or investigate conditions. The Union must have the members of the crew readily accessible in order to work to any real advantage . . ..' (Id. at p. 151.) The court therefore granted enforcement of the board's order of access. (Accord, Richfield Oil Corp. v. National Labor Relations Board (9th Cir. 1944) 143 F.2d 860; Sabine Towing & Transportation Co. (1973) 205 N.L.R.B. No. 45; see also National Labor Rel. Bd. v. National Organization, etc. (7th Cir. 1958) 253 F.2d 66, 70.)

***408** The same result has been reached on a showing of significantly less employee isolation than in the foregoing cases. In N.L.R.B. v. S. & H. Grossinger's Inc. (2d Cir. 1967), 372 F.2d 26, the employer operated a large rural resort hotel located only one and one-half miles from the nearest town. Sixty percent of the employees lived on the premises, but the remainder lived in neighboring towns and droveto work by car or taxi. The employer refused access to its premises by nonemployee union representatives, and the NLRB ruled this to be interference with the employees' right of self-organization. The federal circuit court observed that 'No effective alternatives are available to the Union in its organizational efforts. The resident employees have no telephones in their rooms. Radio and newspaper advertising are expensive and relatively ineffectual. Moreover as far as radio is concerned, there was no single time at which a major proportion of employees would be off duty and free to listen to a message broadcast by the Union. . . . ( ) While some organization work can be done by employees who are willing to solicit fellow employees, it is obvious that, lacking as they do the requisite special training and experience, they cannot convey the Union's appeal with anything like the effectiveness of professional union

organizers.' (Id. at p. 29.) [FN8]

FN8. The court added that the union's attempts to reach the employees as they drove through the gates to the resort were ineffective because the cars did not stop there except briefly for a traffic light, and in any event it was difficult or impossible to distinguish between guests and employees in such circumstances.

The court then quoted and applied the principles of Babcock & Wilcox as follows: 'Here the majority of the employees live on the employer's premises. They cannot be reached by any means practically available to union organizers. As against these considerations Grossinger's raises ***194 **698 only its proprietary interest. It shows no detriment that would result from the admission to its property of the Union's representatives under those reasonable regulations as to place, time and number which the Board's order contemplates.

'We will enforce the Board's order in so far as it requires (the employer) to permit nonemployee union organizers to come on its premises in order to solicit employees.' (Id. at p. 30.) (Accord, H. & G Operating Corp. (Raleigh Hotel) (1971) 191 N.L.R.B. No. 110; see also Fafnir Bearing Company v. N.L.R.B. (2d Cir. 1966) 362 F.2d 716, 722 (company ordered to allow union to enter premises to conduct independent time studies).) [FN9]

FN9. We recognize that other federal circuit court decisions have refused to enforce NLRB orders of access. (See, e.g., N.L.R.B. v. Sioux City & New Orleans Barge Lines, Inc. (8th Cir. 1973) 472 F.2d 753; N.L.R.B. v. New Pines, Inc. (2d Cir. 1972) 468 F.2d 427; N.R.L.B. v. Tamiment, Inc. (3d Cir. 1971) 451 F.2d 794; N.L.R.B. v. Kutsher's Hotel and Country Club, Inc. (2d Cir. 1970) 427 F.2d 200.) But in each case the court found that on the record presented either the union had not made a reasonable effort to communicate with the employees or the alternative means of doing so were effective.

*409 [8] Thus the rule of Babcock & Wilcox, both as enunciated and as applied, is clear: if the circumstances of employment 'place the employees beyond the reach of reasonable union efforts to communicate with them, The employer must allow the union to approach his employees on his property.' (Italics added.) (351 U.S. at p. 113, 76 S.Ct. at p. 685.) This language could not be plainer. We deem it dispositive of the issue of the federal constitutionality of access to agricultural property under the challenged regulation of the ALRB (cf. Petersen v. Talisman Sugar Corporation (5th Cir. 1973) 478 F.2d 73, 79), and of the claim of invalidity premised on the cited provisions of the California Constitution. (Art. I, ss 1, 7, subd. (a), and 19). In the present context we construe those sections to guarantee no greater rights to California property owners than do their federal counterparts.

The only remaining question in this regard is whether it is Constitutionally required that the determination of employee inaccessibility within the meaning of the Babcock & Wilcox test be made on a case-by-case basis, as the real parties urge, rather than by a rule of general application. As will appear, there is no authority for imposing such a requirement as a matter of constitutional law.

[9] The question was not presented in either Babcock & Wilcox or Central Hardware, and the opinions are therefore silent on the point. The real parties rely on decisions holding that when a statute or regulation impairs a fundamental personal liberty, the state has the burden of showing that the measure is necessary to promote a compelling governmental interest (see, e.g., Shapiro v. Thompson (1969) 394 U.S. 618, 638, 89 S.Ct. 1322, 22 L.Ed.2d 600; Castro v. State of California (1970) 2 Cal.3d 223, 234--236, 85 Cal.Rptr. 20, 466 P.2d 244) and that there are no reasonable alternative means of accomplishing that goal (Cleveland Board of Education v. LaFleur (1974) 414 U.S. 632, 640--644, 94 S.Ct. 791, 39 L.Ed.2d 52; Shelton v. Tucker (1960)364 U.S. 479, 488, 81 S.Ct. 247, 5 L.Ed.2d 231.) That well-known principle, however, is not applicable here: for the reasons stated at the outset, the access rule is not a deprivation of 'fundamental personal liberties' but a limited economic regulation of the use of real

property imposed for the public welfare. (Cf. Village of Belle Terre v. Boraas (1974) 416 U.S. 1, 7--8, 94 S.Ct. 1536, 39 L.Ed.2d 797.)

***410** [10][11] It has long been settled that such a regulation satisfies the due process clause if it has a reasonable relation to a proper public purpose and is neither arbitrary nor discriminatory. (Nebbia v. New York (1934) supra, 291 U.S. 502, 537, 54 S.Ct. 505, 78 L.Ed. 940; accord, Weinberger v. Salfi (1975) 422 U.S. 749, 768--770, 95 S.Ct. 2457, 45 L.Ed.2d 522, and cases *****195 **699** cited.) In the light of Babcock & Wilcox, it cannot be said that an access regulation designed to assist self-organization by workers lacks a reasonable relation to a valid public goal; and a careful examination of the various limitations as to time, place, purpose, and manner which are written into this regulation (fn. 4, Ante) demonstrates that it is neither arbitrary nor discriminatory within the meaning of the foregoing standards.

[12] The principal objection of the real parties to the board's decision to proceed by way of rule rather than adjudication is that there will be individual instances in which access might in fact have been unnecessary in order to effectively communicate with the workers. This is inevitable, as the board candidly recognizes. But it does not follow therefrom that the regulation is unconstitutional. 'In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basic,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' (Citation.) 'The problems of government are practical ones and may justify, if they do not require, accommodations--illogical, it may be, and unscientific," (Dandridge v. Williams (1970) 397 U.S. 471, 485, 90 S.Ct. 1153, 1161, 25 L.Ed.2d 491, 501.) Moreover, 'a classification that meets the test articulated in Dandridge is perforce consistent with the due process requirement of the Fifth Amendment.' (Richardson v. Belcher (1971) 404 U.S. 78, 81, 92 S.Ct. 254, 257, 30 L.Ed.2d 231, 235.)

[13] It follows, as we have often had occasion to hold, that general economic regulations affecting property rights are not constitutionally invalid merely because they may be inappropriate in the case of a few individual property owners. (See, e.g., Associated Home Builders, etc. v. City of Walnut Creek (1971) 4 Cal.3d 633, 638--645, 94 Cal.Rptr. 630, 484 P.2d 606.) The entire law of zoning, from Village of Euclid v. Ambler Realty Co. (1926) 272 U.S. 365, 388--389, 47 S.Ct. 114, 71 L.Ed. 303, to the present day, stands as witness to that fact of contemporary life. And it is a fundamental tenet of such law that if a zoning plan is reasonable vis-a-vis the community as a ***411** whole, it is not rendered unconstitutional merely because certain property owners can show that it causes them unnecessary hardship. (Hamer v. Town of Ross (1963) 59 Cal.2d 776, 787, 31 Cal.Rptr. 335, 382 P.2d 375; McCarthy v. City of Manhattan Beach (1953) 41 Cal.2d 879, 890, 264 P.2d 932; Wilkins v. City of San Bernardino (1946) 29 Cal.2d 332, 338, 175 P.2d 542; Zahn v. Board of Public Works (1925) 195 Cal. 497, 512, 234 P. 388.)

We conclude that the decision of the ALRB to regulate the question of access by a rule of general application transgresses no constitutional command.

III

[14] An administrative regulation, however, must also comport with various statutory prerequisites to validity. At the outset we take note of certain principles which govern our consideration of the matter; although these rules have been often restated, it would be well to remember that they are not merely empty rhetoric. First, our task is to inquire into the legality of the challenged regulation, not its wisdom. (Morris v. Williams (1967) 67 Cal.2d 733, 737, 63 Cal.Rptr. 689, 433 P.2d 697.) Second, in reviewing the legality of a regulation adopted pursuant to a delegation of legislative power, the judicial function is limited to determining whether the regulation (1) is 'within the scope of authority conferred' (Gov.Code, s 11373) and (2) is 'reasonably necessary to effectuate the purpose of the statute' (****700***196**Gov. Code, s 11374) [FN10]. Moreover, 'these issues do not present a matter for the independent judgment of an appellate tribunal; rather, both come to this court freighted with the strong presumption of regularity accorded administrative rules and regulations.' (Ralphs Grocery Co. v. Reimel (1968) 69 Cal.2d 172, 175, 70 Cal.Rptr. 407, 410, 444 P.2d 79, 82.)

And in considering whether the regulation is 'reasonably necessary' under the foregoing standards, the court will defer to the agency's expertise and will not 'superimpose its own policy judgment upon the agency in the absence of its arbitrary and capricious decision.' (Pitts v. Perluss (1962) 58 Cal.2d 824, 832, 27 Cal.Rptr. 19, 24, 377 P.2d 83, 88.)

> FN10. A third inquiry--whether the regulation was adopted pursuant to proper procedure--is not an issue in this case.

The real parties in interest seek to overcome the presumption of regularity on several grounds. First, it is contended that in two respects ***412** the access regulation exceeds the authority of the board because it conflicts with the ALRA. The claim is not that the regulation contravenes any particular provision of the act expressly forbidding qualified access to agricultural property by union organizers--or declaring such entry to be an unfair labor practice--for no such provision exists. Rather, it is urged that the regulation violates the Legislature's Implied intent to prohibit such access, assertedly manifested by both legislative action and inaction. Neither branch of the contention is convincing.

[15] As noted earlier, article 1 of chapter 2 of the act prescribes the composition and general method of operation of the board; among its provisions is section 1148, which declares in its entirety that 'The board shall follow applicable precedents of the National Labor Relations Act, as amended.' The real parties stress the fact that it is the practice of the NLRB to decide questions of employee inaccessibility on a case-by-case basis rather than by general rule; when the ALRB adopted a contrary procedure, argue the real parties, it therefore violated section 1148.

The unstated major premise of this argument, however, is that in enacting section 1148 the Legislature impliedly intended the board to follow not only the substantive case law (i.e., the 'precedents') interpreting the NLRA-- holding, for example, that certain activities do or do not constitute unfair labor practices--but also the rules of procedure of the NLRB. In our view the premise appears highly dubious. More importantly, the board could reasonably construe section 1148 otherwise, and that is our only concern: 'In determining whether a specific administrative rule falls within the coverage of the delegated power, the sole function of this court is to decide whether the department reasonably interpreted the legislative mandate.' (Ralphs Grocery Co. v. Reimel, supra, at p. 176 of 69 Cal.2d, at p. 410 of 70 Cal.Rptr., at p. 82 of 444 P.2d.)

[16] Adverting first to the language of section 1148 , we note that it directs the board to follow the 'precedents' of the 'Act,' not the 'procedure' of the 'Board.' The ALRB could reasonably have concluded that the choice of words was significant, and hence that the Legislature did not intend it to be bound by any particular rule of practice adopted by the federal agency to suit its own needs. This conclusion could well have been reinforced by the fact that the state act vests the board with full rulemaking authority in an earlier and different provision (s 1144) which makes no reference to the practices of the NLRB. In addition, we observe that section 1148 directs the board to be guided by the 'applicable' precedents of the NLRA, not merely 'the ***413** precedents' thereof. From this language the board could fairly have inferred that the Legislature intended it to select and follow only those federal precedents which are relevant to the particular problems of labor relations on the California agricultural scene. As we shall *****197 **701** see, a case-by-case resolution of the question of access appears inappropriate in that context.

[17] More importantly, in the absence of an express statutory directive to the contrary the board could also reasonably presume that the Legislature intended to abide by the well-settled principle of administrative law that in discharging its delegated responsibilities the choice between proceeding by general rule or by ad hoc adjudication 'lies primarily in the informed discretion of the administrative agency.' (Securities Comm'n v. Chenery Corp. (1947) 332 U.S. 194, 203, 67 S.Ct. 1575, 1580, 91 L.Ed. 1995, 2002; accord, PBW Stock Exchange Inc. v. Securities and Exch. Com'n (3d Cir. 1973) 485 F.2d 718, 732; GTE Service Corporation v. F.C.C. (2d Cir. 1973) 474 F.2d 724, 731; Alabama-Tennessee Natural Gas Co. v. Federal Power Com'n (5th Cir. 1966) 359 F.2d 318, 343 (Wisdom, J.); see generally Shapiro, The Choice of

Rulemaking or Adjudication in the Development of Administrative Policy (1965) 78 Harv.L.Rev. 921; Baker, Policy by Rule or Ad Hoc Approach--Which Should it Be? (1957) 22 Law & Contemp. Prob. 658.) [FN11] The real parties in interest fail to show that the ALRB abused its discretionary powers as a duly constituted administrative agency when it determined to proceed on this issue by way of a general rule rather than ad hoc adjudication.

> FN11. This principle applies equally well to the NLRB. (See, e.g., NLRB v. Bell Aerospace Co. (1974) 416 U.S. 267, 294, 94 S.Ct. 1757, 40 L.Ed.2d 134.) That agency, however, has chosen to proceed on a case-by-case basis not only on questions of employee inaccessibility, but on essentially all issues within its competence. We note that the pervasive and long-standing reluctance of the NLRB to promulgate any rules or regulations whatever has been the subject of 'substantial and repeated scholarly and judicial criticism . . ..' (Retail, Wholesale and Department Store U. v. N.L.R.B. (1972), 151 U.S.App.D.C. 209, 466 F.2d 380, 388; see NLRB v. Wyman-Gordon Co. (1969) 394 U.S. 759, 89 S.Ct. 1426, 22 L.Ed.2d 709; Davis, Administrative Law Treatise (1970 Supp.) s 6.17; Bernstein, The NLRB's Adjudication-Rule Making Dilemma Under the Administrative Procedure Act (1970) 79 Yale L.J. 571; The Atrophied Rule-Making Powers of the National Labor Relations Board (1961) 70 Yale L.J. 729.)

A related argument is premised not only on section 1148 but also on section 1152 of the ALRA, emphasizing that the language of the latter which declares the right of farmworkers to organize and to bargain collectively is identical to that of section 7 of the NLRA. (See fn. 1, Ante.) Reliance is then placed on the rule that 'When legislation has been judicially construed and a subsequent statute on the same or an *414 analogous subject is framed in the identical language, it will ordinarily be presumed that the Legislature intended that the language as used in the later enactment would be given a like interpretation. This rule is applicable to state statutes which are patterned after federal statutes.' (Los Angeles Met. Transit Authority v. Brotherhood of Railroad Trainmen (1960) supra, 54 Cal.2d 684, 688--689, 8 Cal.Rptr. 1, 3, 355 P.2d 905, 907.) From this premise it is reasoned that the Legislature must have intended that the board also follow the NLRB practice of ad hoc adjudication of the access issue.

We do not question the quoted rule of statutory construction, but in the circumstances of the case at bar it does not lead to the claimed conclusion. It may be posited that by adopting the language of section 7 of the NLRA the Legislature intended also to adopt the rule of Babcock & Wilcox and Central Hardware applying that language to the right of nonemployee labor organizers to enter an employer's premises for union purposes. But as we observed above, the question whether such a right of access should be resolved by regulation or by adjudication was not presented in either decision, and the opinions are accordingly silent on the matter. The teaching of Babcock & Wilcox and its progeny, rather, is simply that qualified access to an employer's premises must be granted when the circumstances of employment render ineffective ****702 ***198** the reasonable efforts of union representatives to communicate with the employees by alternative methods. (351 U.S. at p. 112, 76 S.Ct. 679.)

Far from ignoring this lesson, the ALRB predicated its access regulation on factual findings phrased in the very language of Babcock & Wilcox. Those findings disclose that the board did not adopt the NLRB practice on the access question because it determined that significant differences existed between the working conditions of industry in general and those of California agriculture. As we have seen, in regulating industrial labor disputes the NLRB has authorized access by union organizers to employers' premises when, for example, the same employees did not arrive and depart every day on fixed schedules, there were no adjacent public areas where the employees congregated or through which they regularly passed, and the employees could not effectively be reached at permanent addresses or telephone numbers in the nearby community, or by media advertising.

By contrast, the ALRB found that such conditions

are the rule rather than the exception in California agriculture. The evidence heard by the board showed that many farmworkers are migrants; they arrive in town in time for the local harvest, live in motels, labor camps, or with friends ***415** or relatives, then move on when the crop is in. Obviously home visits, mailings, or telephone calls are impossible in such circumstances. According to the record, even those farmworkers who are relatively sedentary often live in widely spread settlements, thus making personal contact at home impractical because it is both time-consuming and expensive.

Nor is pamphleting or personal contact on public property adjacent to the employer's premises a reasonable alternative in the present context, on several grounds. To begin with, many ranches have no such public areas at all: the witnesses explained that the cultivated fields begin at the property line, and across that line is either an open highway or the fields of another grower. Secondly, the typical industrial scene of a steady stream of workers walking through the factory gates to and from the company parking lot or nearby public transportation rarely if ever occurs in a rural setting. Instead, the evidence showed that labor contractors frequently transport farmworkers by private bus from camp to field or from ranch to ranch, driving directly onto the premises before unloading; in such circumstances, pamphleting or personal contact is again impossible. Thirdly, the testimony established that a significant number of farmworkers read and understand only Spanish, Filipino, or other languages from India or the Middle East. It is evident that efforts to communicate with such persons by advertising o broadcasting in the local media are futile Finally it was also shown that many farm workers are illiterate, unable to read even in one of the foregoing languages; in such circumstances, of course, printed messages in handbills, mailings, or local newspapers are equally incomprehensible. [FN12]

> FN12. Even in the industrial context the true effectiveness of 'traditional' alternative methods of communicating with workers has been seriously questioned. Thus the Second Circuit Court of Appeals has observed that 'The chances are negligible that alternatives equivalent to solicitation in the plant itself would exist. In the plant the entire work force may be contacted by a relatively small number of employees with little expense. The solicitors have the opportunity for personal confrontation, so that they can present their message with maximum persuasiveness. In contrast, the predictable alternatives bear without exception the flaws of greater expense and effort, and a lower degree of effectiveness. Mailed material would be typically lost in the daily flood of printed matter which passes with little impact from mailbox to wastebasket. Television and radio appeals, where not precluded entirely by cost, would suffer from competition with the family's favorite programs and at best would not compare with personal solicitation. Newspaper advertisements are subject to similar objections. Sidewalks and street corners are subject to the vicissitudes of climate and often force solicitation at awkward times, as when employees are hurrying to or from work.' (N.L.R.B. v. United Aircraft Corp., Pratt & Whitney Air Div. (2d Cir. 1963) 324 F.2d 128, 130.) Similar criticisms have been voiced in the legal literature. (See, e.g., Bok, The Regulation of Campaign Tactics in Representation Elections Under the National Labor Relations Act (1964) 78 Harv.L.Rev. 38, 95--96; Gould, The Question of Union Activity on Company Property (1964) 18 Vand.L.Rev. 73, 99--100, 102--103.)

***416 ***199 **703** In addition, the problem here is compounded by the provisions of the ALRA which require swift elections--a difficulty not faced by the NLRB. In all cases involving crops with short harvest seasons, the union petitioning for the election has only a brief time in which to gather the necessary employee signatures. (Lab.Code, s 1156.3 , subd. (a).) An intervening union will have even less time--at most 6 days--to obtain the signatures of 20 percent of the workers in order to qualify for the ballot. (Id., subd. (b).) And both unions have only a few days thereafter to explain their positions to the workers. In such circumstances most of the channels of communication which have been used in organizing industrial laborers, and which were

found sufficient in Babcock & Wilcox and its progeny, are simply too slow to be effective. [FN13]

> FN13. For example, the board heard testimony that although the home addresses of farmworkers can be obtained from the Department of Motor Vehicles on the basis of their automobile license plate numbers, the process takes an average of two weeks and costs $2 per name.

On the basis of the foregoing evidence the ALRB formally found that 'Generally, unions seeking to organize agricultural employees do not have available alternative channels of effective communication. Alternative channels of effective communication which have been found adequate in industrial settings do not exist or are insufficient in the context of agricultural labor.' (Cal.Admin.Code, tit. 8, pt. II, s 20900, subd. 3, p. 1051.) From this finding--and in furtherance of the expressed intent of the framers of the act--the board concluded (Id. subd. 4) that 'The legislatively declared purpose of bringing certainty and a sense of fair play to a presently unstable and potentially volatile condition in the agricultural fields of California can best be served by the adoption of rules on access which provide clarity and predictability to all parties. Relegation of the issues to case-by-case adjudication or the adoption of an overly general rule would cause further uncertainty and instability and create delay in the final determination of elections.'

[18] We conclude from the foregoing that the decision of the board to create a limited right of access by means of a detailed and specific regulation does not conflict with any intent of the Legislature inferable from its enactment of sections 1148 and 1152.

[19] In this connection the real parties also contend that the regulation does not follow 'applicable precedents' of the NLRA under section 1148 because the right of access it declares is assertedly not limited to nonworking areas. In support they rely on a passage from *417Central Hardware Co. v. NLRB (1972), supra, 407 U.S. 539, 545, 92 S.Ct. 2238, 2242, 33 L.Ed.2d 122, 127, in which the court summarizes the rule of Babcock & Wilcox as authorizing access 'limited to (i) union organizers; (ii) Prescribed nonworking areas of the employer's premises; and (iii) the duration of organization activity.' (Italics added.) The purpose of the emphasized limitation, presumably, is to prevent disruption of work. But the regulation here challenged achieves the same goal, although by a method more appropriate to the California agricultural setting in which the ALRB must operate.

As we have seen, there was evidence before the board that many ranches have no public or 'nonworking' areas such as the parking lots of large factories. Responsive to this circumstance, the present regulation first authorizes access by farm labor organizers for a prescribed time prior to and ***200 **704 at the close of the work day in 'areas in which employees congregate before and after working.' (Fn. 4, Ante.) No more precise description is possible, as these areas will vary from ranch to ranch; in each instance, however, no disruption of work is permitted because the access is expressly limited to nonworking hours.

Secondly, and in further distinction to the typical industrial scene, California farm properties generally do not have cafeterias or lunchrooms where the employees assemble for their midday meal. Rather, in the case of row crops the workers frequently eat in or near their cars or the bus at the edge of the field, while in harvesting tree crops they often remain on the job site while they take their food and rest. Again responsive to these conditions, the regulation permits access for a prescribed time 'at such location or locations as the employees eat their lunch.' Although this description may include working areas in certain cases, access at all such locations is primarily restricted to the nonworking period of the 'lunch break' and in any event the regulation expressly prohibits any disruption of 'the employer's property or agricultural operations, including injury to crops or machinery.' (Fn. 4, Ante.) The regulation thus comports with the spirit if not the letter of the quoted language of Central Hardware, and cannot be deemed to contravene the asserted implication of section 1148.

[20] Next it is contended that the access regulation conflicts with an implied intent of the ALRA derived not from a provision thereof but from the absence of such a provision. The real parties stress that one of the proposed farm labor bills which was

Not enacted into law (Assem. Bill No. 1 (1975--1976 Reg.Sess.)) contained a provision (s 1149.3, subd. *418 b)) expressly permitting access by farm labor organizers to employers' property, while the bill which finally became the ALRA (Sen.Bill No. 1 (1975 Third Ex. Sess.)) is silent on the point. This fact is said to reveal an unstated intent of the Legislature that no such access be permitted.

The contention is not persuasive. At best, 'Legislative silence is a Delphic divination.' (Alabama-Tennessee Natural Gas Co. v. Federal Power Com'n (5th Cir. 1966) supra, 359 F.2d 318, 333.) It is true that in two recent cases we have given weight to an argument superficially similar to that now advanced by the real parties. (Cooper v. Swoap (1974) 11 Cal.3d 856, 863-- 865, 115 Cal.Rptr. 1, 524 P.2d 97; Clean Air Constituency v. California State Air Resources Bd. (1974) supra, 11 Cal.3d 801, 817--818, 114 Cal.Rptr. 577, 523 P.2d 617.) But in the circumstances which led to the passage of the ALRA, the reasoning of those decisions is inapposite.

This was not the Cooper situation, in which the Legislature rejected three successive attempts to add a certain provision to a welfare bill which thereafter became law, and the agency administering the ensuing statute nevertheless adopted a regulation 'reviving' that provision. Nor is Clean Air relevant, for in that case an administrative agency charged with promptly adapting a certain antipollution program declined to do so even after the Legislature itself considered and rejected no less than five proposals to order or permit a delay.

In the case before us there was no such sequence: in this respect Senate Bill No. 1 was not merely an amended version of Assembly Bill No. 1, but an entirely new approach. Indeed, when the bills are closely compared it becomes apparent that the absence of a specific access provision in Senate Bill No. 1 is, if anything, an indication that the Legislature intended to adopt rather than reject the access principle. Assembly Bill No. 1 contained a number of proposed sections declaring various rights and duties derived from NLRA precedents, including a specific right of access. Senate Bill No. 1, however, adopted a different technique: instead of listing the substance of NLRA precedents individually as did Assembly Bill No. 1, it simply incorporated ***201 **705 then by reference via section 1148. Thus the omission in Senate Bill No. 1 of any of the foregoing provisions of Assembly Bill No. 1 was a natural consequence of the legislative device employed; and rather than being of negative significance, the statutory history now stressed by the real parties can plausibly be taken to mean that the Legislature affirmatively intended to adopt the access principle of Babcock & Wilcox as herein defined.

*419 Lastly it is urged that the access regulation violates yet another rule discussed in Clean Air (11 Cal.3d at p. 816, 114 Cal.Rptr. at p. 586, 523 P.2d at p. 626): 'An unconstitutional delegation of power occurs when the Legislature confers upon an administrative agency the unrestricted authority to make Fundamental policy determinations. (Citations.)' (Italics added.) Again the present case is distinguishable. In Clean Air the 'fundamental policy determination' by the agency was to totally reverse a clearly established legislative priority of pollution-free air--and environmental protection generally--over concern for increased gasoline consumption. In the cases cited in Clean Air on this point (Id. at pp. 816--817, 114 Cal.Rptr. 577, 523 P.2d 617), administrative decisions of similar magnitude were involved.

[21] In the case at bar the 'fundamental policy determination' was made by the Legislature when that body decided, after must study and discussion, to grant to agricultural workers throughout California the rights of self- organization and collective bargaining so long denied to them under federal law. Seen in the perspective of that momentous decision, the board's qualified access provision appears much less important than the real parties would have us believe. As a regulation which in essence merely implements one aspect of the statutory program--the holding of secret elections--it does not amount to a 'fundamental policy determination' within the meaning of the quoted rule.

IV

Taking a different tack, the real parties contend the access regulation is invalid because it assertedly conflicts with the general criminal trespass statute. (Pen.Code, s 602.) The contention fails largely for reasons we have already explored.

[22] It is settled that 'administrative regulations that violate acts of the Legislature are void and no protestations that they are merely an exercise of administrative discretion can sanctify them. They must conform to the legislative will if we are to preserve an orderly system of government.' (Morris v. Williams (1967) supra, 67 Cal.2d 733, 737, 63 Cal.Rptr. 689, 692, 433 P.2d 697, 700.) Nor is the motivation of the agency relevant: 'It is fundamental that an administrative agency may not usurp the legislative function, no matter how altruistic its motives are.' (City of San Joaquin v. State Bd. of Equalization (1970) 9 Cal.App.3d 365, 374, 88 Cal.Rptr. 12, 19.)

***420** The doctrine has been most frequently invoked to strike down administrative regulations in conflict with the statute which created the agency or which the agency is authorized to administer. (See, e.g., California Welfare Rights Organization v. Brian (1974) 11 Cal.3d 237, 242-- 243, 113 Cal.Rptr. 154, 520 P.2d 970; Mooney v. Pickett (1971) 4 Cal.3d 669, 680--681, 94 Cal.Rptr. 279, 483 P.2d 1231; California Sch. Employees Ass'n v. Personnel Commission (1970) 3 Cal.3d 139, 143--144, 89 Cal.Rptr. 620, 474 P.2d 436.) But the principle is equally applicable when the regulation contravenes a provision of a different statute. (See, e.g., Orloff v. Los Angeles Turf Club (1951) 36 Cal.2d 734, 227 P.2d 449; Tolman v. Underhill (1952) 39 Cal.2d 708, 249 P.2d 280; Harris v. Alcoholic Bev., etc., Appeals Bd. (1964) 228 Cal.App.2d 1, 39 Cal.Rptr. 192.)

[23] On the other hand, it is no less settled that when a special and a general statute are in conflict, the former controls. *****202 **706** (Code Civ.Proc., s 1859.) '(T)he special act will be considered as an exception to the general statute whether it was passed before or after such general enactment.' (In re Williamson (1954) 43 Cal.2d 651, 654, 276 P.2d 593, 594; accord, People v. Gilbert (1969) 1 Cal.3d 475, 479--480, 82 Cal.Rptr. 724, 462 P.2d 580, and cases cited.) This rule of construction is reiterated and specifically made applicable to the ALRA in section 1166.3, subdivision (b), of the act, which **states**: 'If any other act of the **Legislature** shall conflict with the provisions of this part (i.e., the ALRA), this part shall prevail.'

[24] If the **Legislature** can thus depart from its existing dispositions on a given topic, it can authorize an **administrative agency** to do so on its behalf. Accordingly, in cases of conflict a **regulation** validly **adopted pursuant** to a **delegation** of **authority** under a special **statute** likewise prevails over the terms of a general **statute** . The **Legislature** can surely accomplish indirectly that which it could do directly.

[25] The access rule here challenged is such a **regulation**. For the reasons **stated** at length hereinabove, the incorporation in section 1152 of the language of section 7 of the NLRA, together with the express direction in section 1144 that the board mark **regulations** necessary to carry out the act and in section 1148 that it follow applicable NLRA precedents, at least mean that the **Legislature** intended the board to structure a qualified right of entry onto agricultural property for organizational purposes. The access **regulation** was **adopted** as an expression of that intent. It therefore prevails over the general trespass **statute**, by operation ***421** of both the foregoing rule of statutory construction and the specific directive of section 1166.3, subdivision (b). No act in compliance with the access **regulation** can be punished as a criminal trespass. (See In re Zerbe (1964) 60 Cal.2d 666, 36 Cal.Rptr. 286, 388 P.2d 182.)

Let a peremptory writ of mandate issue as prayed.

WRIGHT, C.J., and TOBRINER and SULLIVAN, JJ., concur.

CLARK, Justice (dissenting).

I dissent.

The access regulation of the Agricultural Labor Relations Board is invalid on three grounds. First, federal law has established that nonemployee organizers have no right of access to an employer's property whenever other reasonable means of communication are available. Even when access is permissible, it is restricted to nonworking areas. The California Agricultural Labor Relations Act of 1975 (Lab.Code, s 1140 et seq.) incorporated the federal law; the board's regulation, in authorizing

access when other means of communication are available, and in permitting access to working areas, is contrary to federal law and therefore violates the state statute. Second, because the board's regulation is in conflict with the penal trespass statute it usurps the legislative function, and is thus invalid. Third, the regulation constitutes an unwarranted infringement on constitutionally protected property rights.

THE REGULATION CONFLICTS WITH THE AGRICULTURAL LABOR RELATIONS ACT

A. The Federal Law

Two United States Supreme Court decisions have specifically dealt with the issue of nonemployee union organizer access to private property. In National Labor Relations Board v. Babcock & Wilcox Co. (1955), 351 U.S. 105, 76 S.Ct. 679, 100 L.Ed. 975, employers prohibited nonemployees from distributing union literature on employer-owned parking lots. The National Labor Relations Board (labor board) ruled that the employers' conduct constituted an unfair labor practice. The labor board based its ruling on a decision establishing that Employees could use nonworking areas of the employer's premises for organizational activities. (**707***203Republic Aviation Corp. v. N.L.R.B. (1944) 324 U.S. 793, 65 S.Ct. 982, 89 L.Ed. 1372.)

*422 The court in Babcock unanimously ruled that the labor board had erred in failing 'to make a distinction between rules of law applicable to employees and those applicable to nonemployees.' (351 U.S. at p. 113, 76 S.Ct. at p. 684.)

Having identified the source of the labor board's error, the Supreme Court stated the legal principles which govern nonemployee access cases. '(A)n employer may validly post his property against nonemployee distribution of union literature if reasonable efforts by the union through other available channels of communication will enable it to reach the employees with its message and if the employer's notice or order does not discriminate against the union by allowing other distribution. In these circumstances the employer may not be compelled to allow distribution even under such reasonable regulations as the orders in these cases permit.' (351 U.S. at p. 112, 76 S.Ct. at p. 684.)

In Central Hardware Co. v. N.L.R.B. (1972), 407 U.S. 539, 92 S.Ct. 2238, 33 L.Ed.2d 122, the second United States Supreme Court decision, the labor board again found an employer to have engaged in an unfair labor practice by excluding nonemployee union organizers from its parking lot. In making this ruling, the labor board decided that the employer had violated First Amendment rights of the employees under Amalgamated Food Employees Union v. Logan Valley Plaza (1968), 391 U.S. 308, 88 S.Ct. 1601, 20 L.Ed.2d 603.

The Supreme Court reversed, ruling that Logan Valley's First Amendment analysis was inapplicable, and that if the labor board's attempt to apply Logan Valley to nonemployee organizers were allowed to stand, it would 'constitute an unwarranted infringement of long-settled rights of private property protected by the Fifth and Fourteenth Amendments.' (407 U.S. at p. 547, 92 S.Ct. at p. 2243.)

The Supreme Court reiterated its Babcock holding that nonemployee organizers may not be allowed access when other reasonable means of communication are available. The court added: 'The principle of Babcock is limited to this accommodation between organization rights and property rights. This principle requires a 'yielding' of property rights only in the context of an organization campaign. Moreover, the allowed intrusion on property rights is limited to that necessary to facilitate the exercise of employees' s 7 rights. [FN1] After the requisite need for access to *423 the employer's property has been shown, the access is limited to (i) union organizers; (ii) prescribed nonworking areas of the employer's premises; and (iii) the duration or organization activity. In short, the principle of accommodation announced in Babcock is limited to labor organization campaigns, and the 'yielding' of property rights it may require is both temporary and minimal.' (407 U.S. at pp. 544--545, 92 S.Ct. at p. 2242.) The dissent in Central Hardware did not relate to the points involved here. Even the dissenting justices expressly stated that the labor board should have followed Babcock.

FN1. Section 7 of the National Labor Relations Act is substantially identical to Labor Code section 1152.

The federal law of nonemployee access is therefore settled, establishing that there is no right of access where alternative methods of communication exist. If there are no alternative methods, the nonemployees' right of access is limited to prescribed nonworking areas of the employer's premises. The Supreme Court has expressly held that the broader right of Employees to engage in organizational activities recognized by Republic Aviation v. N.L.R.B., supra, 324 U.S. 793, 65 S.Ct. 982, 89 L.Ed. 1372, does not apply to the nonemployee organizer. Employee organizers are legally upon the employer's premises as employees; thus, their presence usually does not interfere with the employer's ***204 **708** property rights. The employer's interest in securing effective work is the only interest subject to potential interference. Accordingly, the limitation on employees' right to organize relates to discipline. Nonemployee organizers, however, are not invited on the premises. In this situation, not only is the employer's interest in securing effective work jeopardized, but his property rights under the United States Constitution are interfered with as well.

B. The Legislature's Incorporation of the Federal Law

Labor Code section 1152 establishes the right of employees to organize. That section contains language identical to section 7 of the National Labor Relations Act, [FN2] the section applied in Babcock and Central Hardware. Labor Code section 1148 states: 'The board Shall follow Applicable precedents of the National Labor Relations Act, as amended.' (Italics added.)

FN2. The operative language of section 1152 is identical to section 7. The only difference between the statutes is that section 7 cross-references to another federal statute while section 1152 cross-references, of course, to a state statute.

'When legislation has been judicially construed and a subsequent statute on the same or an analogous subject is framed in the identical language, it will ordinarily be presumed that the Legislature intended *424 that the language as used in the later enactment would be given a like interpretation. This rule is applicable to state statutes which are patterned after federal statutes. (Citations.)' (Los Angeles Met. Transit Authority v. Brotherhood of Railroad Trainmen (1960) 54 Cal.2d 684, 688--689, 8 Cal.Rptr. 1, 3, 355 P.2d 905, 907.)

In Los Angeles Met. Transit Authority, as in the instant case, the Legislature had used language from section 7 of the National Labor Relations Act. This court held that, because the federal courts had interpreted part of the language to include the right to strike, the Legislature intended to grant a right to strike despite the fact that the state statute applied to governmental employees who ordinarily have no such right.

By using the language of section 7, the Legislature clearly manifested its intention to adopt the federal construction of section 7. In Babcock and Central Hardware, the United States Supreme Court construed section 7. That construction was therefore adopted by our Legislature when it enacted section 1152. Any doubt in the matter was eliminated when the Legislature, in section 1148, expressly required the board to follow applicable federal precedents. Accordingly, the inescapable conclusion is that the Legislature intended the board to apply the rule of Babcock and Central Hardware, which denies access rights to nonemployee organizers when reasonable alternative methods of communication are available. [FN3]

FN3. The majority attempts to characterize the access regulation as 'limited in purpose, in time and place, and in the number of organizers . . ..' (Ante, p. 188 of 128 Cal.Rptr., p. 692 of 546 P.2d 687.) But in characterizing these as limitations, the majority relies on the irrelevant. These limitations in no way indicate the unavailability of alternative means of communication--the very showing that must be made before any access, regardless of how limited, is permitted. Moreover, the majority's statement that elections under the ALRA are required to be held within short periods of time (Ante, p. 199 of 128 Cal.Rptr., p. 703 of 546 P.2d 687), while true, has nothing to do with the access regulation. The elections must be

> held within seven days of the filing of a petition signed by a majority of the currently employed. (Lab.Code, s 1156.3, subd. (a).) However, the access regulation does not limit access to the period following the filing of a petition. The regulation is thus open- ended and the infringement on property rights it sanctions--contrary to the majority's implication--is therefore neither limited in time nor is it minimal.

It is generally recognized that the Agricultural Labor Relations Act of 1975 is a compromise among the various interests. (Levy, The Agricultural Relations Act of 1975--La Esperanza de California Para El Futuro (1975) 15 Santa Clara Law. 783.) When the competing interests agreed to ***205 **709** compromise, the Legislature was faced with three choices: it could turn the board loose with little definition of its duties, powers, limitations on *425 those powers, or standards to be applied; it could, on the other hand, sharply define the duties, powers, limitations, and standards; or it could incorporate the highly developed federal law, which had over a period of 40 years arrived at definitions of both the rights and interests of the affected parties, as well as the duties, powers, limitations, and standards of the administrative agency.

The Legislature chose to incorporate the highly developed federal law. This is clear from its adoption of section 1152, which is substantially identical to section 7 of the National Labor Relations Act, and adoption of section 1148, which requires the board to rely on applicable federal precedents.

The majority, of course, is not unmindful of the necessity to resort to federal law. There is no specific mention of a right of access in the act (other than for board officials) and no express delegation empowering the board to adopt a right of access. The majority, in finding a right of access, relies upon sections 1148 and 1152, which adopt federal law, and section 1144 which grants general rule-making powers to the board. Obviously, a general rule-making power with no specification as to what those rules relate is not the same as an express power to create access rights. It is evident that the majority must resort to federal law to find board authority to create access rights.

It is manifestly unfair to the Legislature, in light of the history and language of the act, to rely on federal law to establish board power to create an access right, and at the same time to ignore the standards and limitations placed upon that right by the same federal law. Rather, the **Legislature's** incorporation of the federal law includes the duties, powers, limitations, and standards.

Although the board is given general **rule-making** power, **regulations adopted pursuant** to this power must conform to the legislative command requiring application of federal law. As this court **stated** in Morris v. Williams (1967), 67 Cal.2d 733, 63 Cal.Rptr. 689, 433 P.2d 697: 'Under Government Code section 11373, 'Each **regulation adopted** (by a **state agency**), to be **effective**, must be within the scope of **authority** conderred . . ..' Whenever a **state agency** is authorized by **statute** 'to **adopt regulations** to implement, interpret, make specific or otherwise carry out the provisions of the **statute**, No **regulation adopted** is valid or **effective** unless consistent and not in conflict with the **statute** . . . .' (Gov.Code, s 11374.) Our first duty, therefore, is to determine whether the **Administrator** *426 exercised quasi- legislative **authority** within the bounds of the statutory mandate. While the construction of a **statute** by officials charged with its **administration**, including their interpretation of the **authority** invested in them to implement and carry out its provisions, is entitled to great weight, nevertheless 'Whatever the **force** of **administrative** construction . . . final responsibility for the interpretation of the law rests with the courts.' (Whitcomb Hotel v. California Emp. Com. (1944) 24 Cal.2d 753, 756--757, 151 P.2d 233, 155 A.L.R. 405, and **authorities** there collected.) **Administrative regulations** that alter or amend the **statute** or enlarge or impair its scope are void and courts not only may, but it is their obligation to strike down such **regulations**. (Whitcomb Hotel v. California Emp. Com., supra; Hodge v. McCall (1921) 185 Cal. 330, 334, 197 P. 86; Boone v. Kingsbury (1928) 206 Cal. 148, 161--162, 273 P. 797; First Industrial Loan Co. of California v. Daugherty (1945) 26 Cal.2d 545, 550, 159 P.2d 921; see Brock v. Superior Court (1938) 11 Cal.2d 682, 688, 81 P.2d 931.)' (67 Cal.2d at p. 748, 63 Cal.Rptr. at p. 699, 433 P.2d at p. 707.)

C. The Regulation's Conflict With the Federal Law and the Statute

As we have seen, the federal law incorporated in the act by the Legislature denies ***206 **710 access to nonemployee organizers whenever reasonable alternative means of communication are available. Further, even when access is allowed, it is restricted to nonworking areas. By permitting blanket access to all agricultural property, regardless of the existence of alternative means of communication, and by permitting access to working areas, the board's regulation is contrary to Babcock and Central Hardware, violating the statutory command to follow federal precedent.

The conflict may not be avoided on the basis of the board's finding that '(g) enerally' there is no alternative means of communication. The absence of alternative means of communication in Most cases does not relieve the board of its obligation to adhere to Babcock and Central Hardware any more than an N.L.R.B. finding of the availability of alternative means of communication in Most cases would justify the N.L.R.B. from denying nonemployee access in all cases.

CONFLICT WITH TRESPASS STATUTE

Penal Code section 602 provides in relevant part: 'Every person who willfully commits a trespass by any of the following acts is guilty of a misdemeanor: (j) Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with *427 the intention of interfering with, obstructing, or injuring any lawful business or occupation carried on by the owner of such land, his agent or by the person in lawful possession. ( ) (k) Entering any lands under cultivation or enclosed by fence, belonging to, or occupied by, another . . . without the written permission of the owner of such land, his agent or the person in lawful possession, and ( ) (l) Refusing or failing to leave such lands immediately upon being requested by the owner of such land, his agent or by the person in lawful possession to leave such lands, . . . ( ) (l) Entering and occupying real property or structures of any kind without the consent of the owner, his agent, or the person in lawful possession thereof. ( ) (m) Driving any vehicle . . . upon real property belonging to or lawfully occupied by another and known not to be open to the general public, without the consent of the owner, his agent, or the person in lawful possession thereof. ( ) (n) Refusing or failing to leave land, real property, or structures belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by a peace officer and the owner, his agent, or the person in lawful possession thereof.'

The conflict between the access regulation and the trespass statute is apparent.

The law regarding conflict between administrative acts and legislative acts is well-settled. 'Administrative regulations that violate acts of the Legislature are void and no protestations that they are merely an exercise of administrative discretion can sanctify them. They must conform to the legislative will if we are to preserve an orderly system of government.' (Morris v. Williams, supra, 67 Cal.2d 733, 737, 63 Cal.Rptr. 689, 692, 433 P.2d 697, 700, italics added.) 'It is fundamental that an administrative agency may not usurp the legislative function, no matter how altruistic its motives are.' (City of San Joaquin v. State Bd. of Equalization (1970) 9 Cal.App.3d 365, 374, 88 Cal.Rptr. 12, 19.)

Administrative agencies 'may not exercise (their) sub-legislative powers to modify, alter or enlarge the provisions of the legislative act which is being administered. Administrative regulations in conflict with the Constitution or statutes are generally declared to be null or void. (Hammond v. McDonald, 49 Cal.App.2d 671, 679, 122 P.2d 332; Hodge v. McCall, 185 Cal. 330, 334, 197 P. 86.)' (Harris v. Alcoholic Bev., etc., Appeals Bd. (1964) 228 Cal.App.2d 1, 6, 39 Cal.Rptr. 192, 195; Accord: Morris v. Williams, supra, 67 Cal.2d 733, 748--749, 63 Cal.Rptr. 689, 433 P.2d 697; ***207 **711Duskin v. State Board of Dry Cleaners (1962) 58 Cal.2d 155, 161--162, 23 Cal.Rptr. 404, 373 P.2d 468; Schenley*428 Industries, Inc. v. Munro (1965) 237 Cal.App.2d 106, 111, 46 Cal.Rptr. 678; Am. Distilling Co. v. State Bd. of Equalization (1942) 55 Cal.App.2d 799, 805--806, 131 P.2d 609.)

As the court in Harris v. Alcoholic Bev., etc., Appeals Bd., supra, noted: 'The order of priority with respect to jurisdiction, accordingly, is as follows: (1) The Constitution is the supreme

expression; (2) To the extent that it does not conflict with the Constitution, the Legislature may act; (3) To the extent that it does not conflict with the Constitution, Or with lawful acts of the Legislature, the Department (administrative agencies) may act through its rules and regulations.' (228 Cal.App.2d at p. 7, 39 Cal.Rptr. at p. 16; italics added.)

The doctrine that administrative regulations are subordinate and must give way to legislative enactments is equally applicable when the regulation contravenes a provision of a statute or code other than the statutes creating the agency or administered by it. (Tolman v. Underhill (1952) 39 Cal.2d 708, 712, 249 P.2d 280; Orloff v. Los Angeles Turf Club (1951) 36 Cal.2d 734, 737--738, 227 P.2d 449; In re Potter (1913)164 Cal. 735, 739, 130 P. 721; Cleveland Chiropractic College v. State Bd. of Chiropractic Examiners (1970) 11 Cal.App.3d 25, 34--35, 89 Cal.Rptr. 572; Harris v. Alcoholic Bev., etc., Appeals Bd., supra, 228 Cal.App.2d 1, 6, 39 Cal.Rptr. 192.)

The Legislature, as the majority points out, may make exceptions to other statutes and may expressly authorize an administrative agency to make exceptions. Such exceptions may also be made by the incorporation of other law, including federal law. In addition, an agency's right to make an exception to general statutory provisions might be implied in cases of necessity, when exercise of a power expressly granted to the agency will necessarily involve a violation of the other statute. In these circumstances, exceptions are warranted by the general principle that specific statutory provisions govern general ones. (Code Civ.Proc., s 1859; People v. Gilbert (1969) 1 Cal.3d 475, 479--480, 82 Cal.Rptr. 724, 462 P.2d 580.)

However, the special-general principle does not apply when the agency's power to act is not express but merely implied. Because the agency's power is implied, it can never be special in relation to a conflicting express legislative declaration. If the rule were otherwise, agencies in their field of expertise would be free to ignore almost all statutes enacted by the Legislature.

***429** The Legislature has not expressly provided for access by nonemployee organizers to employer property. Nor has the Legislature expressly delegated to the board the authority to formulate an access rule. Having refused to follow Babcock and Central Hardware and the federal law, the majority may not properly claim that the Legislature incorporated an access rule by reference to federal law. Nor has the board or the majority shown it to be absolutely necessary to sanction violations of the Penal Code in order to effectuate the powers expressly granted to the board.

The Agricultural Labor Relations Act deals with labor relations; it does not deal with trespasses to real property. Penal Code section 602 deals with trespass to real property; its relevant provisions do not expressly deal with labor relations. The instant case deals with labor relations And trespasses. Thus each Statute is on par with the other, and the Penal Code provision being a legislative enactment, it must take precedence over the administrative regulation based on a power implied from the labor statute. Moreover, if either the act or the Penal Code provisions must be categorized as special in relation to the activities before us, the Penal Code provisions should be so categorized. Related provisions of the Penal Code expressly deal with both trespasses and labor relations (Pen.Code, ss 552.1, 555.2), and in In re Zerbe (1964) 60 Cal.2d 666, 668--669, 36 Cal.Rptr. 286, 388 P.2d 182, it was held that the provisions of those sections must be read into section 602, subdivision (l), *****208 **712** one of the subdivisions presently before us.

CONSTITUTIONALITY OF THE ACCESS REGULATION

The majority concludes that the access regulation is constitutional and does not impinge upon private property rights because a rational relationship exists between the access regulation and the purposes of the act. The majority finds that the rational relationship test is the proper standard for constitutional review by analogizing the issue here presented to the issues raised when the validity of a zoning ordinance is challenged. The majority, however, has erred in its analogy, applied an improper standard of constitutional review, and thereby sanctioned an impermissible invasion on constitutionally protected property rights. [FN4]

FN4. The majority justifies its application of the rational relationship test on grounds

> that the access regulation's infringement of property rights is 'not a deprivation of 'fundamental personal liberties. '" However, property rights are fundamental and personal. As the United States Supreme Court pointed out in Lynch v. Household Finance Corp. (1972) 405 U.S. 538, 92 S.Ct. 1113, 31 L.Ed.2d 424, '(T)he dichotomy between personal liberties and property rights is a false one. Property does not have rights. People have rights. The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth, a 'personal' right, whether the 'property' in question be a welfare check, a home, or a savings account. In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other. That rights in property are basic civil rights has long been recognized. J. Locke, Of Civil Government 82--85 (1924); J. Adams, A Defense of the Constitutions of Government of the United State of America, in F. Coker, Democracy, Liberty, and Property 121--132 (1942); 1 W. Blackstone, Commentaries 138--140.' (Id. at p. 552, 92 S.Ct. at p. 1122.)

***430** When regulations such as zoning are challenged, the constitutional issue raised is the extent to which the government may regulate A landowner's use of his own property. The access regulation, on the other hand, presents a very distinct situation. In promulgating such a regulation the government is requiring a property owner to surrender the use of his private property not for public use but For the use of other private parties--nonemployee union organizers.

The distinction is of major significance. In the private access situation we must weigh the strength of the interest asserted against the infringement on private property rights. The proper judicial function is to balance the competing interests; although the rational relationship test applies in zoning cases, the law of zoning is not a universal solvent in which property rights are dissolved.

This court is apparently the only court unable to grasp that the appropriate standard for review is one of balancing and not of rational relationship. In National Labor Relations Board v. Babcock & Wilcox Co., supra, 351 U.S. 105, 76 S.Ct. 679, 100 L.Ed. 975, the United States Supreme Court stated: 'This is not a problem of always open or always closed doors for union organization on company property. . . . Accommodation between the two (organizational rights and property rights) must be obtained with as little destruction of one as is consistent with the maintenance of the other.' (Id. at p. 112, 76 S.Ct. at p. 684; italics added.) Similarly, in Central Hardware Co. v. N.L.R.B., supra, 407 U.S. 539, 92 S.Ct. 2238, 33 L.Ed.2d 122, the Supreme Court stated: 'the Principle of accommodation announced in Babcock is limited to labor organization campaigns, and the 'yielding' of property rights it may require is both temporary and minimal.' (Id. at p. 545, 92 S.Ct. at p. 2242; italics added.) The proper test is one of balancing, not a determination of rational relationships.

The federal Courts of Appeals have fully recognized that balancing is the proper standard for review. (E.g., *****209**N.L.R.B. v. Visceglia (3d Cir. 1974) 498 F.2d 43, 45; ****713** McDonnell Douglas Corporation v. N.L.R.B. (8th Cir. 1973) 472 F.2d 539, 544; Diamond Shamrock Co. v. N.L.R.B. (3d Cir. 1971) 443 F.2d 52, 56--58; see ***431** Asociacion de Trabajadores, etc. v. Green Giant Co., 518 F.2d 130, 135; Petersen v. Talisman Sugar Corporation (5th Cir. 1973) 478 F.2d 73, 82.)

Indeed, in the only federal Court of Appeals case decided after Babcock and Central Hardware specifically discussed by the majority, the court recognized that the proper standard for resolving this issue is one of balancing. (N.L.R.B. v. S & H Grossinger's Inc. (2d Cir. 1967) 372 F.2d 26, 29--30.) Moreover, the fact that access has been permitted in several federal cases is hardly suprising under a balancing test. However, it does not follow, as the majority suggests, that because the balance in some cases has favored access that the balance in all case will do so. If this were otherwise then the United States Supreme Court's use of the word 'accommodate' is meaningless, as is the federal Courts of Appeals' continual use of a balancing approach.

The United States Supreme Court balanced the

competing interests in Babcock and Central Hardware, and because, as pointed out above, the board's regulation violates the rule of those cases, the access regulation violates the constitutional provisions protecting private property. The board's regulation does not even attempt to balance or accommodate the competing interests. It allows access when alternative means of communication do in fact exist. And it permits blanket entry onto private property during working hours. The regulation as presently promulgated is unconstitutional.

CONCLUSION

In a case such as this, where conviction and feeling run high, we should apply the law to the facts carefully and objectively, to assure that the result of our decision comports with precedent, thereby carrying out the intent of the Legislature. In this, the majority have failed today. To reach their result, they have relied on inapplicable precedent, applied the wrong constitutional standard of review, nullified the Legislature's mandate to the board, and subordinated the Legislature to an administrative agency.

McCOMB and RICHARDSON, JJ., concur.

128 Cal.Rptr. 183, 16 Cal.3d 392, 546 P.2d 687, 91 L.R.R.M. (BNA) 2657, 78 Lab.Cas. P 53,800

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Hearing: March 27, 2003
H:nancy/bsa/implementation/0303agendaitem

ITEM 3

STAFF REPORT
FINAL REPORT REGARDING IMPLEMENTATION OF THE STATE AUDITOR'S RECOMMENDATIONS ON SCHOOL BUS SAFETY II AUDIT

The Commission on State Mandates (Commission) is required to report to the Bureau of State Audits (BSA) on its efforts to implement the BSA's Audit Report recommendations on the School Bus Safety II program. The Audit Report requires the Commission to report within sixty days, six months, and one year of release of the Audit Report. Attached for your information is our one-year report.

The one-year report provides an overview of implementation of the Audit recommendations reported in the sixty-day and six-month reports, and the Audit recommendations completed since the six-month report. Following are the recommendations from the Audit Report and what tasks were completed to implement those recommendations:

Recommendation 1. *To ensure that the State's interests are fully represented in the future, the Commission should ensure that all relevant state departments and legislative fiscal committees are provided with the opportunity to provide input on test claims and parameters and guidelines, and it should follow up with entities that have indicated they would comment, but did not. Additionally, the Commission should notify all relevant parties, including legislative fiscal committees, of the decisions made at critical points in the process, such as the test claim statement of decision, the adoption of parameters and guidelines, and the adoption of the statewide cost estimate.*

The following actions were taken to implement Recommendation 1:

- Annually train legislative fiscal staff, affected state agency staff, claimants, and interested parties on the mandates process.

- Amended mailing list procedures, including routine review of mailing lists to ensure that all relevant parties are being notified as claims proceed through the process.

- In addition to the letter initially inviting state agency participation, send a letter notifying all parties of the tentative hearing dates for each test claim.

- Modified an internal reporting system that updates management on the progress of the claims. Implemented a process that requires staff to review test claim mailing lists twice before the analysis is finalized to determine if any affected state agencies were omitted from the mailing lists, and to invite any additional state agencies to participate in the process.

- Provide electronic copies of the monthly notices and agendas of Commission hearings to legislative fiscal and policy committee staff.

- Provide electronic notice of release of analyses of test claims, proposed parameters and guidelines and statewide cost estimates; and proposed statements of decision to fiscal and policy committee staff, and direct them to our website to view the analyses and proposed decisions.

- Contact state agencies, claimants and other relevant parties when comments are due, but not received.

Recommendation 2. *The Commission should ensure that it carries out its process for deciding test claims, approving parameters and guidelines, and developing the statewide cost estimate for mandates in as timely a manner as possible. If the Commission believes it necessary to use actual claims data when developing the statewide cost estimate, it should consider seeking regulatory changes to the timeline to include the time necessary to obtain the data from the Controller.*

The following actions were taken to implement Recommendation 2:

- Propose statewide cost estimates for adoption approximately one month after the initial reimbursement claims data is received from the State Controller's Office.

- Revised process to provide that if claimant rebuttals are not submitted timely, the record on the claim is closed and the staff analysis may commence. If claimants choose to rebut state agency positions at a later time, they may provide rebuttal comments to the draft staff analysis.

- Initiated a rulemaking package to amend the Commission's regulations to incorporate the current process for developing statewide cost estimates.

- Continue to review existing Commission processes and resources for ways to reduce the time it takes to complete a test claim.

Recommendation 3. *The Commission should work with the Controller, other affected state agencies, and interested parties to make sure that the language in the guidelines and the claiming instructions reflects the Commission's intentions as well as the Controller's expectations regarding supporting documentation.*

The following actions were taken to implement Recommendation 3:

- Provide all parties with more time to review proposed parameters and guidelines to assist in adopting parameters and guidelines that accurately reflect the implementing statutes and statements of decision.

- Adopted the State Controller's proposed language, as modified by Commission staff, that requires claimants to maintain documentation developed at or near the time the actual costs were incurred in order to support their reimbursement claims. The Commission intends to address this language in all future parameters and guidelines, and in existing parameters and guidelines as they are amended.

Finally, staff reviewed the Bureau of State Audit's Report on Implementation of State Auditor's Recommendations. The report notes that the Commission has partially complied with the Audit recommendations. However, the report noted that the Commission continued to work on revising the documentation language in the parameters and guideline, and including the statewide cost estimate process in our regulations. Since release of this report, the Commission has adopted the parameters and guidelines language regarding documentation and initiated rulemaking to include the statewide cost estimate process in our regulations.

Staff reports that this completes the implementation of the Audit Report Recommendations for School Bus Safety II.

STATE OF CALIFORNIA GRAY DAVIS, *Governor*

COMMISSION ON STATE MANDATES
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March 14, 2003

Ms. Elaine M. Howle
State Auditor
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Re: Bureau of State Audit's Report on the
School Bus Safety II Program
One-Year Report on Implementation

Dear Ms. Howle:

The Audit Report on the School Bus Safety II program issued on March 28, 2002, requires the Commission on State Mandates (Commission) to report on its efforts to implement the report recommendations within sixty days, six months, and one year of release of the Audit Report. This is our one-year report.

Sixty-Day Report

During the sixty days after the Audit Report's release, the Commission's Executive Director met with numerous staff from the Legislative Analyst's Office, legislative fiscal committees, and staff with the Department of Finance, Department of Education, and the State Controller's Office. The purpose of these meetings was to develop a common understanding of the Audit Report recommendations, and to solicit suggestions on how to implement the recommendations.

Commission staff verified that the Department of Education is included on the mailing lists for all education claims, and that the appropriate local agency contacts are on the mailing lists for local government claims. We also added legislative fiscal committee staff to the mailing list for the Commission's agendas to ensure that they receive notice of all upcoming Commission hearings and the agendas for those hearings. Commission staff, together with the Legislative Analyst's Office, also conducted the second annual legislative staff-training program for fiscal committee consultants on the mandates process.

Six-Month Report

Since the sixty-day report was submitted, the Commission modified an existing internal process and established several new procedures to implement the Report recommendations, which are summarized below:

Report Recommendation 1

Staff implemented the following procedures to increase the opportunity for state agencies and legislative staff to participate in the mandates process; follow-up with entities that are late commenting on claims; and notify relevant parties of proposed statements of decision, parameters and guidelines and statewide cost estimates:

- In addition to the letter initially inviting state agency participation, a letter is sent notifying all parties of the tentative hearing dates for each test claim.

- Modified an internal reporting system that updates management on the progress of the claims. Implemented a process that requires staff to review test claim mailing lists twice before the analysis is finalized to determine if any affected state agencies were omitted from the mailing lists, and to invite any additional state agencies to participate in the process.

- Electronic copies of the monthly notices and agendas of Commission hearings are provided to legislative fiscal and policy committee staff.

- Notice of release of analyses of test claims, proposed parameters and guidelines and statewide cost estimates, and proposed statements of decision are emailed to fiscal and policy committee staff. The notice also directs them to our website to view the analyses and proposed decisions.

- State agencies, claimants and other relevant parties are contacted when comments are due, but not received.

Report Recommendation 2

The Commission continues to look for ways to streamline the mandates process and complete determination on claims in a timely manner. Staff implemented the following new procedures to ensure that the Commission carries out its process in as timely a manner as possible.

- Statewide cost estimates are proposed for adoption approximately one month after the initial reimbursement claims data is received from the State Controller's Office.

- If claimant rebuttals are not submitted timely, the record on the claim is closed and the staff analysis may commence. If claimants choose to rebut state agency positions at a later time, they may provide rebuttal comments to the draft staff analysis.

Report Recommendation 3

Commission staff is providing all parties with more time to review proposed parameters and guidelines. This step will assist in adopting parameters and guidelines that accurately reflect the implementing statutes and statements of decision.

On June 10, 2002, the State Controller's Office proposed amendments to the documentation language for parameters and guidelines to clarify the documentation necessary to support reimbursement claims. Comments were received from numerous local agencies and school districts, prehearings were conducted, and staff proposed modifications to the language. This action meets the Audit recommendation that the Commission work with the State Controller's Office and parties to amend existing parameters and guidelines and adopt new parameters and guidelines that reflect the Commission's intentions and the Controller's expectations regarding supporting documentation.

One-Year Report

Since the six-month report was submitted, Commission staff continued to analyze and make modifications to the State Controller's language regarding supporting documentation. We also reviewed your February 28, 2003 report on Implementation of State Auditor's Recommendations. You reported that while we had partially complied with the Audit recommendations, we continued to work on revising documentation language in the parameters and guidelines and including the process for developing statewide cost estimates in our regulations.

On January 23, 2003, the Commission adopted the State Controller's proposed language, as modified by Commission staff, that requires claimants to maintain documentation developed at or near the time the actual costs were incurred in order to support their reimbursement claims. The Commission intends to address this language in all future parameters and guidelines, and in existing parameters and guidelines as they are amended.

The Commission also initiated a rulemaking package on February 27, 2003 to incorporate the current methodology for developing statewide cost estimates into the Commission's regulations. For purposes of calculating when a statewide cost estimate must be adopted by the Commission, the time from when the parameters and guidelines

are effective until the date the statewide cost estimate is adopted is tolled. This allows the statewide cost estimate to be based on the initial reimbursement claims filed with the State Controller's Office, which are filed within 120 days of when the SCO issues its claiming instructions for the program. The proposed revisions also provide that in the event a different methodology is identified, staff is authorized to use it to develop the statewide cost estimate.

Attached is a work plan that shows completion of implementation of the Audit recommendations, including person(s) responsible for implementation.

Overall, participation by the Legislature and state agencies in the mandates process has increased. For example, the Commission and the Legislative Analyst's Office held the third annual mandate training earlier this year. Attendance from legislative staff at these training sessions continues to increase. In addition, revising the parameters and guidelines to require more specific documentation will ensure that costs to implement mandated programs will be more accurately claimed. Thank you for the opportunity to work with your office during this process.

Please call Nancy Patton at (916) 323-8217 with questions.

Sincerely,

PAULA HIGASHI
Executive Director

Enclosure: Work plan

J:nancy/bsa/implementation/finalreporttrans

WORKPLAN

BSA Recommendations and Summary of Tasks	Responsible Person	Status
Recommendation 1. The Commission should 1) ensure that all relevant state departments and legislative fiscal committees are provided with the opportunity to provide input on test claims and parameters and guidelines; 2) follow up with entities that have indicated they would comment, but did not; 3) notify all relevant parties, including legislative fiscal committees, of the decisions made at critical points in the process, such as the test claim statement of decision, the adoption of parameters and guidelines, and the adoption of the statewide cost estimate.		
Summary of Tasks: 1) Implement a process to provide analyses of test claims, *proposed* parameters and guidelines and statewide cost estimates to legislative fiscal and policy committees for review and comment.	Paula Higashi Shirley Opie	Complete
2) Implement a process to notify legislative fiscal and policy committees of proposed Commission decisions (test claim statements of decision, adoption of parameters and guidelines and adoption of statewide cost estimates).	Paula Higashi Shirley Opie	Complete
3) Add legislative fiscal committees to Commission hearing notice and agenda mailing list.	Shirley Opie	Complete
4) Conduct training on the mandate reimbursement process.	Paula Higashi Paul Starkey	Ongoing
5) Establish an internal process to: a) Routinely review Commission mailing lists when comments are requested from legislative committees and state agencies and when Commission decisions are disseminated to ensure that all relevant parties are being notified. b) Follow up with agencies and committees that have indicated they will comment and have not responded by the due dates established by the Commission.	Shirley Opie Paul Starkey	Complete

BSA Recommendations and Summary of Tasks (continued)		
Recommendation 2. The Commission should 1) ensure that it carries out its process for deciding test claims, approving parameters and guidelines, and developing the statewide cost estimate for mandates in as timely a manner as possible; and 2) if the Commission believes it necessary to use actual claims data when developing the statewide cost estimate, it should consider seeking regulatory changes to the timeline to include the time necessary to obtain the data from the Controller.		
Summary of Tasks: 1) Review existing Commission processes and resources for completing test claims to look for ways to reduce the time it takes to complete a test claim. Following review, take responsive steps, including initiating rulemaking as appropriate.	Paula Higashi Shirley Opie	Ongoing
2) Evaluate Commission methodology for developing statewide cost estimates and initiate rulemaking to reflect the process.	Paula Higashi Shirley Opie Paul Starkey	Complete
Recommendation 3. The Commission should work with the Controller, other affected state agencies, and interested parties to make sure that the language in the guidelines and the claiming instructions reflects the Commission's intentions as well as the Controller's expectations regarding supporting documentation.		
Summary of Tasks: 1) Work with claimants, affected state agencies and interested parties to develop changes to parameters and guidelines to clarify supporting documentation requirements.	Paula Higashi Shirley Opie Paul Starkey	Ongoing
2) Beginning with 1/23/03 Commission hearing, incorporate new language in parameters and guidelines submitted to Commission.	Paula Higashi Shirley Opie Paul Starkey	Ongoing
3) Review draft claiming instructions for consistency with parameters and guidelines.	Shirley Opie	Ongoing