

AMENDED IN ASSEMBLY JULY 9, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 656

Introduced by Assembly Member Torrico
(Coauthors: Assembly Members Beall, Block, Bonnie Lowenthal, Ma,
and Price)
(Coauthor: Senator DeSaulnier)

February 25, 2009

An act to add Chapter 8 (commencing with Section 99500) to Part 65 of Division 14 of Title 3 of the Education Code, and to add Part 21 (commencing with Section 42001) to Division 2 of the Revenue and Taxation Code, relating to postsecondary education, and making an appropriation therefor, ~~to take effect immediately, tax levy and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 656, as amended, Torrico. California Higher Education Endowment Corporation: oil and gas severance tax.

(1) Existing law establishes the University of California, under the administration of the Regents of the University of California, the California State University, under the administration of the Trustees of the California State University, and the California Community Colleges, under the administration of the Board of Governors of the California Community Colleges, as the 3 segments of public postsecondary education in this state.

This bill would establish the California Higher Education Endowment Corporation (CHEEC). The bill would establish an oversight board to govern the CHEEC and would require that board to appoint the chief executive officer of the CHEEC. The bill would require the CHEEC to

~~annually allocate an unspecified percentage of the moneys in the continuously appropriated California Higher Education Fund, which would be created in the General Fund by the bill, to the California Community Colleges for curriculum and programs related to renewable energy and to annually allocate remaining moneys in the fund to, the California State University, and the University of California, as specified.~~ The bill also would authorize the board to invest the moneys in the fund in accordance with prescribed procedures.

(2) Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would impose an oil and gas severance tax, on and after January 1, 2010, upon any producer for the privilege of severing oil or gas from the earth or water in this state for sale, transport, consumption, storage, profit, or use, as provided, at a specified rate *of 9.9% of the gross product*. The tax would be administered by the State Board of Equalization, and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law. The bill would require the board to deposit all tax revenues, penalties, and interest collected pursuant to these provisions, except as specified, in the California Higher Education Fund.

Because this bill would expand application of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.

(3) This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

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

~~(5) This bill would take effect immediately as a tax levy.~~

(5) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:

3 (a) A recent study by the Public Policy Institute of California
4 stated that California's need for college-educated workers is
5 outpacing the state's ability to produce them, and that gap is
6 expected to widen in the future.

7 (b) Forty-one percent of California workers will need a
8 bachelor's degree to meet the state's projected economic demand
9 in the year 2025 if current trends continue, yet changes in the
10 California workforce make it unlikely that this demand will be
11 met.

12 (c) The percentage of college-educated workers has increased
13 significantly in recent years, from 28 percent in 1990 to 34 percent
14 in 2006, but *the rate of increase* is expected to slow because people
15 between 50 years of age and 64 years of age currently have the
16 highest levels of education, and that group will reach retirement
17 age by 2025.

18 (d) Groups such as Latinos will make up 40 percent of the state's
19 labor force by 2020, but only 12 percent of Latinos are on pace to
20 hold a bachelor's degree by that date.

21 (e) As the growth *in the number* of college-educated workers
22 slows, the supply of workers with a high school diploma or less
23 education is projected to exceed economic demand, resulting in
24 lower wages and fewer job opportunities for those workers, and
25 resulting in higher wages for college-educated workers as demand
26 for their skills increases.

27 (f) The lack of an educated workforce will deny the state the
28 ability to draw upon the critical resources that are necessary to
29 assist with the state's current economic crisis and to support future
30 economic growth.

31 (g) The current budget proposals will jeopardize the enrollment
32 of 10,000 students into the California State University system.

33 SEC. 2. It is the intent of the Legislature that this act provide
34 additional sources of higher education funding in order to keep up
35 with the growing demand for a skilled labor force.

36 SEC. 3. Chapter 8 (commencing with Section 99500) is added
37 to Part 65 of Division 14 of Title 3 of the Education Code, to read:

1 CHAPTER 8. THE CALIFORNIA HIGHER EDUCATION
2 ENDOWMENT CORPORATION

3
4 Article 1. General Provisions

5
6 99500. As used in this chapter, the following terms have the
7 following meanings:

8 (a) “Board” means the oversight board described in subdivision
9 (a) of Section 99505.

10 (b) “Corporation” means the California Higher Education
11 Endowment Corporation established pursuant to Section 99502.

12 (c) “Director” means the chief executive officer of the
13 corporation appointed pursuant to Section 99506.

14 (d) “Fund” means the California Higher Education Fund
15 established pursuant to Section 42147 of the Revenue and Taxation
16 Code.

17 (e) “Green collar job” means a job in the renewable energy field,
18 including a job in the renewable energy manufacturing,
19 construction, installation, maintenance, or operation sectors.

20 (f) “Public postsecondary education institution” means the
21 California Community Colleges, the California State University,
22 and the University of California.

23 99502. The California Higher Education Endowment
24 Corporation is hereby established for purposes of implementing
25 this chapter.

26
27 Article 2. Oversight Board

28
29 99505. (a) (1) The corporation shall be governed by an
30 oversight board, which shall be composed of the following voting
31 members:

32 (A) Two members appointed by the Board of Trustees of the
33 California State University.

34 (B) Two members appointed by the Regents of the University
35 of California.

36 (C) Two members appointed by the Senate Committee on Rules.

37 (D) Two members appointed by the Speaker of the Assembly.

38 (E) One member appointed by the Treasurer.

39 ~~(2) (A) At least one member appointed pursuant to paragraph~~
40 ~~(1) shall be a student enrolled in a public postsecondary educational~~

1 (F) One member appointed by the Chancellor of the California
2 Community Colleges.

3 (G) One member who is a student enrolled in a public
4 postsecondary educational institution at the time of the
5 appointment, and appointment. The member appointed pursuant
6 to this subparagraph shall be enrolled in a public postsecondary
7 educational institution for the duration of his or her term, which
8 shall be two years.

9 ~~(B)~~

10 (2) (A) At least one member appointed pursuant to paragraph
11 (1) shall be a member of the faculty employed by nonmanagement
12 employee of the California State University.

13 ~~(C)~~

14 (B) At least one member appointed pursuant to paragraph (1)
15 shall be a member of the faculty employed by nonmanagement
16 employee of the University of California.

17 (b) The oversight board shall also include the following ex
18 officio, nonvoting members:

19 (1) The Chancellor of the California State University.

20 (2) The President of the University of California.

21 (3) The Chancellor of the California Community Colleges.

22 (c) The Legislature requests *that* the Regents of the University
23 of California and the President of the University of California ~~to~~
24 comply with the membership requirements in subparagraph (B)
25 of paragraph (1) of subdivision (a) and paragraph (2) of subdivision
26 (b).

27 (d) Except as specified in subparagraph ~~(A) of paragraph (2)~~
28 *(G) of paragraph (1)* of subdivision (a), each of the members
29 identified in subdivisions (a) and (b) shall be appointed to serve a
30 term of four years.

31 (e) The members of the board shall annually select a member
32 to serve as the chairperson of the board.

33 99506. (a) The board shall appoint a director, who shall be
34 the chief executive officer of the corporation. This position is
35 designated as a confidential position and is exempt from civil
36 service under subdivision (e) of Section 4 of Article VII of the
37 California Constitution.

38 (b) The director shall serve at the pleasure of the board.

39 (c) The board may delegate to the director any power, duty,
40 purpose, function, or jurisdiction that the board may lawfully

1 delegate, including the authority to enter into and sign contracts
2 on behalf of the corporation.

3 (d) The director may delegate to his or her designee any power,
4 duty, purpose, or jurisdiction that may be lawfully delegated.

5 99508. The board may adopt regulations necessary to
6 implement its powers and duties under this chapter.

7
8 Article 3. Powers and Duties of the California Higher Education
9 Endowment Corporation

10
11 99510. The corporation may hire employees as it deems
12 necessary to implement this chapter.

13 99512. (a) The corporation shall annually allocate the moneys
14 in the California Higher Education Fund as follows:

15 ~~(1) An amount not to exceed _____ percent of the moneys in the~~
16 ~~fund to the California Community Colleges for all of the following~~
17 ~~purposes:~~

18 ~~(A) Curriculum supporting California's leadership in the~~
19 ~~development of renewable energy technologies and the creation~~
20 ~~of green-collar jobs.~~

21 ~~(B) Career technical education and advancement programs in~~
22 ~~renewable energy manufacturing, construction, installation,~~
23 ~~maintenance, and operation.~~

24 ~~(2) Moneys remaining in the fund after the allocation pursuant~~
25 ~~to paragraph (1) shall be annually allocated as follows:~~

26 ~~(A) _____ percent to the California State University.~~

27 ~~(B) _____ percent to the University of California.~~

28 ~~(b) Nothing in this section shall cause state expenditures for~~
29 ~~postsecondary education from all other sources to be reduced below~~
30 ~~the expenditures provided from those sources prior to the~~
31 ~~establishment of the fund.~~

32 ~~(1) Sixty percent to the California State University.~~

33 ~~(2) Thirty percent to the University of California.~~

34 ~~(3) Ten percent to the California Community Colleges.~~

35 ~~(b) Nothing in this section shall cause appropriations for~~
36 ~~postsecondary education to be reduced below the amount~~
37 ~~appropriated by the Legislature during the fiscal year immediately~~
38 ~~preceding the establishment of the fund.~~

39 99514. (a) The board has exclusive control of the investment
40 of the fund. Except as otherwise restricted by the California

1 Constitution and by law, the board may, in its discretion, invest
2 the assets of the fund through the purchase, holding, or sale of any
3 investment, financial instrument, or financial transaction, if the
4 investment, financial instrument, or financial transaction is prudent
5 in the informed opinion of the board.

6 (b) The board may itself make any investment authorized by
7 law or sell any security, obligation, or real property in which
8 moneys in the fund are invested, by affirmative vote of a majority
9 of the board, or by the same affirmative vote, may from time to
10 time adopt an investment resolution that shall contain detailed
11 guidelines by which to designate the securities and real property
12 that are acceptable for purchase or sale. While the resolution is in
13 effect, securities and real property may be purchased for investment
14 by an officer or employee of the board designated by it for that
15 purpose, and sales of securities may be consummated by the officer
16 or employee under the conditions prescribed. Purchases and sales
17 of securities shall be reported to the board, on a monthly basis, at
18 its next regular meeting.

19 (c) Any investment transaction decisions made during a closed
20 session pursuant to paragraph (16) of subdivision (c) of Section
21 11126 of the Government Code shall be by rollcall vote entered
22 into the minutes of that meeting. The board, within 12 months of
23 the close of an investment transaction or the transfer of system
24 assets for an investment transaction, whichever occurs first, shall
25 disclose and report the investment transaction at a public meeting.

26 (d) In addition to the other investments authorized by this article,
27 the board may invest in real estate, leases of real estate, and
28 improvements on real estate for business or residential purposes
29 as an investment for the production of income.

30 SEC. 4. Part 21 (commencing with Section 42001) is added to
31 Division 2 of the Revenue and Taxation Code, to read:

32
33 **PART 21. OIL AND GAS SEVERANCE TAX LAW**
34

35 42001. This part shall be known, and may be cited, as the Oil
36 and Gas Severance Tax Law.

37 42002. For purposes of this part, the following definitions shall
38 apply:

39 (a) "Board" means the State Board of Equalization.

1 (b) “California Higher Education Fund” or “CHEF” means the
2 account that is created by Section 42147 for purposes of depositing
3 proceeds generated from the taxes levied pursuant to this part to
4 fund instruction for higher education.

5 (c) “Gas” means all natural gas, including casing head gas, and
6 all other hydrocarbons not defined as oil in subdivision (g).

7 (d) “Green collar jobs” means jobs in the renewable energy
8 field, including within California’s renewable energy
9 manufacturing, construction, installation, maintenance, and
10 operation sectors.

11 (e) “Gross value” means the sale price at the mouth of the well,
12 including any bonus, premium, or other thing of value, paid for
13 the oil or gas, as determined by a rolling 30-day average daily
14 value, as established by the market price of the product. The board
15 shall determine the base indexes from which the average shall be
16 calculated. If the oil or gas is exchanged for something other than
17 cash, if there is no sale at the time of severance, or if the relation
18 between the buyer and the seller is such that the consideration
19 paid, if any, is not indicative of the true value or market price, then
20 the board shall determine the value of the oil or gas subject to the
21 tax based on the cash price paid to the producer for like quality oil
22 or gas in the vicinity of the well.

23 (f) “Higher education” means the California Community
24 Colleges, the California State University, and the University of
25 California.

26 (g) “Oil” means petroleum, or other crude oil, condensate, casing
27 head gasoline, or other mineral oil that is mined, produced, or
28 withdrawn from below the surface of the soil or water in this state.

29 (h) “Producer” means any person who takes oil or gas from the
30 earth or water in this state in any manner; any person who owns,
31 controls, manages, or leases any oil or gas well in the earth or
32 water of this state; any person who produces or extracts in any
33 manner any oil or gas by taking it from the earth or water in this
34 state; any person who acquires the severed oil or gas from a person
35 or agency exempt from property taxation under the United States
36 Constitution or other laws of the United States or under the
37 California Constitution or other laws of the State of California;
38 and any person who owns an interest, including a royalty interest,
39 in oil or gas or its value, whether the oil or gas is produced by the

1 person owning the interest or by another on his, her, or its behalf
2 by lease, contract, or other arrangement.

3 (i) "Product" means either a barrel of oil, which means 42 United
4 States gallons of 231 cubic inches per gallon computed at a
5 temperature of 60 degrees Fahrenheit or gas, as measured per
6 thousand cubic feet (Mfc) at a base pressure of 15.025 pounds per
7 square inch absolute and at a temperature base of 60 degrees
8 Fahrenheit.

9 (j) "Production" means the total gross amount of oil or gas
10 produced, including the gross amount thereof attributable to a
11 royalty or other interest.

12 (k) "Severed" or "severing" means the extraction or withdrawing
13 from below the surface of the earth or water of any oil or gas,
14 regardless of whether the extraction or withdrawal shall be by
15 natural flow, mechanical flow, forced flow, pumping, or any other
16 means employed to get the oil or gas from below the surface of
17 the earth or water, and shall include the extraction or withdrawal
18 by any means whatsoever of oil or gas upon which the tax has not
19 been paid, from any surface reservoir, natural or artificial, or from
20 a water surface.

21 (l) "Stripper well" means a well that has been certified by the
22 board as an oil well incapable of producing an average of more
23 than 10 barrels of oil per day during the entire taxable month. Once
24 a well has been certified as a stripper well, that stripper well shall
25 remain certified as a stripper well until the well produces an
26 average of more than 10 barrels of oil per day during an entire
27 taxable month.

28 42010. On and after January 1, 2010, there is hereby imposed
29 an oil and gas severance tax upon any producer for the privilege
30 of severing oil or gas from the earth or water in this state for sale,
31 transport, consumption, storage, profit, or use. The tax shall be
32 applied equally to all portions of the gross value of the product
33 and shall be imposed at the rate of ~~—~~ 9.9 percent of the gross
34 product.

35 42011. Except as otherwise provided in this part, the tax shall
36 be upon the entire production in this state, regardless of the place
37 of sale or to whom sold or by whom used, or the fact that the
38 delivery may be made to points outside the state.

39 42012. (a) The tax imposed by this part shall be in addition
40 to any other tax that may be imposed with respect to the severing

1 of oil or gas or transactions related thereto, including, without
2 limitation, any ad valorem taxes imposed by the state, or any ~~of~~
3 ~~its political subdivisions~~ *political subdivision of the state*, or any
4 local business license taxes that may be incurred as a privilege of
5 severing oil or gas from the earth or water or doing business in
6 that locality. There shall be no exemption from payment of an ad
7 valorem tax related to equipment, material, or property by reason
8 of the payment of the gross severance tax pursuant to this part.

9 (b) *For purposes of this section, “political subdivision of the*
10 *state” includes any local public entity, as defined in Section 900.4*
11 *of the Government Code.*

12 42013. The tax imposed by this part shall not be passed through
13 to consumers by way of higher prices for oil, natural gas, gasoline,
14 diesel, or other oil or gas consumable byproducts, such as propane
15 and heating oil. The board shall monitor and, if necessary,
16 investigate any instance where producers or purchasers of the oil
17 or gas have attempted to gouge consumers by using the tax as a
18 pretext to materially raise the price of oil, natural gas, gasoline,
19 diesel, or other oil or gas consumable byproducts, such as propane
20 and heating oil.

21 42014. Two or more producers that are corporations and are
22 owned or controlled directly or indirectly, as defined in Section
23 25105, by the same interests shall be considered as a single
24 producer for purposes of application of the tax prescribed in this
25 part.

26 42015. There shall be exempted from the imposition of the oil
27 and gas severance tax imposed pursuant to this part, oil or gas
28 produced by a stripper well in which the average value of oil or
29 gas is less than three-quarters of the average gross value of the
30 product as of January 1 of the prior year.

31 42016. There shall be exempted from the imposition of the oil
32 or gas severance tax imposed pursuant to this part, all oil or gas
33 owned or produced by any political subdivision of this state,
34 including that political subdivision’s proprietary share of oil or
35 gas produced under any unit, cooperative, or other pooling
36 agreement. *For purposes of this section, “political subdivision of*
37 *the state” includes any local public entity, as defined in Section*
38 *900.4 of the Government Code.*

1 42020. The tax imposed by this part is due and payable to the
2 board quarterly on or before the last day of the month next
3 succeeding each calendar quarter.

4 42022. The board may prescribe those forms and reporting
5 requirements as are necessary to implement the tax, including, but
6 not limited to, information regarding the location of the well by
7 county, the gross amount of oil or gas produced, the price paid
8 therefor, the prevailing market price of oil or gas, and the amount
9 of tax due.

10 42112. In all proceedings under this part, the board may act
11 on behalf of the people of the State of California.

12 42145. The board shall administer and collect the tax imposed
13 by this part pursuant to the Fee Collection Procedures Law (Part
14 30 (commencing with Section 55001) of Division 2). For purposes
15 of this part, the references in the Fee Collection Procedures Law
16 to “fee” shall include the tax imposed by this part and to “feepayer”
17 shall include a person required to pay the oil and gas severance
18 tax.

19 42146. The board shall, upon appropriation, be reimbursed for
20 expenses incurred in the administration and collection of the tax
21 imposed by this part.

22 42147. The California Higher Education Fund is ~~created in the~~
23 ~~General Fund~~ *hereby created*. Moneys in the fund are continuously
24 appropriated to the California Higher Education Endowment
25 Corporation.

26 42168. With the exception of payments of refunds and
27 reimbursement to the board for expenses incurred in the
28 administration and collection of the tax imposed by this part, all
29 taxes, interest, penalties, and other amounts collected pursuant to
30 this part shall be deposited into the California Higher Education
31 Fund.

32 SEC. 5. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within
39 the meaning of Section 6 of Article XIII B of the California
40 Constitution.

1 ~~SEC. 6.—This act provides for a tax levy within the meaning of~~
2 ~~Article IV of the Constitution and shall go into immediate effect.~~

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

7 *In order to quickly mitigate the impacts of funding reductions*
8 *to institutions of higher education, it is necessary that this act take*
9 *effect immediately.*