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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 644

Introduced by Assembly Member ~~Members~~ Blumenfield and Atkins

February 16, 2011

An act to add ~~Chapter 6.2 (commencing with Section 25560) to Division 15 of the Public Resources Code and repeal Section 46300.8 of the Education Code, relating to energy online education.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 644, as amended, Blumenfield. ~~Energy: renewable energy facility: siting. Online education: school attendance.~~

Existing law establishes the public elementary and secondary school system in this state, and further establishes a funding system pursuant to which the state apportions funds to local educational agencies based on, among other factors, the average daily attendance of pupils at the schools operated by those agencies. Numerous statutes and regulations govern the calculation and reporting of average daily attendance.

This bill, commencing with the 2014–15 fiscal year, would provide that school districts, county offices of education, and charter schools that offer online courses may claim attendance toward average daily attendance on the basis of a pupil's attendance in an online course or courses that satisfy prescribed criteria.

The bill would require the Superintendent of Public Instruction, in consultation with the Controller and the Director of Finance, on or before December 31, 2013, to make revisions to any attendance accounting manual or guidance provided to school districts, county offices of education, or charter schools that are necessary to conform to these provisions, or to clarify these provisions with respect to attendance accounting procedures for asynchronous online courses, as defined. The bill additionally would require the Superintendent, in consultation with the Director of Finance, to adopt rules and regulations for purposes of clarifying or expanding the procedures required for verifying the identification of pupils participating in asynchronous online courses and including pupil attendance in asynchronous online courses in the calculation of average daily attendance.

The bill would make all of these provisions inoperative on July 1, 2018, and repeal them on January 1, 2019.

~~Existing law vests the State Energy Resources Conservation and Development Commission with the exclusive jurisdiction to certify the siting of a thermal powerplant with a generation capacity of 50 megawatts or more. Under existing law, a powerplant not under the jurisdiction of the commission is regulated by local jurisdictions through their land use authority.~~

~~This bill would require the commission, in consultation with the Department of Resources Recycling and Recovery, the Department of Toxic Substances Control, and the Department of Conservation, to establish criteria for identifying land with a high potential for use as a site of a renewable energy generation facility with a generation capacity of less than 50 megawatts in 3 specific types of parcels and to prepare a list identifying lands meeting the criteria. The bill would require the commission, the Department of Resources Recycling and Recovery, the Department of Toxic Substances Control, and the Department of Conservation, to make best efforts to work with the United States Environmental Protection Agency under that agency's RE-Powering America's Land: Siting Renewable Energy on Potentially Contaminated Land and Mine Sites initiative.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 *SECTION 1. Section 46300.8 is added to the Education Code,*
2 *to read:*

3 46300.8. (a) *Commencing with the 2014–15 fiscal year, a*
4 *school district, county office of education, or charter school may*
5 *claim attendance toward average daily attendance, for purposes*
6 *of calculating average daily attendance pursuant to Section 46300,*
7 *on the basis of a pupil’s attendance in an online course or courses*
8 *if all of the following apply:*

9 (1) *The pupil is enrolled in grade 9, 10, 11, or 12.*

10 (2) *The pupil is a California resident.*

11 (3) *The pupil is enrolled in classes that include courses in a*
12 *classroom-based setting, courses that are offered through an online*
13 *program, or both.*

14 (4) *The pupil meets minimum instructional time requirements*
15 *pursuant to:*

16 (A) *Section 46141 and Section 46201, 46201.5, or 46202, as*
17 *applicable, for pupils enrolled in a noncharter school in a school*
18 *district or county office of education.*

19 (B) *Section 46170, for pupils enrolled in a continuation school.*

20 (C) *Section 46180, for pupils enrolled in an opportunity school.*

21 (D) *Subdivision (e) of Section 47612.5, for pupils enrolled in a*
22 *charter school.*

23 (5) *Each online course in which the pupil is enrolled is a*
24 *high-quality online course.*

25 (b) *For purposes of this section, a “high-quality online course”*
26 *is defined as an online course that meets all of the following*
27 *requirements:*

28 (1) *The online course is approved by the governing board of*
29 *the school district or county office of education, or by the governing*
30 *body of the charter school.*

31 (2) *The online course is certified to meet the requirements of*
32 *this subdivision, through board resolution, by the governing board*
33 *of the school district or county office of education, or by the*
34 *governing body of the charter school.*

35 (3) *The online course is certified by the governing board of the*
36 *school district or county office of education, or by the governing*
37 *body of the charter school, as being as rigorous as a*

1 *classroom-based course and meeting or exceeding all relevant*
2 *state content standards.*

3 *(4) Either of the following:*

4 *(A) The teacher is online at the same time as each pupil, is*
5 *accessible to each pupil attending the synchronous online course*
6 *to respond to pupil queries, assign tasks, and dispense information,*
7 *and is able to make a visual connection with each pupil for*
8 *purposes of verifying attendance or providing immediate*
9 *supervision of the pupil.*

10 *(B) The teacher may be online at different times than each pupil,*
11 *is accessible to each pupil attending the asynchronous online*
12 *course to respond to pupil queries, assign tasks, and dispense*
13 *information, and, for purposes of verifying attendance, is able to*
14 *employ at least one of the following:*

15 *(i) Periodic proctored examinations.*

16 *(ii) Direct teacher-pupil meetings no less than twice per*
17 *calendar month.*

18 *(iii) A visual connection, including, but not limited to, Internet*
19 *Webcam.*

20 *(5) (A) The ratio of pupils enrolled in that course to full-time*
21 *equivalent certificated teachers teaching the online course is less*
22 *than or equal to the ratio of pupils to teachers in traditional*
23 *classroom study of the same subject matter in the school, school*
24 *district, or the unified school district with the largest average daily*
25 *attendance of pupils in that county for the prior school year, as*
26 *reported on the Internet Web site of the department.*

27 *(B) If the online course is new or deemed by the governing board*
28 *of the school district or county office of education, or by the*
29 *governing body of the charter school, to be unique to the online*
30 *setting, the ratio of pupils enrolled in that course to full-time*
31 *equivalent teachers teaching the online course shall not exceed*
32 *30 to 1.*

33 *(6) When a traditional classroom-based course of the same*
34 *course title exists within the school district, county office of*
35 *education, or charter school, the subject matter content of the*
36 *online course is the same as that of the traditional classroom-based*
37 *course.*

38 *(7) The teacher of the online course holds the appropriate*
39 *subject matter credential and meets the requirements for a highly*

1 *qualified teacher pursuant to the federal No Child Left Behind Act*
2 *of 2001 (20 U.S.C. Sec. 6301 et seq.).*

3 *(8) Statewide testing results for online pupils are reported and*
4 *assigned to the school in which the pupil is enrolled for regular*
5 *classroom courses, and to any school district or county office of*
6 *education within which that school's testing results are aggregated.*

7 *(9) The online course is offered by a high school, continuation*
8 *school, county office of education, or charter school offering*
9 *instruction in any of grades 9 to 12, inclusive.*

10 *(10) No pupil is assigned to the online course unless the pupil*
11 *voluntarily elects to participate in the online course and the parent*
12 *or guardian of the pupil provides written consent before the pupil*
13 *participates in the online course.*

14 *(11) No pupil voluntarily electing to participate in the online*
15 *course is denied access because the pupil lacks the computer*
16 *hardware or software necessary to participate in the online course.*

17 *(12) No pupil is charged for his or her participation in the online*
18 *course.*

19 *(13) Pupils enrolled in the online course take examinations by*
20 *proctor, or other reliable methods used to ensure test integrity,*
21 *and there is a clear record of pupil work, using the same method*
22 *of documentation and assessment as used in a classroom-based*
23 *course.*

24 *(14) Contemporaneous records of the time that a pupil spends*
25 *online in the course and in related activities, and of the time the*
26 *teacher is online with pupils, are maintained by the school district,*
27 *county office of education, or charter school.*

28 *(c) Nothing in this section shall be interpreted to mean that a*
29 *charter school provides classroom-based or nonclassroom-based*
30 *instruction for purposes of the state board determination made*
31 *pursuant to Section 47612.5.*

32 *(d) Attendance accounted for pursuant to subdivision (a) and*
33 *compliance with the requirements of subdivision (b) are subject*
34 *to the audit conducted pursuant to Section 41020.*

35 *(e) A pupil shall not be credited with more than five days of*
36 *course attendance per calendar week or more than the total number*
37 *of calendar days that regular classes are maintained by the school*
38 *district, county office of education, or charter school during the*
39 *fiscal year.*

1 (f) To remain eligible for claiming average daily attendance
2 and generating apportionments, a pupil over 19 years of age
3 enrolled in an online course or courses shall be continuously
4 enrolled in public school and make satisfactory progress toward
5 award of a high school diploma. The Superintendent shall, on or
6 before December 31, 2013, adopt regulations defining “satisfactory
7 progress.”

8 (g) The Superintendent, in consultation with the Controller and
9 the Director of Finance, on or before December 31, 2013, shall
10 do all of the following:

11 (1) Make revisions to any attendance accounting manual or
12 guidance provided to a school district, county office of education,
13 or charter school that are necessary to conform to this section.

14 (2) Make revisions to any attendance accounting manual or
15 guidance provided to local educational agencies that are necessary
16 to clarify attendance accounting procedures for asynchronous
17 online courses.

18 (3) Make recommendations to the appropriate policy and fiscal
19 committees in both houses of the Legislature and to the Governor
20 regarding statutory changes that would be necessary to allow
21 pupil attendance in asynchronous online courses to be included
22 in the calculation of average daily attendance pursuant to Section
23 46300.

24 (h) Pupil attendance in asynchronous online courses shall not
25 be included in the calculation of average daily attendance pursuant
26 to Section 46300 until the Superintendent has adopted rules and
27 regulations pursuant to subdivision (l).

28 (i) For purposes of calculating average daily attendance
29 pursuant to Section 46300 and meeting the minimum instructional
30 time requirements specified in paragraph (4) of subdivision (a):

31 (1) A pupil enrolled in a noncharter school and engaged in
32 educational activities in an online course meeting the requirements
33 of subdivisions (a) and (b) shall be deemed to be under the
34 immediate supervision and control of an employee of the school
35 district or county office of education who possesses a valid
36 certification document, registered as required by law.

37 (2) A pupil enrolled in a charter school and engaged in
38 educational activities in an online course meeting the requirements
39 of subdivisions (a) and (b) shall be deemed to be attending at the
40 schoolsite of the charter school.

1 (j) For purposes of calculating average daily attendance
2 pursuant to Section 46300, a school district, county office of
3 education, or charter school claiming pupil attendance in an online
4 course meeting the requirements of subdivision (b) shall not be
5 required to meet the requirements of Article 5.5 (commencing with
6 Section 51745) of Chapter 5 of Part 28.

7 (k) For purposes of this section, the following definitions apply:

8 (1) "Asynchronous online course" means a course where the
9 teacher and pupil may be online at different times and are unable
10 to interact simultaneously.

11 (2) "Synchronous online course" means a course where the
12 teacher and pupil are online at the same time and able to interact
13 at that time.

14 (l) The Superintendent, in consultation with the Department of
15 Finance, shall adopt rules and regulations, pursuant to the
16 rulemaking provisions of the Administrative Procedure Act
17 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
18 Division 3 of Title 2 of the Government Code), for both of the
19 following purposes:

20 (1) Clarifying or expanding the procedures required for
21 verifying the identification of pupils participating in asynchronous
22 online courses meeting all of the requirements of subdivisions (a)
23 and (b).

24 (2) Including pupil attendance in asynchronous online courses
25 in the calculation of average daily attendance pursuant to Section
26 46300. The Superintendent shall ensure that the rules and
27 regulations adopted for this purpose are consistent with the
28 revisions and recommendations required pursuant to subdivision
29 (g).

30 (m) No provision of this section shall be waived unless the
31 waiver is specifically authorized in statute.

32 (n) This section shall become inoperative on July 1, 2018, and,
33 as of January 1, 2019, is repealed, unless a later enacted statute,
34 that becomes operative on or before January 1, 2019, deletes or
35 extends the dates on which it becomes inoperative and is repealed.

36 ~~SECTION 1. The Legislature finds and declares all of the~~
37 ~~following:~~

38 ~~(a) Renewable energy promotes economic development and~~
39 ~~provides opportunities to stimulate the creation of jobs for~~
40 ~~Californians.~~

1 (b) ~~California is seeking to increase renewable power generation~~
2 ~~to help achieve the state’s climate change goals required by the~~
3 ~~California Global Warming Solutions Act of 2006 (Division 25.5~~
4 ~~(commencing with Section 38500) of the Health and Safety Code).~~

5 (c) ~~The state has been seeking to revitalize and recycle~~
6 ~~brownfields and provide for beneficial uses for closed landfills~~
7 ~~and unproductive farmland that does not have access to water.~~

8 (d) ~~Closed landfills and brownfields present a unique opportunity~~
9 ~~for siting solar energy on land that has few reuses and is often~~
10 ~~located close to roads and transmission lines.~~

11 (e) ~~By identifying brownfields, closed landfills, and~~
12 ~~unproductive farmland that does not have access to water and~~
13 ~~creating incentives to use the land for renewable energy generation,~~
14 ~~the state could put the land with limited reuses to beneficial use~~
15 ~~while preserving undisturbed lands and advancing renewable~~
16 ~~energy generation goals.~~

17 ~~SEC. 2. Chapter 6.2 (commencing with Section 25560) is added~~
18 ~~to Division 15 of the Public Resources Code, to read:~~

19

20 ~~CHAPTER 6.2. RENEWABLE ENERGY SITING~~

21

22 ~~25560. (a) The commission, in consultation with the~~
23 ~~Department of Resources Recycling and Recovery, the Department~~
24 ~~of Toxic Substances Control, and the Department of Conservation,~~
25 ~~shall do both of the following:~~

26 (1) ~~Establish criteria for identifying land with a high potential~~
27 ~~for use as a site for a renewable generation facility with a~~
28 ~~generation capacity of less than 50 megawatts of electricity in the~~
29 ~~following types of parcels:~~

30 (A) ~~A closed disposal site as defined in Section 40115.5.~~

31 (B) ~~A brownfield as defined in Section 44504.1 of the Health~~
32 ~~and Safety Code.~~

33 (C) (i) ~~Marginally productive and physically impaired~~
34 ~~agricultural land.~~

35 (ii) ~~A parcel shall be designated as marginally productive or~~
36 ~~physically impaired agricultural land based on substantial evidence~~
37 ~~in the record and if the designation is approved by the Secretary~~
38 ~~of Food and Agriculture.~~

39 (iii) ~~For the purposes of this subparagraph, “marginally~~
40 ~~productive agricultural land” means land consisting predominantly~~

1 of soil with significantly reduced agricultural productivity due to
2 chemical or physical limitations that satisfies all of the following
3 conditions:

4 (I) The parcel has not been used for agricultural purposes during
5 the prior six years.

6 (II) Any voluntary transfer or retirement of the water rights
7 associated with the parcel was due to significant chemical or
8 physical soil limitations on the parcel that severely limit
9 agricultural productivity.

10 (III) The parcel is unsuitable for agricultural practices due to
11 the parcel's topography.

12 (iv) For the purposes of this subparagraph, "physically impaired
13 agricultural land" means land with severely adverse soil conditions
14 that are detrimental to continued agricultural cultivation and
15 production. Severely adverse soil conditions may include, but are
16 not limited to, contamination by salts, selenium, or other naturally
17 occurring contaminants.

18 (2) Prepare a list that identifies lands that meet the criteria
19 development pursuant to paragraph (1).

20 (b) The evaluation criteria developed pursuant to paragraph (1)
21 of subdivision (a) shall include, but is not limited to, low habitat
22 value for rare, endangered, and sensitive species, compatibility
23 with neighboring land uses, geological compatibility, absence of
24 recorded cultural resources determined for listing on the California
25 Register for Historical Resources, and absence of Native American
26 tribal cultural sites, as recorded in the Sacred Lands database of
27 the Native American Heritage Commission.

28 (e) To avoid the duplication of effort, the commission, the
29 Department of Resources Recycling and Recovery, the Department
30 of Toxic Substances Control, and the Department of Conservation,
31 in implementing this section, shall make best efforts to work with
32 the United States Environmental Protection Agency pursuant to
33 that agency's RE-Powering America's Land: Siting Renewable
34 Energy on Potentially Contaminated Land and Mine Site initiative.

35 (d) It is the intent of the Legislature that a financial institution
36 providing financial assistance for renewable energy projects located
37 on landfills and brownfields identified pursuant to subdivision (a)
38 should be credited for providing that financial assistance in the
39 evaluation of that institution's performance under the Community
40 Reinvestment Act (12 U.S.C. Sec. 2901 et seq.) to the extent

- 1 permitted by the appropriate federal agency with jurisdiction over
- 2 that financial institution.

O