

AMENDED IN ASSEMBLY APRIL 13, 2011

AMENDED IN ASSEMBLY MARCH 22, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1326

Introduced by Assembly Member Furutani

February 18, 2011

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.

LEGISLATIVE COUNSEL'S DIGEST

AB 1326, as amended, Furutani. 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) in state government. 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 the moneys in the continuously appropriated California Higher Education Fund, which would be created

by the bill, to the California Community Colleges, 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 upon any producer, except as provided, 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 rate of 12.5% of the gross value of the 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 taxes, penalties, and interest collected pursuant to these provisions in the California Higher Education Fund, as provided.

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) 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.

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

1 California workforce make it unlikely that this demand will be
2 met.

3 (c) The percentage of college-educated workers has increased
4 significantly in recent years, from 28 percent in 1990 to 34 percent
5 in 2006, but the rate of increase is expected to slow because people
6 between 50 years of age and 64 years of age currently have the
7 highest levels of education, and that group will reach retirement
8 age by 2025.

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

12 (e) As the growth in the number of college-educated workers
13 slows, the supply of workers with a high school diploma or less
14 education is projected to exceed economic demand, resulting in
15 lower wages and fewer job opportunities for those workers, and
16 resulting in higher wages for college-educated workers as demand
17 for their skills increases.

18 (f) The lack of an educated workforce will deny the state the
19 ability to draw upon the critical resources that are necessary to
20 assist with the state’s current economic crisis and to support future
21 economic growth.

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

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

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

29
30 CHAPTER 8. THE CALIFORNIA HIGHER EDUCATION
31 ENDOWMENT CORPORATION

32
33 Article 1. General Provisions

34
35 99500. As used in this chapter, the following terms have the
36 following meanings:

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

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

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

3 (d) “Fund” means the California Higher Education Fund
4 established pursuant to Section 42147 of the Revenue and Taxation
5 Code.

6 (e) “Public postsecondary education institution” means the
7 California Community Colleges, the California State University,
8 and the University of California.

9 99502. The California Higher Education Endowment
10 Corporation is hereby established in state government for purposes
11 of implementing this chapter.

12

13 Article 2. Oversight Board

14

15 99505. (a) (1) The corporation shall be governed by an
16 oversight board, which shall be composed of the following voting
17 members:

18 (A) Two members appointed by the Board of Trustees of the
19 California State University.

20 (B) Two members appointed by the Regents of the University
21 of California.

22 (C) Two members appointed by the ~~Chancellor~~ *Board of*
23 *Governors* of the California Community Colleges.

24 (D) Two members appointed by the Senate Committee on Rules.

25 (E) Two members appointed by the Speaker of the Assembly.

26 (F) One member appointed by the Treasurer.

27 (G) One member appointed by the Superintendent of Public
28 Instruction.

29 (H) (i) One member who is a student enrolled in the California
30 Community Colleges at the time of the appointment. The member
31 appointed pursuant to this subparagraph shall be enrolled in the
32 California Community Colleges for the duration of his or her term
33 which shall be one year.

34 (ii) The Board of Governors of the California Community
35 Colleges shall appoint the student member from a list of three
36 eligible persons furnished by the Student Senate.

37 (I) (i) One member who is a student enrolled in the California
38 State University at the time of the appointment. The member
39 appointed pursuant to this subparagraph shall be enrolled in the
40 California State University for the duration of his or her term.

1 (ii) The Trustees of the California State University shall appoint
2 the student member from a list of three eligible persons furnished
3 by the California State Student Association.

4 (J) (i) One member who is a student enrolled in the University
5 of California at the time of the appointment. The member appointed
6 pursuant to this subparagraph shall be enrolled in the University
7 of California for the duration of his or her term which shall be one
8 year.

9 (ii) The Regents of the University of California shall appoint
10 the student member from a list of three eligible persons furnished
11 by the University of California Student Association.

12 (2) (A) At least one member appointed pursuant to paragraph
13 (1) shall be a nonmanagement employee of the California State
14 University.

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

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

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

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

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

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

28 (d) Except as specified in subparagraphs (H), (I), and (J) of
29 paragraph (1) of subdivision (a), each of the members identified
30 in subdivisions (a) and (b) shall be appointed to serve a term of
31 four years.

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

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

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

1 (c) The board may delegate to the director any power, duty,
2 purpose, function, or jurisdiction that the board may lawfully
3 delegate, including the authority to enter into and sign contracts
4 on behalf of the corporation.

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

7 99508. (a) The board shall select an auditing firm to conduct
8 periodic audits as provided in subdivision (b) to determine if the
9 funding allocated pursuant to Section 99510 is being appropriately
10 used to fund direct classroom instruction in compliance with this
11 chapter. The auditing firm shall submit a report of the results of
12 the audit to the board.

13 (b) The three segments of public postsecondary education
14 receiving funding from the California Higher Education Fund shall
15 be audited at least once every six years, with the audits occurring
16 alternately between the three public postsecondary education
17 segments every two years. An audit of a public postsecondary
18 education segment may occur independently of the six-year cycle
19 if the board determines that a more immediate audit is necessary.

20 (c) The independent audits shall be funded with investment
21 returns from the fund.

22 (d) The board shall select a different auditing firm to perform
23 the audits at least every six years to ensure the audits are conducted
24 in a fair and equitable manner.

25 (e) If the board determines through the audits performed
26 pursuant to this section that any campus or related administrative
27 office of any segment that receives funding from this chapter is
28 found to have improperly used or otherwise improperly
29 administered moneys allocated under this chapter, the board shall
30 take the following disciplinary actions:

31 (1) Upon a first finding, the board shall place the recipient
32 campus or related administrative office on probation status and
33 require the recipient campus or related administrative office to
34 submit a remediation plan as a condition of receiving funding
35 under this chapter.

36 (2) Upon finding that a recipient campus or related
37 administrative office has subsequently mishandled funds allocated
38 under this chapter within five years of a finding pursuant to
39 paragraph (1), the board shall bar the recipient campus or related

1 administrative office from receiving funds made available under
2 this chapter during the following fiscal year.

3 (3) Upon finding that a recipient campus or related
4 administrative office has subsequently mishandled funds allocated
5 under this chapter within five years of a finding pursuant to
6 paragraph (2), the board shall bar the recipient campus or related
7 administrative office from receiving funding under this chapter.

8 (f) The board may allow a campus or related administrative
9 office that has been barred from receiving funding pursuant to
10 paragraph (3) of subdivision (e) to apply for funding under this
11 chapter after five years have passed since the campus or related
12 administrative office was barred from receiving funding pursuant
13 to paragraph (3) of subdivision (e).

14 99509. The board may adopt regulations necessary or
15 appropriate to implement its powers and duties under this chapter
16 in accordance with the Administrative Procedure Act (Chapter 3.5
17 (commencing with Section 11340) of Part 1 of Division 3 of Title
18 2 of the Government Code).

19

20 Article 3. Powers and Duties of the California Higher Education
21 Endowment Corporation

22

23 99510. The corporation may hire employees as it deems
24 necessary to implement this chapter.

25 99512. (a) The corporation shall annually allocate the moneys
26 in the California Higher Education Fund, for purposes of funding
27 direct classroom instruction for higher education as follows:

28 (1) ____ percent to the California State University.

29 (2) ____ percent to the University of California.

30 (3) ____ percent to the California Community Colleges.

31 (b) The board shall annually allocate a portion of the funds made
32 available in paragraph (2) of subdivision (a) to provide
33 supplemental funding for the operations of the Charles R. Drew
34 University of Medicine and Science.

35 (c) The board shall ensure that a portion of the moneys allocated
36 pursuant to subdivision (a) is directed to campuses with nursing
37 programs located in counties it determines to have the most need.
38 Need in a county shall be established based on consideration of
39 all of the following factors:

1 (1) Counties with a registered nurse to population ratio equal
2 to or less than 500 registered nurses per 100,000 individuals.

3 (2) County unemployment rate.

4 (3) County level of poverty.

5 (d) The funding established pursuant to this chapter shall be
6 used to supplement, not supplant, existing levels of state funding
7 for the California State University, the University of California,
8 and the California Community Colleges. In any academic year,
9 those institutions of higher education shall receive an amount that
10 is no less than the average amount that has been appropriated for
11 the institutions of higher education during the five most recent
12 fiscal years preceding the enactment of this chapter.

13 99514. (a) The board has exclusive control of the investment
14 of the fund. Except as otherwise restricted by the California
15 Constitution and by law, the board may, in its discretion, invest
16 the assets of the fund through the purchase, holding, or sale of any
17 investment, financial instrument, or financial transaction, if the
18 investment, financial instrument, or financial transaction is prudent
19 in the informed opinion of the board.

20 (b) The board may itself make any investment authorized by
21 law or sell any security, obligation, or real property in which
22 moneys in the fund are invested, by affirmative vote of a majority
23 of the board, or by the same affirmative vote, may from time to
24 time adopt an investment resolution that shall contain detailed
25 guidelines by which to designate the securities and real property
26 that are acceptable for purchase or sale. While the resolution is in
27 effect, securities and real property may be purchased for investment
28 by an officer or employee of the board designated by it for that
29 purpose, and sales of securities may be consummated by the officer
30 or employee under the conditions prescribed. Purchases and sales
31 of securities shall be reported to the board, on a monthly basis, at
32 its next regular meeting.

33 (c) Any investment transaction decisions made during a closed
34 session pursuant to paragraph (16) of subdivision (c) of Section
35 11126 of the Government Code shall be by rollcall vote entered
36 into the minutes of that meeting. The board, within 12 months of
37 the close of an investment transaction or the transfer of system
38 assets for an investment transaction, whichever occurs first, shall
39 disclose and report the investment transaction at a public meeting.

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

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

7
8 PART 21. FAIR SHARE FOR FAIR TUITION ACT
9

10 42001. This part shall be known, and may be cited, as the Fair
11 Share for Fair Tuition Act.

12 42002. For purposes of this part, the following definitions shall
13 apply:

14 (a) “California Higher Education Fund” or “CHEF” means the
15 account that is created by Section 42147.

16 (b) “Gas” means all natural gas, including casing head gas, and
17 all other hydrocarbons not defined as oil in subdivision (e).

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

30 (d) “Higher education” means the California Community
31 Colleges, the California State University, and the University of
32 California.

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

36 (f) “Political subdivision of the state” includes any local public
37 entity, as defined in Section 900.4 of the Government Code.

38 (g) “Producer” means any person that takes oil or gas from the
39 earth or water in this state in any manner; any person that owns,
40 controls, manages, or leases any oil or gas well in the earth or

1 water of this state; any person that produces or extracts in any
2 manner any oil or gas by taking it from the earth or water in this
3 state; any person that acquires the severed oil or gas from a person
4 or agency exempt from property taxation under the United States
5 Constitution or other laws of the United States or under the
6 California Constitution or other laws of the State of California;
7 and any person that owns an interest, including a royalty interest,
8 in oil or gas or its value, whether the oil or gas is produced by the
9 person owning the interest or by another on the person's behalf
10 by lease, contract, or other arrangement.

11 (h) "Product" means either a barrel of oil, which means 42
12 United States gallons of 231 cubic inches per gallon computed at
13 a temperature of 60 degrees Fahrenheit or gas, as measured per
14 1,000 cubic feet (mcf) at a base pressure of 15.025 pounds per
15 square inch absolute and at a temperature base of 60 degrees
16 Fahrenheit.

17 (i) "Production" means the total gross amount of oil or gas
18 produced, including the gross amount attributable to a royalty or
19 other interest.

20 (j) "Severed" or "severing" means the extraction or withdrawing
21 from below the surface of the earth or water of any oil or gas,
22 regardless of whether the extraction or withdrawal shall be by
23 natural flow, mechanical flow, forced flow, pumping, or any other
24 means employed to get the oil or gas from below the surface of
25 the earth or water, and shall include the extraction or withdrawal
26 by any means whatsoever of oil or gas upon which the tax has not
27 been paid, from any surface reservoir, natural or artificial, or from
28 a water surface.

29 (k) "Stripper well" means a well that has been certified by the
30 Division of Oil, Gas, and Geothermal Resources in the Department
31 of Conservation as an oil well incapable of producing an average
32 of more than 10 barrels of oil per day during the entire taxable
33 month or a gas well that is incapable of producing more than
34 60,000 cubic feet of gas per day. Once a well has been certified
35 as a stripper well, that stripper well shall remain certified as a
36 stripper well until the well produces an average of more than 10
37 barrels of oil per day during an entire taxable month.

38 42010. There is hereby imposed an oil and gas severance tax
39 upon any producer for the privilege of severing oil or gas from the
40 earth or water in this state for sale, transport, consumption, storage,

1 profit, or use, at the rate of 12.5 percent of the gross value of the
2 product, and the tax shall be applied equally to all portions of the
3 gross value of the product.

4 42011. Except as otherwise provided in this part, the tax shall
5 be upon the entire production in this state, regardless of the place
6 of sale or to whom sold or by whom used, or the fact that the
7 delivery may be made to points outside the state.

8 42012. The tax imposed by this part shall be in addition to any
9 other taxes imposed by law, including, without limitation, any ad
10 valorem taxes imposed by the state, or any political subdivision
11 of the state, or any local business license taxes that may be incurred
12 as a privilege of severing oil or gas from the earth or water or doing
13 business in that locality. There shall be no exemption from the
14 payment of an ad valorem tax related to equipment, material, or
15 other property by reason of the payment of the gross severance
16 tax pursuant to this part.

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

26 (b) This section applies when not superseded by federal law.

27 42014. Two or more producers that are corporations and are
28 owned or controlled directly or indirectly, as defined in Section
29 25105, by the same interests shall be considered as a single
30 producer for purposes of application of the tax prescribed in this
31 part.

32 42015. There shall be exempted from the imposition of the oil
33 and gas severance tax imposed pursuant to this part, oil or gas
34 produced by a stripper well in which the average value of oil or
35 gas is less than three-quarters of the average gross value of the
36 product as of the first day of the previous calendar quarter.

37 42016. There shall be exempted from the imposition of the oil
38 and gas severance tax imposed pursuant to this part, all oil or gas
39 owned or produced by any political subdivision of this state,
40 including that political subdivision's proprietary share of oil or

1 gas produced under any unit, cooperative, or other pooling
2 agreement.

3 42017. The tax imposed by this part is due and payable to the
4 board quarterly on or before the last day of the month next
5 succeeding each calendar quarter.

6 42018. (a) Any producer that fails to pay any tax within the
7 time required shall pay, in addition to the amount of tax owed,
8 interest at the rate of 1 ½ percent per month, or fraction thereof,
9 from the date on which the tax became due and payable to and
10 including the date of payment.

11 (b) Every payment on a delinquent tax owed pursuant to this
12 part shall be applied as follows:

13 (1) First, to any interest due on the tax.

14 (2) Second, to any penalty imposed by this part.

15 (3) Third, the balance, if any, to the tax due.

16 42019. Each producer shall prepare and file with the board a
17 return in the form prescribed by the board containing information
18 as the board deems necessary or appropriate for the proper
19 administration of this part. The return shall be filed on or before
20 the last day of the calendar month following the calendar quarter
21 to which it relates, together with a remittance payable to the board
22 for the amount of tax due for that period.

23 42022. The board may prescribe those forms and reporting
24 requirements as are necessary to implement the tax, including, but
25 not limited to, information regarding the location of the well by
26 county, the gross amount of oil or gas produced, the price paid
27 therefor, the prevailing market price of oil or gas, and the amount
28 of tax due.

29 42145. The board shall administer and collect the tax imposed
30 by this part pursuant to the Fee Collection Procedures Law (Part
31 30 (commencing with Section 55001)). For purposes of this part,
32 the references in the Fee Collection Procedures Law to “fee” shall
33 include the tax imposed by this part and references to “feepayer”
34 shall include a person required to pay the tax imposed by this part.

35 42146. The board shall, upon appropriation, be reimbursed for
36 expenses incurred in the administration and collection of the tax
37 imposed by this part.

38 42147. The California Higher Education Fund is hereby created
39 in the State Treasury. Notwithstanding Section 13340 of the
40 Government Code, moneys in the fund are continuously

1 appropriated, without regard to fiscal years, to the California
2 Higher Education Endowment Corporation established by Section
3 99502 of the Education Code.

4 42168. With the exception of payments of refunds and
5 reimbursement to the board for expenses incurred in the
6 administration and collection of the tax imposed by this part, all
7 taxes, interest, penalties, and other amounts collected pursuant to
8 this part shall be deposited into the California Higher Education
9 Fund.

10 42169. The provisions of this part are severable. If any
11 provision of this part or its application is held invalid, that
12 invalidity shall not affect other provisions or applications that can
13 be given effect without the invalid provision or application.

14 SEC. 5. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.

23 SEC. 6. Section 4 of this act shall become operative on the first
24 day of the first calendar quarter commencing more than six months
25 after this act is enacted.