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SENATE BILL

No. 141

Introduced by Senator Correa

(Principal coauthor: Senator Leno)

(Coauthors: Senators Cannella, Evans, Hernandez, Lara, and Steinberg)

(Coauthors: Assembly Members Ammiano, Garcia, and Wieckowski)

January 29, 2013

An act to amend Sections 76140 and 89705 of the Education Code, relating to postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

SB 141, as amended, Correa. Postsecondary education benefits: children of deported or voluntarily departed parents.

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

paying nonresident tuition at the California Community Colleges and the California State University.

This bill would additionally exempt a student who is a United States citizen who resides in a foreign country, and who meets all of the following requirements, from nonresident tuition at the California Community Colleges and the California State University: (A) demonstrates financial need for the exemption; (B) has a parent who has been deported or was permitted to depart voluntarily; (C) moved abroad as a result of that deportation or voluntary departure; (D) lived in California immediately before moving abroad; (E) attended a public or private secondary school in the state for 3 or more years; and (F) upon enrollment, will be in his or her first academic year as a matriculated student in California public higher education, as defined, will be living in California, and will file an affidavit with the institution stating that he or she intends to establish residency in California as soon as possible. The bill would request the regents to enact regulations and procedures to exempt similarly situated students of the University of California from nonresident tuition.

(2) To the extent the provisions of this bill would place additional requirements on community college districts regarding the provision of postsecondary education benefits to additional categories of students, the bill would impose a state-mandated local program.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:
3 (a) It is estimated that over 5 million children are currently living
4 in the United States with at least one undocumented immigrant
5 parent. Approximately 75 percent of these children are United
6 States citizens, and many of them are from California.

1 (b) When one or both parents are deported, these citizen children
2 often have no recourse but to leave the country. At no fault of their
3 own, these children lose their schools, friends, and the place they
4 have come to know as “home.”

5 (c) As a result of moving abroad, there is a break in these
6 children’s presence in California, affecting their ability in later
7 years to attend a California public college or university at the much
8 lower resident prices.

9 (d) Today, these children, who are American citizens, are
10 growing up outside the United States, yet their desire to return to
11 their birth home continues to live within them. These children lack
12 many basic services granted to most United States citizens.

13 (e) The State of California has an interest in ensuring that these
14 children can access and afford a high-quality education.

15 SEC. 2. Section 76140 of the Education Code, as added by
16 Section 66 of Chapter 38 of the Statutes of 2012, is amended to
17 read:

18 76140. (a) A community college district may admit, and shall
19 charge a tuition fee to, nonresident students, except that a
20 community college district may exempt from all or parts of the
21 fee any person described in paragraph (1), (2), or (3), and shall
22 exempt from all of the fee any person described in paragraph (4):

23 (1) All nonresidents who enroll for six or fewer units.
24 Exemptions made pursuant to this paragraph shall not be made on
25 an individual basis.

26 (2) Any nonresident who is both a citizen and resident of a
27 foreign country, if the nonresident has demonstrated a financial
28 need for the exemption. Not more than 10 percent of the
29 nonresident foreign students attending any community college
30 district may be so exempted. Exemptions made pursuant to this
31 paragraph may be made on an individual basis.

32 (3) (A) A student who, as of August 29, 2005, was enrolled,
33 or admitted with an intention to enroll, in the fall term of the
34 2005–06 academic year in a regionally accredited institution of
35 higher education in Alabama, Louisiana, or Mississippi, and who
36 could not continue his or her attendance at that institution as a
37 direct consequence of damage sustained by that institution as a
38 result of Hurricane Katrina.

39 (B) The chancellor shall develop guidelines for the
40 implementation of this paragraph. These guidelines shall include

1 standards for appropriate documentation of student eligibility to
2 the extent feasible.

3 (C) This paragraph shall apply only to the 2005–06 academic
4 year.

5 (4) A nonresident student who is a United States citizen who
6 resides in a foreign country, if that nonresident meets all of the
7 following requirements:

8 (A) Demonstrates a financial need for the exemption.

9 (B) Has a parent or guardian who has been deported or was
10 permitted to depart voluntarily under the federal Immigration and
11 Nationality Act in accordance with Section 1229c of Title 8 of the
12 United States Code. The student shall provide documents from the
13 United States Citizenship and Immigration Services evidencing
14 the deportation or voluntary departure of his or her parent or
15 guardian.

16 (C) Moved abroad as a result of the deportation or voluntary
17 departure specified in subparagraph (B).

18 (D) Lived in California immediately before moving abroad. The
19 student shall provide information and evidence that demonstrates
20 the student previously lived in California.

21 (E) Attended a public or private secondary school, as described
22 in Sections 52 and 53, in the state for three or more years. *The*
23 *student shall provide documents that demonstrate his or her*
24 *secondary school attendance.*

25 (F) Upon enrollment, will be in his or her first academic year
26 as a matriculated student in California public higher education, as
27 that term is defined in subdivision (a) of Section 66010, will be
28 living in California, and will file an affidavit with the institution
29 stating that he or she intends to establish residency in California
30 as soon as possible.

31 (b) A district may contract with a state, a county contiguous to
32 California, the federal government, or a foreign country, or an
33 agency thereof, for payment of all or a part of a nonresident
34 student's tuition fee.

35 (c) Nonresident students shall not be reported as full-time
36 equivalent students (FTES) for state apportionment purposes,
37 except as provided by subdivision (j) or another statute, in which
38 case a nonresident tuition fee may not be charged.

39 (d) The nonresident tuition fee shall be set by the governing
40 board of each community college district not later than February

1 1 of each year for the succeeding fiscal year. The governing board
2 of each community college district shall provide nonresident
3 students with notice of nonresident tuition fee changes during the
4 spring term before the fall term in which the change will take
5 effect. Nonresident tuition fee increases shall be gradual, moderate,
6 and predictable. The fee may be paid in installments, as determined
7 by the governing board of the district.

8 (e) (1) The fee established by the governing board pursuant to
9 subdivision (d) shall represent for nonresident students enrolled
10 in 30 semester units or 45 quarter units of credit per fiscal year
11 one or more of the following:

12 (A) The amount that was expended by the district for the
13 expense of education as defined by the California Community
14 College Budget and Accounting Manual in the preceding fiscal
15 year increased by the projected percent increase in the United
16 States Consumer Price Index as determined by the Department of
17 Finance for the current fiscal year and succeeding fiscal year and
18 divided by the FTES (including nonresident students) attending
19 in the district in the preceding fiscal year. However, if for the
20 district's preceding fiscal year FTES of all students attending in
21 the district in noncredit courses is equal to, or greater than, 10
22 percent of the district's total FTES attending in the district, the
23 district may substitute the data for expense of education in grades
24 13 and 14 and FTES in grades 13 and 14 attending in the district.

25 (B) The expense of education in the preceding fiscal year of all
26 districts increased by the projected percent increase in the United
27 States Consumer Price Index as determined by the Department of
28 Finance for the fiscal year and succeeding fiscal year and divided
29 by the FTES (including nonresident students) attending all districts
30 during the preceding fiscal year. However, if the amount calculated
31 under this paragraph for the succeeding fiscal year is less than the
32 amount established for the current fiscal year or for any of the past
33 four fiscal years, the district may set the nonresident tuition fee at
34 the greater of the current or any of the past four-year amounts.

35 (C) An amount not to exceed the fee established by the
36 governing board of any contiguous district.

37 (D) An amount not to exceed the amount that was expended by
38 the district for the expense of education, but in no case less than
39 the statewide average as set forth in subparagraph (B).

1 (E) An amount no greater than the average of the nonresident
2 tuition fees of public community colleges of no less than 12 states
3 that are comparable to California in cost of living. The
4 determination of comparable states shall be based on a composite
5 cost-of-living index as determined by the United States Department
6 of Labor or a cooperating government agency.

7 (2) The additional revenue generated by the increased
8 nonresident tuition permitted under the amendments made to this
9 subdivision during the 2009–10 Regular Session shall be used to
10 expand and enhance services to resident students. In no event shall
11 the admission of nonresident students come at the expense of
12 resident enrollment.

13 (f) The governing board of each community college district also
14 shall adopt a tuition fee per unit of credit for nonresident students
15 enrolled in more or less than 15 units of credit per term by dividing
16 the fee determined in subdivision (e) by 30 for colleges operating
17 on the semester system and 45 for colleges operating on the quarter
18 system and rounding to the nearest whole dollar. The same rate
19 shall be uniformly charged nonresident students attending any
20 terms or sessions maintained by the community college. The rate
21 charged shall be the rate established for the fiscal year in which
22 the term or session ends.

23 (g) Any loss in district revenue generated by the nonresident
24 tuition fee shall not be offset by additional state funding.

25 (h) Any district that has fewer than 1,500 FTES and whose
26 boundary is within 10 miles of another state that has a reciprocity
27 agreement with California governing student attendance and fees
28 may exempt students from that state from the mandatory fee
29 requirement described in subdivision (a) for nonresident students.

30 (i) Any district that has more than 1,500, but less than 3,001,
31 FTES and whose boundary is within 10 miles of another state that
32 has a reciprocity agreement with California governing student
33 attendance and fees may, in any one fiscal year, exempt up to 100
34 FTES from that state from the mandatory fee requirement described
35 in subdivision (a) for nonresident students.

36 (j) The attendance of nonresident students who are exempted
37 pursuant to subdivision (h) or (i), or pursuant to paragraph (3) or
38 (4) of subdivision (a), from the mandatory fee requirement
39 described in subdivision (a) for nonresident students may be
40 reported as resident FTES for state apportionment purposes. Any

1 nonresident student reported as resident FTES for state
2 apportionment purposes pursuant to subdivision (h) or (i) shall
3 pay a per unit fee that is three times the amount of the fee
4 established for residents pursuant to Section 76300. That fee is to
5 be included in the FTES adjustments described in Section 76300
6 for purposes of computing apportionments.

7 SEC. 3. Section 89705 of the Education Code is amended to
8 read:

9 89705. (a) Except as provided in subdivision (c), and as
10 otherwise specially provided, an admission fee and rate of tuition
11 fixed by the trustees shall be required of each nonresident student.
12 The rate of tuition to be paid by each nonresident student, as
13 defined in Section 68018, shall not be less than three hundred sixty
14 dollars (\$360) per year. The rate of tuition paid by each nonresident
15 student who is a citizen and resident of a foreign country and not
16 a citizen of the United States, except as otherwise specifically
17 provided, shall be fixed by the trustees and shall not be less than
18 three hundred sixty dollars (\$360) per year.

19 (b) The trustees may waive entirely, or reduce below the rate,
20 or the minimum rate, fixed by this section, the tuition fee of a
21 nonresident student who is a citizen and resident of a foreign
22 country and not a citizen of the United States and who attends a
23 state university or college under an agreement entered into by a
24 governmental agency or a nonprofit corporation or organization
25 with a similar agency, or corporation or association, domiciled in
26 and organized under laws of a foreign country, where a principal
27 purpose of the agreement is to encourage the exchange of students
28 with the view of enhancing international good will and
29 understanding. The trustees shall, in each instance, determine
30 whether the conditions for this exemption from fees exist and may
31 prescribe appropriate procedures to be complied with in obtaining
32 the exemption.

33 (c) The trustees shall waive entirely the admission fee and rate
34 of tuition fixed under this section for a nonresident student who
35 is a United States citizen who resides in a foreign country, if that
36 nonresident meets all of the following requirements:

37 (1) Demonstrates a financial need for the exemption.

38 (2) Has a parent or guardian who has been deported or was
39 permitted to depart voluntarily under the federal Immigration and
40 Nationality Act in accordance with Section 1229c of Title 8 of the

1 United States Code. The student shall provide documents from the
2 United States Citizenship and Immigration Services evidencing
3 the deportation or voluntary departure of his or her parent or
4 guardian.

5 (3) Moved abroad as a result of the deportation or voluntary
6 departure specified in paragraph (2).

7 (4) Lived in California immediately before moving abroad. The
8 student shall provide information and evidence that demonstrates
9 the student previously lived in California.

10 (5) Attended a public or private secondary school, as described
11 in Sections 52 and 53, in the state for three or more years. *The*
12 *student shall provide documents that demonstrate his or her*
13 *secondary school attendance.*

14 (6) Upon enrollment, will be in his or her first academic year
15 as a matriculated student in California public higher education, as
16 that term is defined in subdivision (a) of Section 66010, will be
17 living in California, and will file an affidavit with the institution
18 stating that he or she intends to establish residency in California
19 as soon as possible.

20 SEC. 4. The Legislature requests the Regents of the University
21 of California to enact regulations and procedures that exempt from
22 nonresident tuition students of that university who meet the
23 requirements applicable to students of the California Community
24 Colleges and the California State University, respectively, in
25 paragraph (4) of subdivision (a) of Section 76140, and subdivision
26 (c) of Section 89705, of the Education Code.

27 SEC. 5. If the Commission on State Mandates determines that
28 this act contains costs mandated by the state, reimbursement to
29 local agencies and school districts for those costs shall be made
30 pursuant to Part 7 (commencing with Section 17500) of Division
31 4 of Title 2 of the Government Code.