AMENDED IN SENATE APRIL 22, 2010

AMENDED IN SENATE MARCH 8, 2010

AMENDED IN ASSEMBLY JANUARY 25, 2010

AMENDED IN ASSEMBLY JANUARY 14, 2010

AMENDED IN ASSEMBLY JANUARY 4, 2010

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, Blumenfield, Chesbro, Coto, Eng, *Furutani,* Bonnie Lowenthal, Ma, and Skinner)
(Coauthors: Senators DeSaulnier and Price)

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, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 656, as amended, Torrico. ~~State Board of Equalization: annual report: oil and gas severance tax revenue estimates.~~ *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.

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

Vote: ⅔. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

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

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

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

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

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

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

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

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

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

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

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

Chapter 8. The California Higher Education Endowment Corporation

Article 1. General Provisions

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

(a) "Board" means the oversight board described in subdivision (a) of Section 99505.

(b) "Corporation" means the California Higher Education Endowment Corporation established pursuant to Section 99502.

(c) "Director" means the chief executive officer of the corporation appointed pursuant to Section 99506.

(d) "Fund" means the California Higher Education Fund established pursuant to Section 42147 of the Revenue and Taxation Code.

(e) "Public postsecondary education institution" means the California Community Colleges, the California State University, and the University of California.

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

Article 2. Oversight Board

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

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

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

(C) Two members appointed by the Chancellor of the California Community Colleges.

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

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

(F) One member appointed by the Treasurer.

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

~~(H) One member who is a student enrolled in a public postsecondary educational institution at the time of the appointment. The member appointed pursuant to this subparagraph shall be enrolled in a public postsecondary educational institution for the duration of his or her term, which shall be two years.~~

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

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

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

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

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

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

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

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

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

(1) The Chancellor of the California State University.

(2) The President of the University of California.

(3) The Chancellor of the California Community Colleges.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Upon finding that a recipient campus or related administrative office has subsequently mishandled funds allocated under this chapter within five years of a finding pursuant to paragraph (1), the board shall bar the recipient campus or related administrative office from receiving funds made available under this chapter during the following fiscal year.

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

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

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

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

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

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

(1) Fifty percent to the California State University.
(2) Twenty-five percent to the University of California.
(3) Twenty-five percent to the California Community Colleges.

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

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

(1) Counties with a registered nurse to population ratio equal to or less than 500 registered nurses per 100,000 individuals.
(2) County unemployment rate.
(3) County level of poverty.

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

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

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

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

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

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

PART 21. ~~OIL AND GAS SEVERANCE TAX LAW~~ *FAIR SHARE FOR FAIR TUITION ACT*

42001. This part shall be known, and may be cited, as the ~~Oil and Gas Severance Tax Law.~~ *Fair Share for Fair Tuition Act.*

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

(a) "California Higher Education Fund" or "CHEF" means the account that is created by Section 42147.

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

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

(d) "Higher education" means the California Community Colleges, the California State University, and the University of California.

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

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

(g) "Producer" means any person that takes oil or gas from the earth or water in this state in any manner; any person that owns, controls, manages, or leases any oil or gas well in the earth or water of this state; any person that produces or extracts in any manner any oil or gas by taking it from the earth or water in this state; any person that acquires the severed oil or gas from a person or agency exempt from property taxation under the United States Constitution or other laws of the United States or under the California Constitution or other laws of the State of California; and any person that owns an interest, including a royalty interest, in oil or gas or its value, whether the oil or gas is produced by the person owning the interest or by another on the person's behalf by lease, contract, or other arrangement.

(h) "Product" means either a barrel of oil, which means 42 United States gallons of 231 cubic inches per gallon computed at a temperature of 60 degrees Fahrenheit or gas, as measured per ~~thousand cubic feet (Mfc)~~ *1,000 cubic feet (mfc)* at a base pressure of 15.025 pounds per square inch absolute and at a temperature base of 60 degrees Fahrenheit.

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

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

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

42010. There is hereby imposed an oil and gas severance tax 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, at the rate of 12.5 percent of the gross value of the product, and the tax shall be applied equally to all portions of the gross value of the product.

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

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

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

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

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

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

42016. There shall be exempted from the imposition of the oil ~~or~~ *and* gas severance tax imposed pursuant to this part, all oil or gas owned or produced by any political subdivision of this state, including that political subdivision's proprietary share of oil or gas produced under any unit, cooperative, or other pooling agreement.

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

42018. (a) Any producer that fails to pay any tax within the time required shall pay, in addition to the amount of tax owed, interest at the rate of 1½ percent per month, or fraction thereof, from the date on which the tax became due and payable to and including the date of payment.

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

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

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

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

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

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

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

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

42147. The California Higher Education Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, moneys in the fund are continuously appropriated, without regard to fiscal year, to the California Higher Education Endowment Corporation established by Section 99502 of the Education Code.

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

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

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

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

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 mitigate the impacts of funding reductions to institutions of higher education as soon as possible, it is necessary that this act take effect immediately.

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