

AMENDED IN SENATE JULY 12, 1999  
AMENDED IN SENATE JUNE 30, 1999  
AMENDED IN ASSEMBLY MAY 28, 1999  
AMENDED IN ASSEMBLY APRIL 27, 1999  
AMENDED IN ASSEMBLY APRIL 6, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1197**

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**Introduced by Assembly Member Firebaugh  
(Coauthors: Assembly Members Honda, Kuehl, and  
Romero)  
(Coauthor: Senator Vasconcellos)**

February 26, 1999

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An act to amend Sections 76140 and 89706 of the Education Code, relating to public postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

AB 1197, as amended, Firebaugh. Public postsecondary education: residency.

Existing law establishes the California Community Colleges under the administration of the Board of Governors of the California Community Colleges. Existing law authorizes the establishment of community college districts under the administration of community college governing boards, and authorizes these districts to provide instruction at community college campuses throughout the state. Existing law authorizes community college districts to admit, and charge

a tuition fee for, nonresident students in accordance with specified criteria.

Existing law establishes the California State University and authorizes the operation of its various campuses under the administration of the Trustees of the California State University. Existing law authorizes the trustees, on the basis of demonstrated financial need and scholastic achievement, to waive entirely, or reduce below the minimum rate, the tuition fee of a nonresident student, as defined.

Existing law prescribes residency requirements for students at public institutions of postsecondary education, including, among others, the campuses of the California Community Colleges and the California State University. With respect to alien students, existing law specifies that an alien, including an unmarried minor alien, may establish his or her residence unless precluded by the federal Immigration and Nationality Act from establishing domicile in the United States.

This bill would require that a ~~student~~ *person*, including an alien ~~student~~ precluded from establishing California residency because of federal law, who has attended high school in California for 3 or more years, ~~and~~ who has graduated from a California high school, *who continues his or her education at a California institution of higher education within one year of high school graduation or on or before January 1, 2001, and who files, or on whose behalf has been filed, a petition or application for lawful immigration status,* be exempted, under specified circumstances, from paying nonresident tuition at the California Community Colleges or the California State University. *The bill would request the Regents of the University of California to also exempt these persons from paying nonresident tuition.* The bill would also make various technical, nonsubstantive changes to the provisions relating to residency with respect to attendance at campuses of the California Community Colleges and the California State University.

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 76140 of the Education Code is  
2 amended to read:

3 76140. (a) A community college district may admit  
4 and shall charge a tuition fee to nonresident students. The  
5 district may exempt from all or parts of the fee any person  
6 described in paragraph (1) or (2):

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

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

17 (b) A community college district may contract with a  
18 state, a county contiguous to California, the federal  
19 government, or a foreign country, or an agency thereof,  
20 for payment of all or a part of a nonresident student's  
21 tuition fee.

22 (c) Nonresident students shall not be reported as  
23 full-time equivalent students (FTES) for state  
24 apportionment purposes, except as provided by  
25 subdivision (k) or (l) or another statute, in which case a  
26 nonresident tuition fee may not be charged.

27 (d) The nonresident tuition fee shall be set by the  
28 governing board of each community college district not  
29 later than February 1 of each year for the succeeding  
30 fiscal year. The governing board of each community  
31 college district shall provide nonresident students with  
32 notice of nonresident tuition fee changes during the  
33 spring term before the fall term in which the change will  
34 take effect. Nonresident tuition fee increases shall be  
35 gradual, moderate, and predictable. The fee may be paid  
36 in installments, as determined by the governing board of  
37 the district.



1 (e) The fee established by the governing board of a  
2 community college district pursuant to subdivision (d)  
3 shall represent for nonresident students enrolled in 30  
4 semester units or 45 quarter units of credit per fiscal year  
5 (1) the amount that was expended by the district for the  
6 expense of education as defined by the California  
7 Community College Budget and Accounting Manual in  
8 the preceding fiscal year, increased by the projected  
9 percent increase in the United States Consumer Price  
10 Index as determined by the Department of Finance for  
11 the current fiscal year and succeeding fiscal year and  
12 divided by the FTES (including nonresident students)  
13 attending in the district in the preceding fiscal year, (2)  
14 the expense of education in the preceding fiscal year of  
15 all districts increased by the projected percent increase  
16 in the United States Consumer Price Index as determined  
17 by the Department of Finance for the fiscal year and  
18 succeeding fiscal year and divided by the FTES  
19 (including nonresident students) attending all districts  
20 during the preceding fiscal year, (3) an amount not to  
21 exceed the fee established by the governing board of any  
22 contiguous district, or (4) an amount not to exceed the  
23 amount that was expended by the district for the expense  
24 of education, but in no case less than the statewide  
25 average as set forth in paragraph (2). However, if for the  
26 district's preceding fiscal year FTES of all students  
27 attending in the district in noncredit courses is equal to,  
28 or greater than, 10 percent of the district's total FTES  
29 attending in the district, the district, in calculating the  
30 amount in paragraph (1), may substitute, instead, the  
31 data for expense of education in grades 13 and 14 and  
32 FTES in grades 13 and 14 attending in the district.

33 (f) The governing board of each community college  
34 district also shall adopt a tuition fee per unit of credit for  
35 nonresident students enrolled in more or less than 15  
36 units of credit per term by dividing the fee determined  
37 in subdivision (e) by 30 for colleges operating on the  
38 semester system and 45 for colleges operating on the  
39 quarter system and rounding to the nearest whole dollar.  
40 The same rate shall be uniformly charged nonresident



1 students attending any terms or sessions maintained by  
2 the community college. The rate charged shall be the rate  
3 established for the fiscal year in which the term or session  
4 ends.

5 (g) In adopting a tuition fee for nonresident students,  
6 the governing board of each community college district  
7 shall consider nonresident tuition fees of public  
8 community colleges in other states.

9 (h) Any loss in district revenue generated by the  
10 nonresident tuition fee shall not be offset by additional  
11 state funding.

12 (i) Any community college district that has fewer than  
13 1,500 FTES and whose boundary is within 10 miles of  
14 another state that has a reciprocity agreement with  
15 California governing student attendance and fees may  
16 exempt students from that state from the mandatory fee  
17 requirement described in subdivision (a) for nonresident  
18 students.

19 (j) Any community college district that has more than  
20 1,500, but less than 3,001, FTES and whose boundary is  
21 within 10 miles of another state that has a reciprocity  
22 agreement with California governing student attendance  
23 and fees may, in any one fiscal year, exempt up to 100  
24 FTES from that state from the mandatory fee  
25 requirement described in subdivision (a) for nonresident  
26 students.

27 (k) The attendance of nonresident students who are  
28 exempt pursuant to subdivision (i) or (j) from the  
29 mandatory fee requirement described in subdivision (a)  
30 for nonresident students may be reported as resident  
31 FTES for state apportionment purposes. Any nonresident  
32 student reported as a resident FTES for state  
33 apportionment purposes pursuant to subdivision (i) or  
34 (j) shall pay a fee of forty-two dollars (\$42) per course  
35 unit. That fee is to be included in the FTES adjustments  
36 described in Section 76330 for purposes of computing  
37 apportionments.

38 (l) (1) Notwithstanding any other provision of law,  
39 any ~~student~~ *person*, including an alien precluded from  
40 establishing California residency by reason of subdivision



1 (h) of Section 68062, who ~~has attended high school~~ *meets*  
2 *all of the following requirements is exempt from*  
3 *nonresident tuition:*

4 (A) *High school attendance in California for three or*  
5 *more years, who has graduated years.*

6 (B) *Graduation from a California high school, and who*  
7 ~~obtains admission to a California community college~~  
8 *California high school.*

9 (C) *Continuation of his or her education at a California*  
10 *institution of higher education within one year of high*  
11 *school graduation or on or before January 1, 2001, shall be*  
12 ~~exempt from nonresident tuition. In order to avail himself~~  
13 ~~or herself of the exemption provided by this subdivision,~~  
14 ~~a student precluded from establishing California~~  
15 ~~residency by subdivision (h) of Section 68062 shall submit~~  
16 ~~a declaration to the community college he or she attends~~  
17 ~~declaring his or her intent to seek the legalization of his~~  
18 ~~or her immigration status. 2001.~~

19 (D) *Filing of a petition or application for lawful*  
20 *immigration status, either by the person seeking the*  
21 *exemption from nonresident tuition or by another person*  
22 *on behalf of the person seeking the exemption.*

23 (2) *For the purposes of this subdivision:*

24 (A) *“A petition or application for lawful immigration*  
25 *status” includes a petition or application in relation to*  
26 *which the person is a derivative beneficiary.*

27 (B) *Documentation that a petition or application for*  
28 *lawful immigration status has been initiated may include*  
29 *either or both of the following:*

30 (i) *A photocopy of the petition or application.*

31 (ii) *A letter or other document from the Immigration*  
32 *and Naturalization Service or from another appropriate*  
33 *government agency, or an affidavit from an attorney,*  
34 *indicating that the person is in the process of petitioning*  
35 *or applying for lawful immigration status.*

36 (3) *A student who is exempt from nonresident tuition*  
37 *pursuant to this subdivision may be reported by a*  
38 *community college district as a full-time equivalent*  
39 *student for apportionment purposes.*



1 SEC. 2. Section 89706 of the Education Code is  
2 amended to read:

3 89706. (a) The trustees may, on the basis of  
4 demonstrated financial need and scholastic achievement,  
5 waive entirely, or reduce below the rate, or the minimum  
6 rate, fixed by Section 89705, the tuition fee of a  
7 nonresident student, as defined in Section 68018, who is  
8 a citizen and resident of a foreign country, who is an  
9 undergraduate student of exceptional scholastic ability  
10 and prior scholastic achievement, and who is enrolled in  
11 a course of study of no less than 10 semester units.

12 (b) The number of reductions and waivers granted by  
13 the trustees under this section shall at no time exceed  $7\frac{1}{2}$   
14 percent of the nonresident undergraduate students who  
15 are citizens and residents of a foreign country, then  
16 enrolled in the California State University.

17 (c) *(1)* Notwithstanding any other provision of law,  
18 any ~~student~~ *person*, including an alien precluded from  
19 establishing California residency by reason of subdivision  
20 (h) of Section 68062, who ~~has attended high school~~ *meets*  
21 *all of the following requirements is exempt from*  
22 *nonresident tuition:*

23 (A) *High school attendance* in California for three or  
24 more ~~years, who has graduated~~ *years.*

25 (B) *Graduation* from a California high school, ~~and who~~  
26 ~~continues school.~~

27 (C) *Continuation of his or her education* at a California  
28 institution of higher education within one year of high  
29 school graduation or on or before ~~January 1, 2001,~~ *shall be*  
30 ~~exempt from nonresident tuition at the California State~~  
31 ~~University. In order to avail himself or herself of the~~  
32 ~~exemption provided by this subdivision, a student~~  
33 ~~precluded from establishing California residency by~~  
34 ~~subdivision (h) of Section 68062 shall submit a declaration~~  
35 ~~to the campus of the California State University that he~~  
36 ~~or she attends declaring his or her intent to seek the~~  
37 ~~legalization of his or her immigration status. January 1,~~  
38 ~~2001.~~

39 (D) *Filing of a petition or application for lawful*  
40 *immigration status, either by the person seeking the*



1 *exemption from nonresident tuition or by another person*  
2 *on behalf of the person seeking the exemption.*

3 (2) *For the purposes of this subdivision:*

4 (A) *“A petition or application for lawful immigration*  
5 *status” includes a petition or application in relation to*  
6 *which the person is a derivative beneficiary.*

7 (B) *Documentation that a petition or application for*  
8 *lawful immigration status has been initiated may include*  
9 *either or both of the following:*

10 (i) *A photocopy of the petition or application.*

11 (ii) *A letter or other document from the Immigration*  
12 *and Naturalization Service or from another appropriate*  
13 *government agency, or an affidavit from an attorney,*  
14 *indicating that the person is in the process of petitioning*  
15 *or applying for lawful immigration status.*

16 SEC. 3. (a) *The Legislature hereby requests the*  
17 *Regents of the University of California to take action to*  
18 *exempt from nonresident tuition any—~~student~~ person,*  
19 *including an alien precluded from establishing California*  
20 *residency by reason of subdivision (h) of Section 68062 of*  
21 *the Education Code, who has attended high school in*  
22 *California for three or more years, who has graduated*  
23 *from a California high school, and who continues his or*  
24 *her education at a California institution of higher*  
25 *education within one year of high school graduation or on*  
26 *or before January 1, 2001, and to ~~require each of those~~*  
27 *students, in order to avail himself or herself of that*  
28 *exemption, to submit a declaration to the campus of the*  
29 *University of California that he or she attends declaring*  
30 *his or her intent to seek the legalization of his or her*  
31 *immigration status. who has filed a petition or application*  
32 *for lawful immigration status, or on whose behalf a*  
33 *petition or application for lawful immigration status has*  
34 *been filed.*

35 (b) *For the purposes of this section:*

36 (1) *“A petition or application for lawful immigration*  
37 *status” includes a petition or application in relation to*  
38 *which the person is a derivative beneficiary.*



1 (2) *Documentation that a petition or application for*  
2 *lawful immigration status has been initiated may include*  
3 *either or both of the following:*

4 (A) *A photocopy of the petition or application.*

5 (B) *A letter or other document from the Immigration*  
6 *and Naturalization Service or from another appropriate*  
7 *government agency, or an affidavit from an attorney,*  
8 *indicating that the person is in the process of petitioning*  
9 *or applying for lawful immigration status.*

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