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AB-1998 Community colleges: nonresident tuition fees: Western Undergraduate Exchange. (2021-2022)

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Assembly Bill No. 1998

CHAPTER 495

An act to amend Sections 66801 and 76140 of the Education Code, relating to community colleges.

[Approved by Governor September 23, 2022. Filed with Secretary of State September 23, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1998, Smith. Community colleges: nonresident tuition fees: Western Undergraduate Exchange.

(1) Existing law establishes the California Community Colleges under the administration of the Board of Governors of the California Community Colleges. Existing law also authorizes the establishment of community college districts, and further authorizes the operation, by these districts, of community college campuses that offer instructional services throughout the state. Existing law authorizes the board of governors to enter into an interstate attendance agreement with any statewide public agency of another state that is responsible for institutions of postsecondary education providing the first 2 years of college instruction and that is an agency of a state that is a party to the Western Interstate Compact for Higher Education, for the exchange of residents, on a one-for-one basis, for purposes of instruction. Existing law authorizes community college districts to admit nonresident students, and requires community college districts to charge a tuition fee to nonresident students, with specified exceptions, including an exception for those students who enroll in certain community colleges pursuant to a reciprocity agreement with California, as specified.

This bill would authorize the board of governors to enter into the Western Undergraduate Exchange through the Western Interstate Commission for Higher Education. The bill would authorize certain community college districts with 3,000 or fewer full-time equivalent students to also exempt students from states that participate in the Western Undergraduate Exchange from the mandatory fee requirement, as provided.

(2) Existing law requires certain nonresident students, including those who enroll in certain community colleges pursuant to a reciprocity agreement with California, who are reported as resident full-time equivalent students for state apportionment purposes, and who are exempt from paying the tuition fee charged to nonresident students, to pay a per-unit fee that is 3 times the amount of the fee established for residents.

This bill would decrease the per-unit fee for those students to $1\frac{1}{2}$ times the amount of the fee established for residents and would include students from states that participate in the Western Undergraduate Exchange within that provision.

(3) This bill would incorporate additional changes to Section 76140 of the Education Code proposed by AB 1232 to be operative only if this bill and AB 1232 are enacted and this bill is enacted last.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 66801 of the Education Code is amended to read:

66801. (a) The Board of Governors of the California Community Colleges may enter into an interstate attendance agreement with any statewide public agency of another state that is responsible for public institutions of postsecondary education providing the first two years of college instruction and that is an agency of a state that is a party to the Western Interstate Compact for Higher Education, for the exchange of residents, on a one-for-one basis, for purposes of instruction.

(b) (1) As an alternative to the procedure established in subdivision (a), the board of governors may authorize the governing board of a community college district to enter into an interstate attendance agreement directly with the governing body of a public institution of postsecondary education providing the first two years of college instruction if the state in which the public institution is situated borders California, is a party to the Western Interstate Compact for Higher Education, and the state is not represented by a statewide public agency that is responsible for public institutions of postsecondary education providing the first two years of college instruction.

(2) Each agreement entered into under this subdivision shall satisfy the requirements of subdivision (a), and shall become effective once fully executed and approved by the governing board of each participating community college district. There shall be no need to file a resolution as described in Section 66802 or for any further action by the board of governors. An interstate attendance agreement entered into under this subdivision may be effective on or after July 1, 2003.

(c) The board of governors may enter into the Western Undergraduate Exchange through the Western Interstate Commission for Higher Education.

(d) The agreement shall contain terms as the board of governors may adopt and that are consistent with the authority and responsibility of California community college districts and the community colleges they maintain. In no event shall an agreement permit or require the entry of California residents into institutions in another state on terms substantially different from those governing the admission of residents of the other state to California community colleges. Except as provided in subdivision (j) of Section 76140, agreements shall contain the provision that no additional state funds shall be required to carry out the provisions of this chapter.

SEC. 2. Section 76140 of the Education Code is amended to read:

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

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

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

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

(B) The chancellor shall develop guidelines for the implementation of this paragraph. These guidelines shall include standards for appropriate documentation of student eligibility to the extent feasible.

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

(4) A special part-time student, other than a person excluded from the term "immigrant," for purposes of the federal Immigration and Nationality Act (8 U.S.C. Sec. 1101), pursuant to paragraph (15) of subsection (a) of Section 1101 of Title 8 of the United States Code, admitted pursuant to Section 76001, 76003, or 76004.

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

(A) Demonstrates a financial need for the exemption.

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

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

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

(E) Attended a public or private secondary school, as described in Sections 52 and 53, in the state for three or more years. The student shall provide documents that demonstrate the student's secondary school attendance.

(F) Upon enrollment, the student will be in the student's first academic year as a matriculated student in California public higher education, as that term is defined in subdivision (a) of Section 66010, will be living in California, and will file an affidavit with the institution stating that the student intends to establish residency in California as soon as possible.

(6) (A) A student who attends Lake Tahoe Community College and who has residence, pursuant to subparagraph (B), in one of the following communities in Nevada:

(i) Incline Village.

(ii) Kingsbury.

(iii) Round Hill.

(iv) Skyland.

(v) Stateline.

(vi) Zephyr Cove.

(B) Residence shall be determined pursuant to Article 5 (commencing with Section 68060) of Chapter 1 of Part 41 of Division 5. A person shall have residence in one of the communities listed in subparagraph (A) if the person has lived in the community for more than one year immediately before seeking the fee exemption pursuant to this paragraph.

(C) The governing board of the Lake Tahoe Community College District shall adopt rules and regulations for determining a student's residence classification and for establishing procedures for an appeal and review of the residence classification. No more than 200 students shall be exempted from payment of a nonresident tuition fee under this paragraph in any academic year.

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

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

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

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

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

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

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

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

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

(2) The additional revenue generated by the increased nonresident tuition permitted under the amendments made to this subdivision during the 2009–10 Regular Session shall be used to expand and enhance services to resident students. The admission of nonresident students shall not come at the expense of resident enrollment.

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

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

(h) Any community college district that has fewer than 1,500 FTES and whose boundary is within 10 miles of another state that either (1) has a reciprocity agreement with California governing student attendance and fees, or (2) that participates in the Western Undergraduate Exchange, may exempt students from that state, or may exempt students from those states that participate in the Western Undergraduate Exchange, from the mandatory fee requirement described in subdivision (a) for nonresident students.

(i) Any community college district that has more than 1,500, but fewer than 3,001, FTES and whose boundary is within 10 miles of another state that either (1) has a reciprocity agreement with California governing student attendance and fees, or (2) that participates in the Western Undergraduate Exchange, may, in any one fiscal year, exempt up to 100 FTES from that state or from states that participate in the Western Undergraduate Exchange from the mandatory fee requirement described in subdivision (a) for nonresident students.

(j) The attendance of nonresident students who are exempted pursuant to subdivision (h) or (i), or pursuant to paragraph (3), (4), (5), or (6) of subdivision (a), from the mandatory fee requirement described in subdivision (a) for nonresident students may be reported as resident FTES for state apportionment purposes. Any nonresident student reported as resident FTES for state apportionment purposes who is exempt pursuant to paragraph (6) of subdivision (a), or pursuant to subdivision (h) or (i), shall pay a per-unit fee that is one and one-half times the amount of the fee established for residents pursuant to Section 76300. That fee shall be included in the FTES adjustments described in Section 76300 for purposes of computing apportionments.

SEC. 2.5. Section 76140 of the Education Code is amended to read:

76140. (a) A community college district may admit, and shall charge a tuition fee to, nonresident students, except that a community college district may exempt from all or parts of the fee any person described in paragraph (1), (2), (3), or (6), and shall exempt from all of the fee any person described in paragraph (4), (5), or (7):

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

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

(3) (A) A student who, as of August 29, 2005, was enrolled, or admitted with an intention to enroll, in the fall term of the 2005–06 academic year in a regionally accredited institution of higher education in Alabama, Louisiana, or Mississippi, and who could

not continue the student's attendance at that institution as a direct consequence of damage sustained by that institution as a result of Hurricane Katrina.

(B) The chancellor shall develop guidelines for the implementation of this paragraph. These guidelines shall include standards for appropriate documentation of student eligibility to the extent feasible.

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

(4) A special part-time student, other than a person excluded from the term "immigrant," for purposes of the federal Immigration and Nationality Act (8 U.S.C. Sec. 1101), pursuant to paragraph (15) of subsection (a) of Section 1101 of Title 8 of the United States Code, admitted pursuant to Section 76001, 76003, or 76004.

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

(A) Demonstrates a financial need for the exemption.

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

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

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

(E) Attended a public or private secondary school, as described in Sections 52 and 53, in the state for three or more years. The student shall provide documents that demonstrate the student's secondary school attendance.

(F) Upon enrollment, the student will be in the student's first academic year as a matriculated student in California public higher education, as that term is defined in subdivision (a) of Section 66010, will be living in California, and will file an affidavit with the institution stating that the student intends to establish residency in California as soon as possible.

(6) (A) A student who attends Lake Tahoe Community College and who has residence, pursuant to subparagraph (B), in one of the following communities in Nevada:

(i) Incline Village.

(ii) Kingsbury.

(iii) Round Hill.

(iv) Skyland.

(v) Stateline.

(vi) Zephyr Cove.

(B) Residence shall be determined pursuant to Article 5 (commencing with Section 68060) of Chapter 1 of Part 41 of Division 5. A person shall have residence in one of the communities listed in subparagraph (A) if the person has lived in the community for more than one year immediately before seeking the fee exemption pursuant to this paragraph.

(C) The governing board of the Lake Tahoe Community College District shall adopt rules and regulations for determining a student's residence classification and for establishing procedures for an appeal and review of the residence classification. No more than 200 students shall be exempted from payment of a nonresident tuition fee under this paragraph in any academic year.

(7) (A) A nonresident student who enrolls in a credit English as a second language (ESL) course at a California Community College and who is any of the following:

(i) A recent immigrant, as defined in Section 1101(a)(15) of Title 8 of the United States Code.

(ii) A recent refugee, as defined in Section 1101(a)(42) of Title 8 of the United States Code.

(iii) A person who has been granted asylum by the United States, as defined in Section 1158 of Title 8 of the United States Code.

(B) This exemption shall only apply to individuals who, upon entering the United States, settled in California and who have resided in California for less than one year.

(C) This exemption shall only apply to the tuition fee for credit ESL courses.

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

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

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

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

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

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

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

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

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

(2) The additional revenue generated by the increased nonresident tuition permitted under the amendments made to this subdivision during the 2009–10 Regular Session shall be used to expand and enhance services to resident students. The admission of nonresident students shall not come at the expense of resident enrollment.

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

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

(h) Any community college district that has fewer than 1,500 FTES and whose boundary is within 10 miles of another state that either (1) has a reciprocity agreement with California governing student attendance and fees, or (2) that participates in the Western Undergraduate Exchange, may exempt students from that state, or may exempt students from those states that

participate in the Western Undergraduate Exchange, from the mandatory fee requirement described in subdivision (a) for nonresident students.

(i) Any community college district that has more than 1,500, but fewer than 3,001, FTES and whose boundary is within 10 miles of another state that either (1) has a reciprocity agreement with California governing student attendance and fees, or (2) that participates in the Western Undergraduate Exchange, may, in any one fiscal year, exempt up to 100 FTES from that state or from states that participate in the Western Undergraduate Exchange from the mandatory fee requirement described in subdivision (a) for nonresident students.

(j) The attendance of nonresident students who are exempted pursuant to subdivision (h) or (i), or pursuant to paragraph (3), (4), (5), or (6) of subdivision (a), from the mandatory fee requirement described in subdivision (a) for nonresident students may be reported as resident FTES for state apportionment purposes. Any nonresident student reported as resident FTES for state apportionment purposes who is exempt pursuant to paragraph (6) of subdivision (a), or pursuant to subdivision (h) or (i), shall pay a per-unit fee that is one and one-half times the amount of the fee established for residents pursuant to Section 76300. That fee shall be included in the FTES adjustments described in Section 76300 for purposes of computing apportionments.

SEC. 3. Section 2.5 of this bill incorporates amendments to Section 76140 of the Education Code proposed by both this bill and Assembly Bill 1232. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2023, (2) each bill amends Section 76140 of the Education Code, and (3) this bill is enacted after Assembly Bill 1232, in which case Section 2 of this bill shall not become operative.