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AB-91 Community colleges: exemption from nonresident tuition fee: residence near the California-Mexico border. (2023-2024)

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Date Published: 10/16/2023 10:00 AM

Assembly Bill No. 91

CHAPTER 796

An act to amend, repeal, and add Section 76140 of the Education Code, relating to community colleges.

[Approved by Governor October 13, 2023. Filed with Secretary of State October 13, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 91, Alvarez. Community colleges: exemption from nonresident tuition fee: residence near the California-Mexico border.

(1) Existing law establishes the California Community Colleges, under the administration of the Board of Governors of the California Community Colleges, as one of the segments of public postsecondary education in this state. Existing law establishes community college districts throughout the state and authorizes them to operate campuses and provide instruction to students.

Existing law authorizes community college districts to admit nonresident students, and requires that nonresident students be charged a nonresident tuition fee unless an exemption applies. Existing law includes among these exemptions any nonresident who is both a citizen and resident of a foreign country if the nonresident has demonstrated a financial need, as specified. Existing law authorizes the attendance of certain exempted, nonresident students to be reported as resident full-time equivalent students (FTES) for state apportionment purposes.

This bill would additionally exempt from the nonresident tuition fee a nonresident, low-income student who: (1) is a resident of Mexico, (2) registers for lower division courses at Cuyamaca College, Grossmont College, Imperial Valley College, MiraCosta College, Palomar College, San Diego City College, San Diego Mesa College, San Diego Miramar College, or Southwestern College, and (3) has residence within 45 miles of the California-Mexico border, as provided. The bill would, in any academic year, prohibit more than 150 FTES at each of these community colleges from being exempted from payment of the nonresident tuition fee.

The bill would require the governing boards of the community colleges that choose to use this exemption to adopt one uniform policy to determine a student's residence classification, establish procedures for an appeal and review of the residence classification, and determine whether a student is low income. The bill also would require the governing boards of the community colleges that choose to use this exemption, as a condition of its students receiving the exemption described above, to collaborate with each other to ensure the adoption of the uniform policy.

The bill would additionally authorize the attendance of nonresident students who receive this exemption to be reported as resident FTES for state apportionment purposes, as specified. The bill would provide that a nonresident student exempted under the above-mentioned exemption is not exempted pursuant to the existing provision involving any nonresident who is both a citizen and resident of a foreign country. The bill would require the governing boards of the community colleges that choose to use this exemption, on or before January 1, 2028, to jointly submit a report to the Legislature that includes, but is not limited to,

the demographics, attendance rate, and class completion rate of nonresident students who receive the exemption described above.

The bill's provisions would become inoperative on July 1, 2028, and would be repealed on January 1, 2029, as specified. The bill would also make related findings and declarations.

(2) This bill would make legislative findings and declarations as to the necessity of a special statute for Cuyamaca College, Grossmont College, Imperial Valley College, MiraCosta College, Palomar College, San Diego City College, San Diego Mesa College, San Diego Miramar College, and Southwestern College.

(3) This bill would not become operative unless the Board of Governors of the California Community Colleges enters into an attendance agreement that provides reciprocal rights to California residents attending a university in the State of Baja California that reasonably conforms to the benefits conferred upon residents of Mexico pursuant to certain provisions of the bill, as provided.

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

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

SECTION 1. It is the intent of the Legislature to increase the pathways by which nonresident students who reside near the California-Mexico border, and who might otherwise experience financial hardships, can attend community colleges near the border.

SEC. 2. The Legislature finds and declares all of the following:

(a) Increased educational access can help drive economic growth and create new job opportunities in California's border communities. California's border communities support billions of dollars in international trade with Mexico, and across Asia and the Pacific Rim through the Port of San Diego.

(b) Reducing the cost of higher education for low-income individuals, first-generation college students, and students from historically marginalized communities reduces the inequities in these students obtaining a college education and improves their economic mobility.

(c) Community colleges play a crucial role in California's workforce development by providing affordable, accessible, and high-quality education and training opportunities to students across the state, including a wide range of career and technical education programs, and transfer programs for students who wish to continue their educations at four-year universities.

(d) Career and technical education programs in California offer students the opportunity to earn industry-recognized certifications and credentials, leading to higher-paying jobs and greater job security, while helping address the skills gap that exists in many industries and providing employers with a pipeline of skilled workers.

(e) As a hub of technological innovation and the world's fifth-largest economy, California requires a workforce with a solid understanding of education in science, technology, engineering, and mathematics, which plays a crucial role in driving innovation, economic growth, and social progress.

SEC. 3. 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), (6), or (8) 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. A nonresident student exempted pursuant to paragraph (8) is not exempted pursuant to this paragraph.

(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 apply only 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 apply only to the tuition fee for credit ESL courses.

(8) (A) A student who meets all of the following criteria:

(i) Is a nonresident, low-income student who is a resident of Mexico.

(ii) Registers for lower division courses at Cuyamaca College, Grossmont College, Imperial Valley College, MiraCosta College, Palomar College, San Diego City College, San Diego Mesa College, San Diego Miramar College, or Southwestern College.

(iii) Has residence within 45 miles of the California-Mexico border for at least one year immediately before seeking the fee exemption pursuant to this paragraph.

(B) (i) The governing boards of the community colleges described in clause (ii) of subparagraph (A) that choose to use the exemption pursuant to this paragraph shall adopt one uniform policy that accomplishes all of the following:

(I) Determines a student's residence classification.

(II) Establishes procedures for an appeal and review of the residence classification.

(III) Determines whether a student is low income.

(ii) As a condition of its students receiving an exemption pursuant to this paragraph, the governing boards of the community colleges described in clause (ii) of subparagraph (A) that choose to use the exemption pursuant to this paragraph shall collaborate with each other to ensure the adoption of the uniform policy pursuant to clause (i).

(C) No more than 150 full-time equivalent students (FTES) at each community college described in clause (ii) of subparagraph (A) shall be exempted from payment of a nonresident tuition fee under this paragraph in any academic year.

(D) On or before January 1, 2028, the governing boards of the community colleges described in clause (ii) of subparagraph (A) that choose to use the exemption pursuant to this paragraph shall jointly submit a report to the Legislature in compliance with Section 9795 of the Government Code that includes, but is not limited to, the demographics, attendance rate, and class completion rate of students receiving an exemption pursuant to this paragraph.

(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 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) 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) 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), (6), or (8) 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.

(k) This section shall become inoperative on July 1, 2028, and, as of January 1, 2029, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2029, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 76140 is added to the Education Code, 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 apply only 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 apply only 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) 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) 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.

(k) This section shall become operative on July 1, 2028.

SEC. 5. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of Cuyamaca College, Grossmont College, Imperial Valley College, MiraCosta College, Palomar College, San Diego City College, San Diego Mesa College, San Diego Miramar College, and Southwestern College with respect to students who reside in nearby communities.

SEC. 6. (a) This act shall not become operative unless the Board of Governors of the California Community Colleges enters into an attendance agreement, on behalf of a community college that chooses to use the exemption pursuant to paragraph (8) of subdivision (a) of Section 76140 of the Education Code, with a nationally or internationally accredited university located in the State of Baja California, Mexico, that provides reciprocal rights to California residents attending a university in the State of Baja California that reasonably conforms to the benefits conferred upon residents of Mexico pursuant to paragraph (8) of subdivision (a) of Section 76140 of the Education Code.

(b) As used in this section, "community college" means a community college described in clause (ii) of subparagraph (A) of paragraph (8) of subdivision (a) of Section 76140 of the Education Code.